IPBA Journal

March 2014

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NEWS & LEGAL UPDATE

INTER-PACIFIC BAR ASSOCIATION

March 2014 No 73

IPBA JOURNAL

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Inter-Pacific Bar Association

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INTER-PACIFIC BAR ASSOCIATION

IPBA Journal

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The President's Message

Young-Moo Shin
President

Dear Colleagues,

As I write this, my last message to you as President of the IPBA, I reflect on how quickly my one-year term has passed. It was my good fortune to take the reins of the IPBA from my accomplished predecessor, Mr. Lalit Bhasin, on 20 April 2013, and I will be passing the leadership baton to Mr. William A. Scott at the end of the Annual General Meeting in Vancouver on 11 May this year.

Although the term of the IPBA President is only one year, we actually serve the IPBA for five consecutive one-year terms as Vice President, President-Elect, President, Immediate Past President, and finally as the chair of the Nominating Committee. As individuals we each have our own unique character and way of doing business based on cultural norms, legal parameters, and accepted practices in our own jurisdictions, yet we all lead the IPBA as an association with one common goal: to uphold the Spirit of Katsuura (see the IPBA Web Site for a history of the IPBA: http://ipba.org/about-us/the-spirit-of-katsuura/8/122/the-spirit-of-katsuura.html). The primary purpose of the IPBA is to provide a forum for members to get together to exchange views in a democratic environment without financial or political influence of any individual member, and to make friends in the process. I think we have consistently accomplished this year after year.

Therefore, rather than focus on accomplishments of the past 12 months, most of which I have already noted in my previous messages, I take this opportunity to update you on long-term projects that are currently in progress: projects that have begun in one administration and continue into the next, projects that show how the leaders of the IPBA focus on the benefit to the association rather than on personal agendas.

Strategic Long-Term Planning: the second round of this Committee (the first was in 2005-2006) was established at the Mid-Year Council Meeting in Auckland in 2012, upon the suggestion of then president Mr. Bhasin. I'd like to thank all of you who took the time to answer the recent online survey as part of the Strategic Long-Term Planning Committee's efforts to improve the IPBA. The data gathered from your responses is being analysed by Eliquent Business Consulting, and the individual comments were most helpful to assist the IPBA leadership in determining the next steps to take in order to enhance membership benefits. The final report will be made public to all IPBA members soon.

Ad Hoc Committee on Anti-corruption and the Rule of Law: One of the goals of the IPBA as stated in the IPBA Constitution is to 'promote the rule of law'. Several IPBA Council members and other prominent IPBA members came forward to express their interest in helping me lead this effort, which the Council fully supported at the Mid-Year Council Meeting in Zurich. We have decided on the leadership of the committee as follows:

Co-Chairs:
Young-Moo Shin; Shin & Park, Seoul
Gerold Libby; Zubler Lawler & Del Duca LLP, Los Angeles

Vice-Chairs:
Jeffrey Holt; Saipem Offshore Norway, Sola
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Roger Best; Clifford Chance LLP, London

Special Advisors:
Lee Suet-Fern; Stamford Law Corporation, Singapore
Lalit Bhasin; Bhasin & Co., Advocates, New Delhi

We look forward as well to many IPBA members participating on the committee as our mission statement and goals are developed over the next few months.

IPBA Web Site: The current IPBA web site was constructed in 2008, and unfortunately it has become somewhat antiquated in terms of the technology and designs that are available today. Our Webmaster, Christopher To, is working hard to make much-needed improvements to the site, with the goal of having it completely revamped by the end of this year. Watch for upcoming announcements on this project that will bring IPBA's site more up-to-date in terms of technology and user-friendliness. Any suggestions on features that should be included can be sent to the IPBA Secretariat (ipba@ipba.org).

Upcoming Meetings

Mid-year Council Meeting and Regional Conference in 2014: be sure and join us at end of September this year in Rio de Janeiro and São Paulo, Brazil. The host committee has already begun planning the meetings for the IPBA Council members and two conferences for the general public. The only previous occasion that an IPBA Council Meeting was held in South America was in 2004 in Santiago, Chile, making this an exciting opportunity to reaffirm IPBA's presence in this important region.

24th Annual Meeting and Conference in Vancouver, 8-11 May 2014: in addition to the committee sessions and social events, don't forget the Annual General Meeting, at which the business of the Association for the past year is announced to all IPBA members. The end of every AGM is open to questions and comments from members, so it is a great chance to express your thoughts in an open forum, and get your voice heard by the IPBA leadership. I encourage all IPBA members to attend the AGM on 11 May, 10:30am-12:00pm.

After 11 May, I will no longer be President, but I will remain active in the IPBA for the next two years in an official capacity, and beyond that out of my personal interest in the hope of contributing to its bright future. I thank all IPBA members for their support and sincerely look forward to seeing you all for many years to come.

Young-Moo Shin
President

IPBA 2014 VANCOUVER

IPBA Best Paper Prize Programme Guidelines

IPBA 2014 Vancouver

1. The competition is open to all IPBA members who have registered for the IPBA Annual Meeting and Conference in Vancouver, May 8-11, 2014.
2. Articles submitted must focus primarily on legal issues that would be of interest to business and commercial lawyers around the world.
3. The competition is open to articles of up to 4,500 words excluding footnotes and bibliography. Entries that exceed the word limitation will be disqualified.
4. All entries must be in English, original, unpublished and not submitted or accepted elsewhere at the time of submission.
5. No more than one article may be submitted by the same author. Co-authored articles will not be accepted.
6. Entries must be received by the IPBA Secretariat at ipba@ipba.org by April 15, 2014. Late or incomplete articles will not be accepted for consideration.
7. A summary of the best paper will be published in the IPBA Journal. The paper selected to be published shall follow the IPBA's Publications Committee Guidelines, and copyright to the paper will belong to the IPBA.
8. The best paper will be selected by the Best Paper Selection Committee comprising two to three Past Presidents of the IPBA.
9. Selection of the best paper will be based on:
   a) creativity and depth of the legal analysis;
   b) thoroughness of the legal research; and
   c) structure and writing style.
10. The author of the best paper will be acknowledged and presented with a certificate during the IPBA Annual Meeting and Conference in Vancouver.
11. Any inquiries regarding this Best Paper Prize Programme should be sent to the IPBA Secretariat at ipba@ipba.org.
12. The Publications Committee will be responsible for the implementation of this programme.

INTER-PACIFIC BAR ASSOCIATION

For further information, please contact Caroline Berube,
Chairperson of the Publications Committee: cberube@hjmasialaw.com

The Secretary-General's Message

Yap Wai Ming
Secretary-General

Dear IPBA Members,

Over the last decade, business interests in the Asia Pacific countries have increased significantly compared with many countries in the EU and America. Businesses in the East continue to expand despite the economic gloom in the West. IPBA, being an inter-Pacific organisation, is well poised to take advantage of this growth taking place in our backyard. However, our membership has not grown in tandem with the increase in business activities here. In fact, for some years IPBA membership has shrunk from a high of 2,006 members in 2006 to a low of 1,239 in 2009. Current membership stands at 1,476 as of this publication, but after subtracting non-renewed memberships this is sure to drop to around 1,200 at the end of the membership renewal period on March 31st. We have, on average, a membership number around 1,500 members since 1991, but only 1,300 over the last decade. Many members from a jurisdiction join the IPBA during the time of the annual conference that is held in their jurisdiction. Many of these members do not renew their membership thereafter. IPBA has always retained a core group of loyal members who have been with us for more than a decade.

This trend has been receiving some analysis from a recent survey carried out by the Strategic Long-Term Planning (SLTP) committee and we hope to report to Council in greater detail at the Vancouver meeting. The survey was also extended to former members of IPBA who had not renewed their membership with us. It would be useful to share some snippets of these findings. An interesting observation is that 31% of our members have only a three- to six-year relationship with us, while only 13% have been with us 10 years or longer. 49% of our members are older than 55 years of age. Is this a reflection of our "greying" membership and that we are not attracting enough younger members to join us? Our respondents have also provided useful general comments. One in particular has remarked that there were no activities within his jurisdiction apart from the annual conference that he signed up for that year. His enthusiasm soon waned and over time, he dropped out of IPBA. This general feedback serves as a good wake up call to us and quite poignantly summarised by another respondent's remarks which I reproduced below (please appreciate the anonymity of these remarks due to the confidential nature of this survey):

> *"The IPBA is a tremendous concept and properly led could be the major regional business law association. Over recent years it has had a poor record for vision, innovation, change or focus on member benefits. The business model is essentially unchanged from the early 1990s and there is a distinct atmosphere of the IPBA being run as a club for its long term members rather than as a vibrant 21st century professional association. Over the same period the IBA has realised the importance of Asia and has assumed much of the professional territory that was originally a relatively uncompetitive space occupied by the IPBA, with the implication that the IPBA is becoming increasingly irrelevant as a representative association for vibrant, ambitious young lawyers of the region. If it is to survive as a meaningful player in this space the IPBA needs to be able to reinvent itself and assert its 'ownership' of the Asia regional business space. This will necessarily involve a willingness to change and commitment to follow through but it could be done."*

Notwithstanding the above comment, some jurisdictions are more active than others. They have their own annual regional events outside of the usual IPBA calendar. Japan has its own IPBA chapter (www.ipbajp.com that actively

organises social events [golf included of course]). Hong Kong, through Christopher To and Allan Leung, has been holding an annual construction law seminar. Wilson Chu has for many years lead the IFLR-IPBA M&A forum in Hong Kong annually. Anne Durez, Jean-Claude Beaujoir and Patrick Vovan organise a women's dinner and other regional conferences in Paris. IPBA members do not have to rely on the leadership or programme coordinators to start something in their own jurisdictions. I would urge members to contact their respective local jurisdictional council members or regional representatives, committee leadership, or officers with ideas for holding events in your jurisdictions. Participation by all members is needed. A "by the members, for the members" association will serve to promote the close friendships that members find appealing about the IPBA.

I have written in my past few messages as Secretary-General regarding the trends and corporate governance of IPBA which was rooted in its foundation in Japan as an unincorporated association. I have moved for a call to review this seriously with a focus of enhancing the strength of our secretariat support. The longest serving members of the IPBA appear to be the secretariat staff, as most of the Officers hold leadership positions for a transient period of about four years: two years as deputy and two years in the actual post. We seriously need to re-examine our structure and governance going forward. Some of these initiatives will be outlined in our proposal to corporatize IPBA as a legal entity so that we have the formality of a proper legal structure to govern our organisation and also of the membership initiatives that will be summarised in the SLTP report.

See all of you in Vancouver in May!

Yap Wai Ming
Secretary-General

IPBA Upcoming Events for IPBA Journal, March 2014 Issue		
Event	**Location**	**Date**
IPBA Annual Meeting and Conference		
24th Annual Meeting and Conference	Vancouver, Canada	May 8-11, 2014
25th Annual Meeting and Conference	Hong Kong	May 6-9, 2015
IPBA Mid-Year Council Meeting		
2014 Mid-Year Council Meeting (Council Members only)	Brazil	September, 2014
Regional Events		
IPBA Regional Conference (open to all)	São Paulo, Brazil	September, 2014
IPBA Regional Conference (open to all)	Rio de Janeiro, Brazil	September, 2014
Supporting Events		
ABA Section of International Law Spring Meeting	New York, NY	April 1-5, 2014
Kluwer Law International's "Hong Kong International Arbitration Summit"	Hong Kong	May 21, 2014
Kluwer Law International's "Hong Kong: Global Competition Law Forum Asia"	Hong Kong	June 27, 2014
More details can be found on our web site: http://www.ipba.org, or contact the IPBA Secretariat at ipba@ipba.org		

Interview with Mr Michiyoshi Kiuchi, Justice of the Supreme Court of Japan

On 13 November 2013, Caroline Berube, the Chair of the Publications Committee of the IPBA and Tatsuki Nakayama, Vice-Chair of the IPBA Scholarship Committee, were honoured with an opportunity to interview Michiyoshi Kiuchi, a Justice of the Supreme Court of Japan, for the *IPBA Journal*. Below is a summary of the interview.

Michiyoshi Kiuchi graduated from the University of Tokyo, Faculty of Law, in 1973 and registered as an attorney with the Osaka Bar Association in 1975. He was very involved with the Osaka Bar Association and has held various leadership positions from 1981 to 2013, until he became a Justice of the Supreme Court of Japan. One of his favorite phrases is 'you must not be bound by your successful experiences' and his hobby is reading Japanese historical novels.

Mr Michiyoshi Kiuchi

1. What was your motivation to become a lawyer?

I decided to be a lawyer, hoping that I could have more freedom for what I should do in my daily work life. However, after being a lawyer, I found that I was not able to have as much leeway as I had expected. Nevertheless, I cannot compare my experience with other jobs because I have not had any other job other than as a lawyer.

2. How does one become a judge of the Supreme Court? Is the judge elected/recommended by the Bar Association or appointed by the Justice Department?

In my case, where I was nominated as a Supreme Court Judge with a lawyer's background, I was one of eight candidates nominated by the Japan Federation of Bar Associations. I do not know how other Supreme Court Judges with a different backgrounds (other than as a lawyer) are selected.

3. **Among the eight candidate lawyers, do you know why you were selected as the Supreme Court Judge?**

I am not really sure why I was selected from among them. However, I have had an interest, and pursued my career, in the fields of family law and bankruptcy law (of both commercial entities and individuals). These two fields might be the areas which are now in demand. I should say though that my expertise in family law and bankruptcy law have nothing to do with each other.

4. **Can we understand then that each Supreme Court Judge has his/her area of expertise?**

Yes. However, cases in the Supreme Court of Japan are allocated to a judge regardless of the specialty that each Judge has pursued.

5. **As I understand it, an 'American Legal Education system' was introduced several years ago to address the low passage rate of the National Bar Examination. However, it caused a surplus of young lawyers and too few jobs were available for them. What are your thoughts on legal education in Japan?**

In relation to the National Bar Exam of Japan, I think that the passage rate should be in excess of 50 percent. Otherwise, law school students would cram only for passing the Exam itself. In other words, if the percentage pass rate of the National Bar Exam is lower than half, then students would not study in order to acquire the real skills or knowledge necessary to be a good lawyer, nor would he/she have time to stop and consider what it is to be a lawyer.

6. **Presently foreign lawyers cannot appear in Japanese courts. Do you think the negotiations on TPP or the recent trend for globalisation will change this restrictive attitude?**

To ask a question in return, do you think there is a need for foreign lawyers to appear in Japanese courts?

(Caroline) For example, in my practice in China, some of our clients in international transactions prefer me to appear in the Chinese court. However, in China only a lawyer of Chinese nationality is admitted to appear in Chinese courts.

When I took part in the discussions for admitting Gaikokuho-Jimu-Bengoshi (registered foreign lawyers in Japan) about 20 years ago, I heard that there was no such need for foreign lawyers to appear in Japanese courts. Either way, what ultimately counts in relation to requirements for appearing at the bar is not one's nationality, but the talent or ability of the lawyer.

7. **Then, is it the case that so long as foreigners pass the National Bar Exam in Japan, and thus acquire their qualification as a lawyer (which is possible), then he or she is admitted to appear in a Japanese court?**

Yes. In this sense, the Japanese system would not unreasonably restrain the admission of foreign lawyers.

8. **In 2013, a Supreme Court ruling in Japan declared unequal and unconstitutional the Civil Code clause that denies full inheritance rights to heirs born out of wedlock. It is reported that this ruling was influenced by the foreign trend where children born out of wedlock have stronger rights. Do you think this Supreme Court ruling was affected by the practices or trends in foreign countries?**

   In the last 20 years or so, the percentage of children born out of wedlock in Japan has been rather low and has scarcely, if at all, increased since 1995 when there was a previous Supreme Court ruling on this matter.

9. **Yes, as far as we know, the percentage of children born out of wedlock in Japan has been only one to two percent.**

   This is extremely low compared to around 20 percent or more in European countries. If children born out of wedlock in Japan are increasing in number, then there might be an influence from foreign countries with a larger percentage of children born out of wedlock. Given the static, stagnant percentage of Japanese children born out of wedlock and the huge difference between Japan and foreign countries, I do not think that the laws in European or other western countries had direct influence on the Supreme Court ruling.

10. **With regard to the acceptance of foreign judgments, do you think it is likely that, 'mutual guarantee/ reciprocity' with more countries will be acknowledged in the future?**

    I do not believe that the judges in Japan have an inclination to unreasonably or intentionally refuse the acceptance of foreign judgments.

11. **This interview will be published in the IPBA Journal which is read by many international lawyers. Do you have any specific message to IPBA members?**

    I hope that, both domestically and overseas, the role of not only litigation, but also the judiciary system as a whole, will increase in the future. For this cause, I would hope that IPBA members play an active role in many ways.

    Further, I hope that more and more contracts in international transactions have clauses where the governing law is the law of Japan and Japanese courts have jurisdiction. As you may know, the Civil Code of Japan is now in the process of being overhauled and totally revised. And one of the purposes of this Civil Code revision is to make the Code or Japanese law practice more understandable to foreigners, and thus fit for global standards.

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Caroline Berube is a managing partner of HJM Asia Law & Co LLC and focuses on Chinese corporate law and commercial practice. She has advised clients in various industries such as manufacturing, energy (oil, gas and mining), technology, and services. Caroline is also a regular speaker at many international conferences and is an arbitrator approved by the Chinese European Arbitration Centre.

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Administrative Law in Hong Kong - 2nd Edition

A comprehensive and up to date commentary on Administrative Law in HK

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About the book

Hong Kong Administrative Law provides the most comprehensive and up to date commentary on this increasingly important area of law in Hong Kong.

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It also included discussion on the latest controversial and high profile cases, such as Fok Chun Wa v Hospital Authority, the case concerning the obstetric services in public hospitals for non-resident women from the Mainland; Vallejos and Domingo v Commissioner of Registration, the case concerning the foreign domestic helpers' right of abode; and W v Registrar of Marriages the case on same sex marriage of transsexuals.

Relevant cases and materials from other jurisdictions are also discussed. This book provides a breadth of coverage to be of interest to academics and practitioners, whilst being accessible to students considering administrative law for the first time.

Rights of a Commercial Agent on Termination of his Agency under English Law

This article deals with the rights of a commercial agent on termination of his or her agency under English law and considers the following issues: the definition of a commercial agent under English law; and the four rights of an agent on termination. These rights are: entitlement to unpaid commission; entitlement to minimum notice; entitlement to pipeline commission; and entitlement to either an indemnity or compensation.

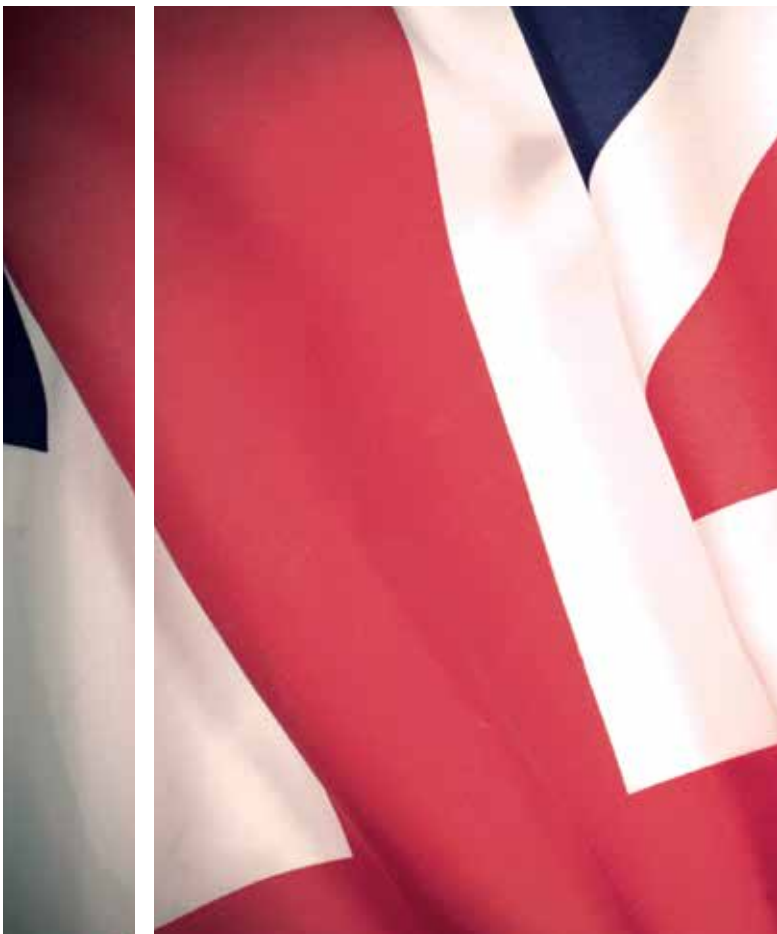
Rights of a Commercial Agent on Termination of his Agency under English Law

The purpose of this article is to set out the various claims a commercial agent can make on the termination of his agency agreement under English law.

The position is governed by the Commercial Agents (Council Directive) Regulations 1993 (as amended) (the 'Regulations'). The Regulations came into force on 1 January 1994 and apply to all agreements between commercial agents and their principals, even those entered into before 1994. The Regulations are based on a European Union ('EU') Directive whose aim is to protect commercial agents throughout the EU.

Before considering the claims a commercial agent can make on termination, it is necessary to understand who is a commercial agent for the purposes of the Regulations. A commercial agent is defined under Regulation 2(1) as 'a self-employed intermediary who has continuing authority to negotiate the sale or purchase of goods on behalf of another person (the 'principal'), or to negotiate and conclude the sale or purchase of goods on behalf of and in the name of that principal'. The important issues in relation to this definition are as follows:

- Although the phrase 'a self-employed intermediary' is used, this includes a limited company and indeed any other form of legal person.



- In interpreting who is and who is not a commercial agent, the English courts have taken a very broad view of the Regulations, adopting a purposive approach to the interpretation of the Regulations; in other words, following the aims of the EU Directive by trying to protect the commercial agent so that as many agents as possible come within the ambit of the Regulations.

- By way of example, even though the Regulations require a degree of 'negotiation', the courts have decided in many cases that the amount of negotiation necessary to fall within the definition is very small indeed and, in effect, if the input of the agent is simply to procure business for his principal, this will normally be sufficient to be classed as 'commercial agent'. The only case thus far where an agent was deemed not to come within the Regulations was a garage selling petrol where it was impossible to conclude that the agent was in any way at all negotiating the sale of the petrol.

- Under English law, the definition of 'commercial agent' is limited to the sale or purchase of goods and does not include services, unlike the position in most of the continental European countries. There have been a number of cases where an agent has been negotiating the sale of computer software and, unless this includes the sale of computer hardware as well as software, such an agent will not fall within the Regulations.

When deciding whether or not the agent has the protection given to him under the Regulations, it is necessary to consider Regulation 1(2) which states: 'These Regulations govern the relations between commercial agents and their principals and, subject to paragraph (3), apply in relation to the activities of commercial agents in Great Britain'.

Paragraph 3 extends the ambit of the Regulations to the rest of the EU and also to the three non-EU countries in the European Economic Area ('EEA'), namely, Iceland, Liechtenstein and Norway. Accordingly, if you are engaging a commercial agent outside the EU and outside the three other non-EU countries in the EEA under a contract subject to English law and the agent carries out no activities within the EU and the EEA, then the agent would not fall within the Regulations. Thus, for example, if you engage a Swiss agent for the territory of Switzerland under English law, the Regulations would not apply to the contract. If you are engaging an agent where the activities are partly carried out in Great Britain and partly outside Great Britain and the rest of the EU/EEA, then it would be appropriate to enter into two separate agreements.

Once you have established that the agreement is subject to the Regulations, what are the agent's rights once the agreement is terminated? Essentially, the agent has four separate rights:

1. First, he is entitled to any outstanding unpaid commission or other payment due under his contract. This would apply whether the agent is in fact protected by the Regulations or not, as this is a normal contractual right.

2. Secondly there is a minimum notice period under Regulation 15. The minimum notice periods are:

    - one month during the first year of the contract;
    - two months during the second year; and
    - three months during the third year and subsequent years.

    Unless otherwise agreed, the end of the notice period must coincide with the end of a calendar month.

3. Third, the agent is entitled to what is known as 'pipeline commission' under Regulation 8. In other words, if the agent can show in relation to a transaction concluded after termination that that transaction was mainly attributable to his efforts during the agency contract and, if the transaction was entered into within a reasonable period after termination, then he will be entitled to contractual commission.

   It is, however, possible to exclude this entitlement to pipeline commission in the contract. In addition, there have been several cases regarding what is understood to be 'a reasonable period after termination'. The standard period is normally three months, but this has been extended to as long as 21 months where complex projects are being negotiated which can take a long time to come to fruition, and the purpose of this Regulation 8 is to ensure, as far as possible, that the agent is protected by receiving at least some remuneration to reward him for his efforts.

4. The final, and by far the most important right of the agent, is that he has an entitlement to receive what is termed either an indemnity or compensation on termination under Regulation 17 and, unlike the pipeline commission under Regulation 8, this entitlement to indemnity or compensation cannot be excluded in the agency contract.

   This final entitlement is a totally new entitlement under English law and is very often the major issue to be determined on termination. The purpose of the remainder of this article is to explain how this entitlement works in practice.

Entitlement to Indemnity or Compensation

Indemnity or compensation (as the case may be) is payable in the event of termination of the agency contract for any reason except in the following circumstances:

- under Regulation 18(a) where the principal has terminated the agency contract because of default attributable to the agent which would justify immediate termination of the agency contract; or

- under Regulation 18(b) where the agent has himself terminated the agency contract unless such termination is justified (i) by circumstances attributable to the principal; or (ii) on grounds of the age, infirmity or illness of the agent in consequence of which he cannot reasonably be required to continue his activities.

Accordingly, even where the agent terminates the contract because he is too ill to continue or has reached retirement age, then indemnity or compensation will still be payable, even where the agent (being a natural person rather than a limited company) dies, in which event his estate will inherit the agent's claim.

In order to understand the two different concepts of indemnity and compensation, it is necessary to explain the background to the negotiations of the EU Directive.

The EU Directive was a compromise between the negotiating positions taken by Germany and France, the two major countries that had already provided legal protection for commercial agents for many years. Germany used the indemnity system under which agents received as a maximum the average annual gross commission over the period of five years prior to termination of the contract (or if shorter, the average for the contractual period), whereas in France the agents received compensation based on a payment of two years' gross commissions, representing either the last two years of the contract or the average over the three years prior to termination multiplied by two.

By way of compromise, the EU Directive allowed member states to implement the Directive by adopting either the German indemnity system or the French compensation system. Other than France, most of the EU countries adopted the German indemnity system but the United Kingdom decided to give principals and agents a choice of either system.

Accordingly, under English law, the parties can agree to apply the German indemnity system, but if such an agreement is not included in the agency agreement, then by default compensation will automatically apply. These two different systems will now be examined in order to explain how each operates.

The indemnity system is set out in Regulations 17(3) and (4).

The EU Directive was a compromise between the negotiating positions taken by Germany and France.

In order for an agent to be entitled to an indemnity, he must be able to show under Regulation 17(3) that 'he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers and the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers'.

Under Regulation 17(4), 'the amount of the indemnity shall not exceed a figure equivalent to an indemnity for one year calculated from the agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question'.

Although superficially, for the agent, it is attractive to be able to receive an indemnity on termination, the amount normally paid is likely to be fairly limited. Under German law, the calculation of the indemnity (known as an *Ausgleichsanspruch* in Germany) is extremely complicated and often results in relatively low awards with, in any event, a cap of one year's gross commission.

The difficulty for English lawyers is that there has only been one reported decision on the calculation of an indemnity in *Moore v Piretta* [1999] 1 All ER 174, which was a decision by a High Court judge who decided to look to German law for help in ascertaining how the Regulations should be interpreted, but unfortunately he seems completely to have misapplied German law in making the relevant calculation, despite having had assistance from German legal expert evidence. This case was 15 years ago and there still have not been any further decisions on how the indemnity should properly be calculated under English law or whether or not in future decisions the English courts will again seek to follow the calculation methods adopted by German jurisprudence or alternatively build up their own English system which, as can be seen below, has taken place with the alternative system of compensation.

Perhaps a reason why there has only been one reported decision on indemnity is that it is still relatively unusual, as the adoption of the indemnity alternative requires prior agreement in the agency contract; this appears to be rarely the case and, accordingly, it is far more common that the compensation system applies. The basis of compensation is set out in Regulations 17(6) and (7).

Regulation 17(6) states that 'the commercial agent shall be entitled to compensation for the damage he suffers as a result of the termination of his relations with his principal' and Regulation 17(7) continues by stating 'such damage shall be deemed to occur particularly when the termination takes place in either or both of the following circumstances, namely circumstances which:

- deprive the commercial agent of the commission which proper performance of the agency contract would have procured for him whilst providing his principal with substantial benefits linked to the activities of the commercial agent; or

- have not enabled the commercial agent to amortise the costs and expenses that he had incurred in the performance of the agency contract on the advice of his principal'.

It is clear from the above that there are major differences between the two systems:

1. there is no cap, i.e., no limit to the amount of compensation that the courts can award to an agent, which is a major disadvantage to principals;

2. the award of compensation is not specifically linked to the agent bringing in new customers or significantly increasing the volume of business;

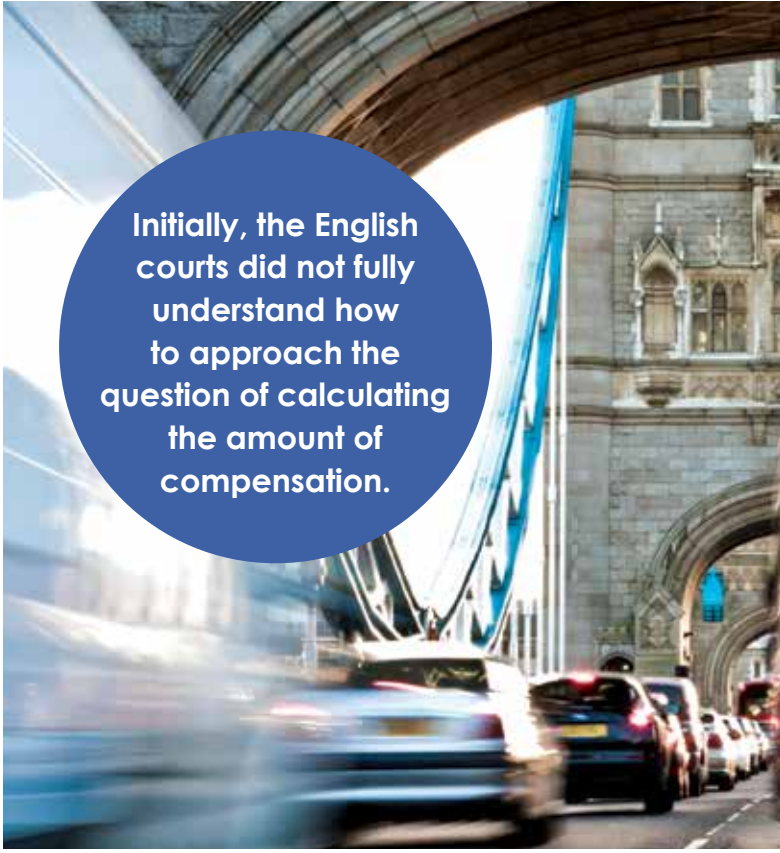
3. there is no requirement that the principal continues to derive substantial benefits from the business with such customers;

4. there is no requirement that the payment of compensation is equitable.

As far as the agent is concerned, he would do better to ensure that the agency agreement is silent on the issue of which system should apply so that he receives compensation rather than indemnity, and this is a very common situation in practice.

Initially, the English courts did not fully understand how to approach the question of calculating the amount of compensation. The Regulations are drafted without too many specifics and as there was only one European country that awarded agents compensation on termination, the English courts naturally turned to France for guidance. In the first cases they decided, the English courts took advantage of the French experience and agents more or less automatically received two years' gross commission by way of compensation. This automatic adoption of the French system gradually started to change after about 10 years from the introduction of the Regulations and the English courts slowly started attempting to introduce new English principles to the method of calculating compensation.

However, all previous case law was consigned to history as a result of the now leading case of *Lonsdale* v *Howard & Hallam Limited* [2007] UKHL 32 in 2007, the first ever decision made on commercial agency law by the then House of Lords. Graham Lonsdale had been an agent for Howard & Hallam, a shoe manufacturer, for 13 years until the agency was terminated due to the closure of the shoe making business. It had been in decline as had Lonsdale's commission income which fell year by year. For example, in 1997–1998, Lonsdale earned



gross commissions of almost £17,000, but five years later this had fallen to £9,621. As a result, in 2003 Howard & Hallam ceased trading, the goodwill of the business was sold to a competitor and the agency relationship with Mr Lonsdale was terminated. Howard & Hallam offered £7,500 by way of compensation, but Mr Lonsdale claimed a sum of approximately £26,000 based on the French system of compensation, equivalent to two years' gross commission. The law lords decided, based on the wording of Regulation 17(6), that the damage suffered by Mr Lonsdale was the loss of the agency business, including whatever goodwill attached to it, and so the compensation to which he was entitled should reflect the value of the agency business going forward. The court recognised that Howard & Hallam's shoe making business was in serious decline and Mr Lonsdale's income was, as a result, modest and falling at the date of termination. Consequently, the court considered it unrealistic that a buyer would have paid as much as two years' gross commission for Lonsdale's agency business as at the termination date and instead he was awarded compensation of £5,000 as being a reasonable figure that he could have expected to receive for the agency. If the German indemnity system had been agreed in the agency contract, it is likely that Mr Lonsdale would have received nothing since he would not have been able to show that his principal continued to derive substantial benefits from the business with his customers, or indeed that the payment of the indemnity was equitable having regard to all the circumstances. However, these

conditions are not contained in Regulation 17(6) in relation to compensation.

Since the *Lonsdale* decision, the principles laid down in the case have been followed and amplified in subsequent decisions which have helped in formulating the method by which compensation is to be calculated.

This method is similar to the way in which businesses are valued and the following principles have been established.

- First, one calculates the gross income of the agency business which is normally straightforward by calculating the gross annual commissions paid, probably taking the average income over the last three years (although whether three years is the appropriate period will depend on the circumstances of each case).

- Then one deducts from this income the actual costs of running the agency business. This can become quite complex where one agent is running a multiple agency business, which is very common. Another area of difficulty is that the overhead expenses need to include a reasonable salary paid to a salesman.

Once the expenses have been calculated, one arrives at the net annual profit of the agency business.

The next step is to assess how many years' net profit a hypothetical purchaser would pay to purchase the agency business; the current case law appears to be applying an average of 4.5 years. It goes without saying that the appropriate number of years to be assessed does depend on all the circumstances of the particular case and English law in this area is fast developing. To give an example, if an average income over the last three years is £150,000, and average costs are £50,000, so that the average net annual profit is £100,000, one could anticipate compensation of around £450,000 being awarded.

Normally an expert accountant is appointed by each party and efforts are made prior to trial for the two experts to seek to reach an agreed report.

A final observation is that the agent must notify the principal (normally in writing) that he wishes to seek either indemnity or compensation within one year after termination of the agency agreement (Regulation 17(9)).

Conclusion

An agent's rights on termination of the commercial agency agreement are extensive and complex and potentially very expensive for a principal. However, the principal can potentially improve his position substantially if he takes legal advice before entering into the agency agreement and, in most circumstances, chooses the indemnity option since he can then at least limit his exposure.

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Simon Ekins, head of dispute resolution at Fladgate LLP, has extensive experience in complex breach of contract and international disputes, including those heard by the LCIA and the AAA. He has a particular expertise in commercial agency disputes and acted in *Ingmar GB Ltd v Eaton Leonard Technologies Inc.*, a leading case that went to the Court of Justice of the European Communities.

Companies Act in India, 2013 – Key Changes

This article discusses the recent overhaul of the legal framework governing companies in India. The Companies Act 2013 has been enacted to replace the five-decade old Companies Act 1956. The new Act has introduced various new concepts, such as one-person companies, fast-track mergers, and enhanced minority protections and governance norms. The article discusses the impact of certain key amendments to the functioning of Indian companies.

The five-decades old Companies Act 1956 ('1956 Act') has finally been replaced with a new act (the '2013 Act'), which was notified in the official gazette on 30 August 2013. Only certain provisions of the 2013 Act have been notified and the rest of the Act is expected to be made effective in parts as and when the relevant rules pertaining to that section of the law are finalised. The 2013 Act brings in substantial changes to the laws and regulations governing companies in India. This article discusses some of the key changes introduced by the new Act.

Control, Promoters and Associate Companies

The definition of 'control' under the 2013 Act is akin to the definition of 'control' under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011. The definition is broad and includes the right to appoint the majority of the directors or to control the management or policy decisions of the company, whether under a shareholder agreement or otherwise. Further, 'promoter' has been defined as any person who either has been named in the prospectus or annual return as such or who has direct or indirect control over the affairs of the company, as a shareholder, director or otherwise, or in accordance with whose advice, directions or instructions the board of directors is accustomed to act. Additionally, 'associate company' has been defined as, in relation to another company, a company (other than a subsidiary) in which that other company has significant influence (i.e., control of at least 20 percent share capital or control of business decisions under an agreement) and includes a joint venture company.

The implications of introducing such wide definitions are that a strategic investor merely interested to invest in a company and subsequently exit may be considered as a 'promoter' or 'associate company'. Under the 2013 Act, being classified as a promoter imposes various obligations and liabilities such as providing an exit opportunity to shareholders who dissent to variation in objects referred to in a prospectus, civil liabilities to compensate any loss sustained due to misleading statements in a prospectus etc. Further, the 2013 Act stipulates new disclosures in relation to promoters and associate companies, for instance, companies are required to disclose particulars of associate companies and promoters in their annual return, the source of promoters' contribution has to be disclosed in the prospectus, and salient features of the financial statement of associate companies are required to be attached to the financial statement of the company.

Directors and Key Managerial Personnel

The 2013 Act has brought about significant changes with respect to the appointment and qualifications of directors. Every company is required to have at least one director who has stayed in India for a total period of at least 182 days in the previous calendar year.

The 2013 Act mandates certain classes of companies to have a woman director on their board. The requirement of appointing independent directors is now not limited to listed companies alone but has been extended to certain classes of public companies as well. An 'independent director' has been defined to be a director other than a managing director, whole-time director or a nominee director who meets the prescribed qualifications. The 2013 Act restricts independent directors and their relatives from having certain kinds of pecuniary relationships with the company, its holding, subsidiary or associate company, or their promoters, or directors in the preceding two financial years. Further, promoters, key managerial personnel or employees of a company have been disqualified from being appointed as an independent director of such a company.

The 2013 Act has introduced a concept of key managerial personnel ('KMP') which has been defined to include (1) the chief executive officer or the managing director or the manager; (2) the company secretary; (3) the whole-time director; or (4) the chief financial officer. Certain classes of companies are mandatorily required to appoint KMP.

The KMP and directors have been prohibited from buying in the company, its holding company, subsidiary and associate companies a right to call for delivery or to make delivery of shares or debentures. Accordingly, promoters who are also directors or KMP may be precluded from being call option/put option holders. Further, the 2013 Act now contains provisions relating to insider trading which applies to KMP as well. Any dealing of securities of the company by KMP who are also the shareholders will have to be examined in light of the provisions relating to insider trading as any contravention attracts imprisonment.

Auditors

The 2013 Act has increased the qualifications and responsibilities of auditors. The Act now requires a listed company and such other company as may be prescribed, to appoint auditors on a rotational basis for a period of 10 years in the case of a firm of auditors and five years in the case of an individual. Further, the retiring auditors cannot be re-appointed as auditor in the same company for five years from the completion of their term. The new Act has also increased the list of disqualifications that persons intending to act as auditors for companies can attract. A person cannot be appointed as an auditor of a company if a relative of such a person holds a security or an interest of a value of more than INR 1000 in the concerned company or its holding or subsidiary or an associate company or is indebted or has provided any guarantee or security in connected to the indebtedness of any third person to these companies.

The 2013 Act has increased the number of matters on which the auditor is required to comment on in the auditor's report. Auditors are required to comment on matters such as adequacy and effectiveness of internal financial controls, pending litigation, provision for foreseeable losses, if any, on long term contracts including derivative contracts, and so on.

Under the new Act, non-compliance with certain provisions by auditors attracts punishment by way of imprisonment for a term which may extend to one year. The new provisions are geared towards improving the quality of corporate governance.

Private Companies

The maximum number of shareholders for a private company has been increased from 50 to 200 opening opportunities for larger businesses with absolute private control. With the increase in the number of shareholders,

There has been an increase in the regulations governing private companies.

there has also been an increase in the regulations governing private companies. Certain provisions under the 1956 Act which were exempted for private companies have now been made applicable to it. For instance, a private company is now required to comply with restrictions related to fund raising, borrowing and inter-corporate loans and securities which under the 1956 Act were applicable only to public companies.

Share Capital and Transfer of Securities

Earlier, public companies were required to comply with the prescribed rules in order to issue shares with differential rights whereas private companies enjoyed the flexibility to structure their capital containing shares with differential rights. The 2013 Act now requires companies proposing to issue shares with differential rights to comply with the rules (to be prescribed) in this regard thereby making no distinction between public and private companies in this regard.

The 2013 Act prohibits issue of shares (other than sweat equity shares) at a discount and any share issued at a discounted price will be considered to be void. Earlier the issuance of shares at discount was permitted with prior approval of the Central Government and subject to certain conditions.

A notable change brought about by the 2013 Act is that although the provisions with respect to free transferability of shares of a public company have been retained, a new provision has been introduced which provides that any contractual restrictions between two or more persons with respect to transferability of shares of a public company would be enforceable. The shareholders of a public company may now incorporate pre-emptive rights in their agreements. A lacunae is that the 2013 Act is silent on whether such contractual restrictions are enforceable against the company if such rights are not incorporated in constitutional documents.

Private Placement

A significant change brought about by the 2013 Act is the inclusion of a separate section on private placement. The 1956 Act did not contain any specific provisions on private placements. The 2013 Act defines private placement as any offer of securities or invitation to subscribe securities to a select group of persons through the issue of an offer letter and subject to the conditions specified in the new Act. A private placement offer cannot be made to more than 50 persons or such higher number as may be prescribed. Qualified institutional buyers and employees who have been offered securities under an employee stock exchange plan scheme are not to be counted. The draft rules currently envisage a maximum of 200 persons to whom securities may be offered through private placement in a financial year and allottees cannot transfer the securities to more than 20 persons during a quarter.

To further regulate matters, the 2013 Act provides for various restrictions on private placements. A company is prohibited from making a fresh offer unless allotments under any previous offer have been completed (except where such offers are withdrawn or abandoned) and allotment of securities is required to be made within 60 days from the receipt of application money failing which the application money is to be refunded.

The above restrictions seemingly are a fallout of the various securities scams that have dominated headlines in recent times. The regulations, even though introduced with good intentions, are likely to severely restrict companies seeking to raise finance under this route.

Investments Structure

The 2013 Act prohibits investment structures involving more than two layers of investment companies (i.e., companies whose principal business is acquisition of securities). Such restriction shall not apply to (1) Indian companies acquiring companies outside India if such offshore companies have investment subsidiaries beyond two layers in compliance with the laws of its country; and (2) in cases where a company needs to have more than two layers of investment companies in order to comply with law.

Cross Border Mergers

The 2013 Act now permits Indian companies to merge with foreign companies (as opposed to only foreign companies being permitted to merge with Indian companies earlier) in jurisdictions notified by the Central Government subject to any rules prescribed by the Central Government and the Reserve Bank of India.

Fast Track Mergers

One of the significant changes brought about by the 2013 Act has been simplification of the procedure for mergers amongst certain companies. Now, two or more small companies (i.e., companies which are not public companies and which have a paid up capital of INR 50 million or turnover of up to INR 200 million as per their last profit and loss statement), holding companies and their wholly owned subsidiaries and other class of companies (to be prescribed) can merge without the sanction of the court by entering into a scheme of merger/amalgamation and following the procedure laid down under the 2013 Act.

One Person Company

The 2013 Act has introduced the concept of a One Person Company ('OPC'), wherein a company may be incorporated with only one member. Provisions in relation to board meetings and shareholder meetings, preparation of annual financial statement, number of directors, etc. do not apply to an OPC. The concept helps small entrepreneurs access the benefits of a corporate entity without the accompanying burdensome regulations.

Corporate Social Responsibility

The 2013 Act has introduced new provisions in relation to corporate social responsibility ('CSR'). The provisions require certain classes of companies to constitute a CSR committee consisting of at least three directors including one independent director. The company is required to spend at least two percent of its average net profits in the immediately preceding three financial years on CSR activities, in every financial year failing which, the board shall provide reasons for the same in its report attached to the financial statements laid before the general meeting.

The provisions, though welcome, are not mandatory and do not incentivise/ penalise compliance/non-compliance.

Conclusion

The 2013 Act seems to be a conscious effort on behalf of the Legislature to enhance standards of corporate governance in companies. Its enactment is heavily influenced by recent corporate frauds in India. Whether the good intentions translate into actual results can only be assessed in the long term.

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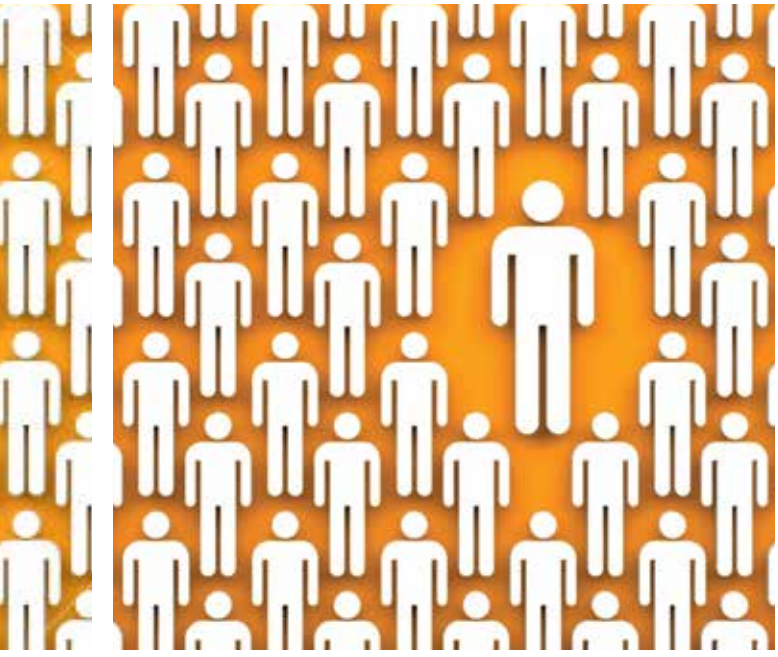
Franchising in Korea

This article discusses franchising in Korea. It describes the method commonly employed by foreign franchisors to expand their franchise businesses into Korea. It also discusses the Fair Transactions in Franchise Business Act, which governs the franchise relationship in Korea, and which is designed to protect the interests of franchisees.



Over the past decade, the number of franchises launched by domestic and foreign companies in Korea has increased significantly. At the end of 2012, there were a total of 2,678 registered franchisors operating in Korea with 176,788 franchise registered outlets. Of these, 66 percent of the franchises were in the restaurant and food industry, 20 percent operated in the services industry and 14 percent were in retail.

Master Franchise Agreements

While different options, such as joint venture arrangements, are available to franchisors, foreign franchise enterprises have commonly used a master franchise agreement (the 'Master Agreement') structure to expand their franchises into Korea.

Under the Master Agreement, the franchisor may establish a wholly owned subsidiary which would act as master franchisee, or enter into a master franchise arrangement directly with a local business partner who will operate the business.

Generally, the Master Agreement arrangement is structured so that the master franchisee relies on 'sub-franchisees' to run the franchise outlets, which are either directly owned and operated by a master franchisee or owned and operated by an independent sub-franchisee.

Fair Transactions in Franchise Business Act

Generally, franchise enterprises are regulated under the Fair Transactions in Franchise Business Act (the 'Franchise Act') especially with respect to relationship and information disclosure laws. In most instances, the Franchise Act governs the relationship between the master franchisor and master franchisee which should include licensing or transfer of intellectual property, operational know-how transfer, establishment of business regions, designation of a franchise term, assignment rights, and grounds for termination.

Additionally, the Fair Trade Commission requires franchisors to provide an information disclosure statement (the 'Disclosure Statement') to the prospective franchisee in connection with the execution of the franchise agreement or sub-franchise agreement. The Disclosure Statement is generally required to include a description of the franchise business, information on key personnel, description of franchisee obligations and responsibilities, and description of the terms and grounds for termination.

The Escrow Programme

The Franchise Act provides various mandatory protections for franchisees, such as the franchise fee deposit escrow programme (the 'Escrow Programme'). Pursuant to the Escrow Programme, the Franchise Act requires that any royalty or franchise fee deposit should be escrowed and held by a bank or financial institution upon the opening of the franchise outlet or lapse of two or more months from the signing of the related franchise agreement. The Escrow Programme provides some level of assurance that if the franchisor fails to provide an adequate level of support or assistance to the franchisee, any franchise fee deposit held in escrow can be refunded. Moreover, it guards against termination without cause, requires a two month prior notice requirement, and institutes the right to cure breaches contained in the notice of termination.

Necessity to Review Requirements

Despite the relatively straightforward guidelines and procedures for establishing a franchise enterprise in Korea, it is crucial that a franchisor looking to expand into Korea should fully review the underlying legal requirements and regulations under Korean law prior to initiating any franchising transaction.

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Reforms to Enhance the Chilean Economy

The Chilean Government is boosting its economy and improving the protection of consumers' rights through different legal reforms. Economically, all of these legal initiatives represent a striking effort in the sense that they should bring in more foreign investment. However, from a legal point of view, there is still a gap that needs to be addressed.

In the last four years, Chile's Ministry of Economy has introduced interesting legal reforms that seek to enhance and promote the Chilean economy. The reforms passed relate to: (1) incorporating a company in one day; (2) granting powers in financial matters to the National Consumer Service; (3) new tax incentives for private research and development; (4) streamlining class actions; and (5) fostering the international cruise ship market.[1]

Driving these legal reforms, the Chilean Government has a two-fold purpose for their initiation. The first purpose is to boost the economy, making it easier and cheaper to set up small or medium companies. This would allow foreign investors to participate in new commercial areas, as well as increase innovation and competitiveness through investments and development. In order to reach these goals, Acts (1), (3), and (5) mentioned above, have introduced tax benefits and reduced operational costs.

The second purpose is to strengthen rights for all consumers. In this sense, Chile understands that economies do not have healthy growth if their respective legal systems do not enshrine a system that effectively protects consumers' rights. In this respect, the Acts (2) and (4) mentioned above, attempt to deal with this challenge.

All of the relevant statutes have been issued and implemented under the Government of President Sebastian Piñera. Therefore, the Chilean business community does not yet know the real impact of these reforms. Bearing this in mind, the present article seeks to highlight the relevant aspects of the reforms introduced in order to examine whether their goals described above have been achieved or not.

Law No 20,659: Incorporating a Company in One Day[2]

Generally speaking, the incorporation process requires a public deed which must contain the by-laws of the company which is being set up. A copy of this deed must be registered at the Commerce Registry and then published in the Official Gazette within 60 days after the signature of the by-laws.

As soon as Law No 20,659 came into effect, a new process to incorporate companies was set up within the Chilean legal system, allowing the formation, modification, transformation, merger, division, termination, and dissolution of small and medium companies in one day. The formality of maintaining a deed is reserved for large companies only.

Further, this law states that only some types of companies are subject to it – Limited Liability Companies, Individual Limited Liability Companies, Closely Held Companies, among a few others, are subject to it, and only Publicly Held Companies have been excluded.

The importance of this Act lies in four essential aspects, including reduction of time in the procedure to set up companies, no fees associated with registering companies, transparency, and flexibility.[3]

This law seeks to establish a faster process to set up companies and initiate commercial activities.

First, this law seeks to establish a faster process to set up companies and initiate commercial activities. Therefore, it is only necessary to complete an online form for that purpose and it is possible to complete this within one day.

Further, these online forms must be signed with an electronic signature. However, if the constituents do not have an electronic signature, the law requires that these forms be notarised.

Second, once these online forms have been completed and signed, they must be registered at the Electronic Registry of Companies and Societies. This registration is free of charge. So far, the only costs associated with this process are the Notary's fees – if the constituents do not have an electronic signature – and the Official Gazette's fees – if the company's equity is greater than approximately US$210,740.

Third, the Electronic Registry of Companies and Societies is an online and public registry which makes it possible for anyone to have free access to information about the companies registered on it and the details of their business. The Chilean Government understands that a free market operates much better if a policy of transparency is implemented.

Fourth, the law expressly deals with important issues arising from the migration between the traditional and new system. In order for a company to make the transition, a migration form must be signed and registered on the Commerce Registry if the company is migrating from the new system to the traditional one, or on the Electronic Registry of Companies and Societies if the company is migrating from the traditional system to the new one. The reasons for the possibility of transitioning between the newly established and traditional systems are not expressed by the Act. Also, there are no benefits associated with this choice.

In accordance with figures from the Ministry of Economy, so far the formation of new companies has increased by 35 percent and produced savings of up to US$7,500 per year, per company.[4]

Law No 20,570: New Tax Incentives for Research and Development[5]

Law No 20,570, published on 6 March 2012, modifies Law No 20,241 which set tax benefits to foster private investment in research and development. These tax benefits never worked correctly because they were extremely low.[6]

Currently, private investments in research and development represent 0.4 percent of the GDP. The Act seeks to double the amount of these investments as a percentage of GDP in 2014.[7] Further, this average is extremely low in comparison with other OECD members. In fact, while Chile invests 0.4 percent of its GDP, the average of OECD members has risen to 2.3 percent.[8] This average is also extremely low in terms of private company investments. Thus, while private investments in Chile reach an average of 43.7 percent, private investments within the OECD members reach an average of 65 percent.[9]

The OECD's threshold is the aim of the Chilean Government. In order to reach the target, five key changes have been introduced. First, all domestic and international businesses may be subject to this Act if at least 50 percent of their productivity takes place in Chile. Second, the tax incentive consists of a tax credit of up to 35 percent of the total project's expenses. The other 65 percent may be deducted as a revenue expense. Within this 65 percent, intellectual property expenses may be included. Third, the limit of this tax credit has increased up to US$1,180,000 (from US$390,000 under Law No 20,241) for each business or company within a fiscal year. Fourth, these tax benefits may be used during 10 consecutive years since the project's expenses were produced. Finally, the benefits enshrined in this Act of amendment will remain in force until 31 December 2025 (not 31 December 2017 as Law No 20,241 stated previously).

It is important to note that these projects must be certified by the Chilean Government before they are undertaken or while they are being undertaken. Under Law No 20,241, projects had to be certified before they were been undertaken. The legal change was introduced because bureaucratic issues were unnecessarily delaying investments on investigations.

Law No 20,549: Fostering the Cruise Ship Market[10]

This Act introduced several modifications into Law No 19,995 on the General Rules for Authorization, Operation and Control of Casinos. In fact, this Act seeks to allow international cruise ships to operate their on board casinos within the Chilean maritime jurisdiction.

The benefits sought by the Ministry of Economy may be expressed as follows: (1) allowing on board casinos is expected to lead to an increase of passengers arriving in Chile. The increase in tourists will contribute to the economy because it is expected that other business, such as restaurants, grocery shops, hotels, etc., will increase their commercial productivity. This may also have an important impact on the labour market because more new job positions might be created[11]; (2) legal changes such as these contribute the undertaking of political decentralisation plans. In this respect, Chile is the longest country in the world, nevertheless, its population and economic activity is mainly concentrated in Santiago, its capital city. This reform intends to decentralise Chile because tourists will arrive in Chile through different ports located in different cities[12]; and (3) larger Chilean ships that provide accommodation services to foreign passengers are allowed to recover the VAT exporter.[13]

Businesses such as restaurants, grocery shops and hotels will increase their commercial productivity.

In order to reach these aims, international cruise ships must comply with the following legal requirements to operate their on board casinos legally. First, the Chilean maritime authority, called DIRECTEMAR, must issue its authorisation. Second, these cruises must not be docked in any Chilean port, and therefore, they must be sailing. In this sense, their itinerary cannot be less than three days, including a distance from Chilean shores of 500 nautical miles. If the ship is docking at any Chilean port or its distance is three nautical miles from a port, its casino's operation must be suspended immediately. Third, the casino's operator must be registered at the Casinos Superintendence and maintain its registration regularly. Also, it needs to send reports to the Financial Analysis Unit. This requirement seeks to prevent money laundering.

On the other hand, if larger Chilean ships want to recover the VAT exporter, the following requirements must be complied with. First, these ships have to provide

accommodation or hotel services. Second, these services have to be provided to non-resident or domiciled passengers. Third, this benefit is restricted to those ships which operate in certain ports within Chile.

So far, the Chilean Government's efforts to foster the economy have been mentioned. However, there is no healthy economic growth if these legal improvements do not strengthen customers' rights. In this sense, the following two laws are worth considering.

Law No 20,555: Granting Powers in Financial Matters to the National Consumer Service[14]

Law No 20,555 modifies Law No 19,496 dealing with the protection of consumers' rights. In this sense, the National Consumer Service has been empowered by new ways to protect consumers' rights in financial matters.

In accordance with the Ministry of Economy, consumers are buying more financial products and services than ever.[15] These products and services are extremely sophisticated, and difficult to understand, compared with other products.[16] Consequently, these characteristics have shown that consumers do not have enough accessible information to deal with these products. This lack of information may eventually cause severe damage to consumers.

In this respect, the main modifications introduced by Law No 20,555 are: (1) the establishment of new financial rights for consumers and new financial obligations for providers; (2) contract certification by the Chilean Government; and (3) the establishment of a financial mediator and financial arbitrator.[17]

First, consumers have been granted several rights concerning the financial services and products they purchase, including: (a) their right to know the total costs associated with the financial services and products; (b) access to information about any condition or feature related to the financial product; (c) a detailed explanation if they are denied a product or service; and (d) the ability to be released from guaranties opportunely. On the other hand, financial product and service providers must set forth clearly the price, costs, commissions, readjustment mechanisms, and any other relevant financial conditions expressed in the contracts entered into with any consumer. Also, they must indicate if they have a cosumer service section and how it works.

Second, the National Consumer Service certification will be only granted to those financial contracts in compliance with the requirements set under this law, which allows access to financial mediators and arbitrators, and includes a consumer service section. Behind this certification lies the idea that certified contracts are a guarantee for consumers that their rights will be effectively protected.

Third, mediators and arbitrators have authority to resolve disputes between consumers and providers when financial matters arise. Both must be registered at the National Consumer Service, and must be chosen by the consumer and provider. If there is no agreement, the National Consumer Service will choose someone from its list of mediators and arbitrators. By and large, the mediator may intervene in those disputes for up to approximately US$4,300. An arbitrator must be engaged to settle any dispute that involves an amount that exceeds this limit. The decision handed down by the mediator or arbitrator may be appealed.

Law No 20,543: Streamlining Class Actions[18]

This Act introduces modifications to Law No 19,496 in relation to protection of consumers' rights. In this sense, this amendment seeks to streamline those judicial processes where consumers' interests are compromised. This amendment seeks to strength consumers' collective interests.

In accordance with the National Consumer Service, in 2009, the courts took at least 14 months to declare lawsuits admissible.[19]

This amendment attempts to reduce this time drastically. Now, the whole process cannot take more than two years. In order to reach this aim, if the lawsuit contains a clear description of the facts, it must be declared admissible by the court without delay.

Further, once the lawsuit has been declared admissible, two important stages will occur. First, the judge will summon the parties to a conciliation phase where he will try to achieve a total or partial settlement. Second, the plaintiff will have 10 days to publish a notice in a national newspaper and on the National Consumer Service's web site, which notifies other affected consumers that he/she has undertaken this process. This modification will allow other consumers to be part of this judicial process or make their own claims.

Legal Issues Arising

To sum up, from an economic viewpoint, all of these legal initiatives represent a striking effort to foster and enhance the Chilean economy – they should lure in more foreign investment. However, from a legal point of view, there is still a gap that needs to be enhanced.

For example, incorporating a company in one day without doubt reduces the costs of setting up a new company, especially for small and medium businesses. However, to undertake a business is usually a complex reality that cannot be replaced by online forms. Therefore, the by-laws must represent that complexity; a standard online form is not sufficient to achieve this.

Further, in civil law jurisdictions, one of the most important requirements to set up a company is called '*affectio societatis*' which means that the by-laws must express the real and particular intention and commitment of the constituents to undertake commercial activities. These intentions and commitments must be present throughout the company's existence. Certainly, this essential requirement disappears using online forms.

Moreover, to grant powers on financial matters to the National Consumer Service does not seem to be the correct solution to better protect the rights of all consumers. The National Consumer Service has been traditionally an organisation which protects consumers' rights on civil and commercial grounds. However, it has never been a financial organisation. In this respect, it is not the most competent institution to resolve disputes that involve financial matters.

Additionally, any legal modification introduced to enhance collective procedures should be undertaken carefully. It can be a good thing when a legal system has fast and effective judicial procedures. However, Chilean politicians cannot dismiss the interests of all parties involved. Hence, if it is easier for consumers to sue a provider, it should be easier for the provider to also defend its interests adequately. Otherwise, excessive litigation may eventually finish several businesses. Especially small and medium ones, which do not have enough money to pay high legal fees.

Notwithstanding all of this, Chile is also still far away from the OECD's members' average in terms of investigation, development and tourism. Laws No 20,570 and No 20,549 represent important steps in this direction. However, more time is required to see if these Acts accomplish their proposed goals.

Notes:

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Incorporation, Reporting Requirements and the Constitution of Hong Kong Companies under the New Hong Kong Companies Ordinance

The new Hong Kong Companies Ordinance (the 'CO') came into effect on 3 March 2014. This article highlights the changes which affect the incorporation, reporting requirements and constitution of Hong Kong companies and certain actions that Hong Kong companies should be aware of under the new CO.

The CO provides a legal framework for the formation and operation of companies in Hong Kong. One of the initiatives of the new CO is to modernise the law in order to enhance Hong Kong's competitiveness as a major international financial and business centre. The changes under the new CO are extensive and some of them affect investors who wish to set up a Hong Kong company as a corporate vehicle to conduct business in Hong Kong or to invest in China or overseas.

The new CO aims to modernise the law to enhance Hong Kong's competitiveness.

Types of Companies

There are five types of companies that may be formed under the new CO, namely: (1) private companies limited by shares; (2) public companies limited by shares; (3) private unlimited companies with a share capital; (4) public unlimited companies with a share capital; and (5) companies limited by guarantee without a share capital.

A private company limited by shares is the most common type of company formed by Hong Kong incorporated companies. This is a company in which the liability of its members is limited by the company's articles to any amount unpaid on the shares held by its members. As a private company, its articles will restrict a member's right to transfer shares, limit the number of members to 50 and prohibit any invitation to the public to subscribe for any shares or debentures of the company.

A public company, as defined under the new CO, is a company which is neither a private company nor a company limited by guarantee. A company limited by guarantee does not have a share capital and the liability of its members is limited by the company's articles to the amount that the members undertake, by those articles, to contribute to the assets of the company in the event of it being wound up. A company is an unlimited company if there is no limit on the liability of its members.

Simplified Reporting Requirements for Certain Types of Companies

New provisions have been introduced under the new CO to facilitate small and medium-sized enterprises (SMEs) to take advantage of simplified accounting and reporting requirements. The new CO sets out the qualifying conditions for companies to prepare simplified financial and directors' reports as follows:

(1) **small private companies:** a private company that satisfies any two of the following conditions, namely, it has: (i) a total annual revenue of not more than HK$100 million; (ii) total assets of not more than HK$100 million; or (iii) no more than 100 employees.

(2) **a group of small private companies:** a private company that is the holding company of a group of small private companies and that satisfies any two of the following conditions, namely, it has (i) an aggregate total annual revenue of not more than HK$100 million; (ii) an aggregate total assets of not more than HK$100 million; or (iii) no more than 100 employees.

(3) **eligible private company:** a private company that satisfies any two of the following conditions and has the approval of members holding at least 75% of the voting rights, with no other members objecting, namely, it has (i) a total (or aggregate total) annual revenue of not more than HK$200 million; (ii) a total (or aggregate total) assets of not more than HK$200 million; or (iii) no more than 100 employees.

(4) **small guarantee company:** a guarantee company with a total annual revenue or aggregate total annual revenue (as the case may be) not exceeding HK$25 million.

(5) **a group of eligible companies:** a group of private companies not being a member of a corporate group carrying out banking business, a regulated activity

under the Securities and Future Ordinance (Cap. 571) or insurance business, with all members of the company agreeing in writing that the company is to fall within the reporting exemption for the financial year.

The above companies fall within the reporting exemptions relating to the preparation of financial statements and directors' reports under the new CO. Such exemptions include: (a) no requirement to disclose auditor's remuneration in financial statements; (b) no requirement for financial statements to give a 'true and fair view'; (c) subsidiary undertakings may be excluded from consolidated financial statements in accordance with applicable accounting standards; (d) no requirement to include a business review in the directors' report; (e) no requirement for the auditor to express a 'true and fair view' opinion on the financial statements.

The accounting standard applicable to companies falling within the above reporting exemption is the SME-FRS and FRF issued or specified by the Hong Kong Institute of Certified Public Accountants ('HKICPA'). HKICPA is a professional body prescribed in the Companies (Accounting Standards (Prescribed Body)) Regulation for issuing or specifying the applicable accounting standards. The accounting standards applicable to companies that prepare simplified financial reports are less onerous than the Hong Kong Financial Reporting Standards ('HKFRS') applicable to listed, public or other companies not qualified for simplified reporting. Audit of the financial statements is still required for all companies, except dormant companies.

However, there are also initiatives to enhance corporate governance by requiring public companies and other companies that do not qualify for simplified reporting to prepare a 'business review' within the directors' report, whilst allowing private companies to opt out by special resolution. A 'business review' contains analytical and forward-looking statements and provides additional information for shareholders. In particular, it includes, without limitation to, information relating to the company's environmental policies and performance and the company's compliance with the relevant laws and regulations, as well as the company's key relationships with its employees, customers and suppliers. These are in line with international trends to promote corporate social responsibility.

Memorandum of Association Abolished

Before the new CO came into effect, the constitutional documents of a Hong Kong incorporated company were the Memorandum of Association ('MA') and Articles of Association ('AA'). The MA states the name, domicile, objects (optional), liability and capital of the company. From 10 February 1997, the object clause in the MA is optional given the abolition of the doctrine of *ultra vires* in relation to corporate capacity. As all the information in the MA (other than the object clause and the authorised capital which will be removed under the new CO) has already been included in the AA, the requirement to have both the MA and AA as the constitutional documents of the company is no longer necessary and will therefore be removed.

Under the new CO, for existing companies incorporated before 3 March 2014 (i.e., the date of commencement of the new CO), information which remains relevant and is currently contained in the existing MA of the company will be deemed to be included in the AA. However, as a result of the abolition of the nominal value (also known as par value) of shares of a company, the provisions stating the amount of share capital and the division of the share capital of the company into shares of a fixed amount, which are deemed to be included in the AA, are for all purposes to be regarded as deleted.

In addition, the following provisions in the AA will be void under the new CO:

(a) a provision in the AA of a company limited by guarantee purporting to give any person a right to participate in the company's divisible profits otherwise than as a member;

(b) a provision exempting an auditor of a company from any liability in connection with any negligence, default, breach of duty or breach of trust in relation to the company in the course of performance of the auditor's duties;

(c) a provision indemnifying an auditor of the company or its associated company against any liability in connection with any negligence, default, breach of duty or breach of trust in relation to the company or its associated company in the course of performance of the auditor's duties;

(d) a provision preventing removal of a person from the office of auditor by an ordinary resolution;

(e) a provision in the AA of a private company with a single member and director preventing the company from nominating a natural person who has attained the age of 18 years as a reserve director to act in place of the sole director in the event of the death of the sole director, by resolution passed at a general meeting;

(f) a provision for the automatic reappointment of retiring directors in default of another appointment where a resolution for appointment of directors is void;

(g) a provision preventing the removal of a director before the end of the director's term of office by an ordinary resolution passed at a general meeting;

(h) a provision purporting to exempt a director of the company from any liability in connection with any negligence, default, breach of duty or breach of trust in relation to the company;

(i) a provision providing an indemnity for a director of the company or its associated company against any liability attaching to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or its associated company;

(j) a provision having the effect that a resolution could not be proposed and passed as a written resolution;

(k) a provision excluding the right to demand a poll at a general meeting on any question other than the election of the chairperson of the meeting or the adjournment of the meeting;

(l) a provision having the effect of requiring an appointment of a proxy or any document showing the validity of the appointment to be received by the company or another person earlier than 48 hours before the time for holding the general meeting or adjourned meeting;

(m) a provision having the effect of requiring notice of termination of a proxy's authority to be received by the company or another person earlier than 48 hours before the time for holding the general meeting or adjourned meeting or 24 hours before the time appointed for the taking of a poll to be taken more than 48 hours after demand.

Model AA under the New CO

The Companies (Model Articles) Notice (the 'Notice'), subsidiary legislation under the new CO, prescribes the model AA which a company incorporated after 3 March 2014 may adopt in whole or in part at its sole discretion. The Notice prescribes model AA for public companies limited by shares, private companies limited by shares, and companies limited by guarantee. The model AA will apply by default if it is not excluded or modified by specific articles in the AA adopted by the company. The model AA will have no impact on existing companies, including those which have adopted the standard articles provided in Schedule 1 to the previous CO.

The major changes introduced in the model AA include the following:

1. In respect of decision-making by directors, new articles providing detailed procedures for written resolutions and dealing with unanimous decisions of directors are added. Articles dealing with the appointment and removal

of alternate directors are also added. The articles on voting at directors' meetings where there is a conflict of interest have been updated to take into account the provisions concerning fair dealing by directors under the new CO. Articles on directors' meetings have also been revised to cater for the use of electronic technology to link up the venue of the meeting.

2. In respect of members' rights and the proceedings at general meetings, an article is added on the rights of directors and members to attend and speak at general meetings. The articles relating to the effect, validity and the delivery of relevant notices for proxies, the contents and timeframe for notices of meetings have also been revised to align with those provided for in the new CO.

3. In respect of share capital, the articles relating to forfeiture of partly paid shares are set out in greater detail and an article has been added to deal with the surrender of shares in lieu of the enforcement of a call for payment. Amendments have also been made to reflect provisions in the new CO, such as abolishing the concept of nominal value (also known as par value) of shares of a company.

The model articles set out in the Notice are *in addition* to the mandatory articles that are required to be included in the constitutional documents of a company under the new CO. They include: (a) the name of the company; (b) the objects of the company, only if the company has been granted a licence to dispense with the use of the word 'limited' in its name; (c) details of members' liabilities; (d) details of the liabilities or contribution of members; and (e) details of initial capital and initial shareholding.

Restriction on Corporate Directors

The previous CO permits private companies to have only corporate directors. Under the new CO, at least one director will be required to be a natural person for private companies. Existing companies which only have corporate directors will have a grace period of six months from the commencement of the new CO to appoint an individual to comply with this new requirement.

What Hong Kong Incorporated Companies Should Know

The new CO contains deeming provisions whereby relevant provisions in the MA which are not for all purposes regarded as deleted or void will be deemed to be included in the AA. Hong Kong companies are therefore not mandatorily required to do anything in order to comply with the provisions of the new regime. However, companies should note that:

1. The new CO does not require a company to amend its AA to remove the objects clause. Some companies, such as trustee companies, charitable and other 'exempted' companies or special purpose vehicles may choose to retain specific objects in their AAs.

2. If a company chooses to remove its objects clause from the AA, it can do so by passing a special resolution at general meeting.

3. If a company chooses to keep its objects clause in the AA, any restrictions in it will act as a constraint on the directors' powers and they may be liable to the company if they execute a transaction in breach of those restrictions. However, the restrictions will not affect the right of a third party dealing with the company in good faith.

Hong Kong companies should also review their current constitutional documents and relevant contracts and agreements signed by them, such as joint venture agreements, shareholders' agreements and option agreements, to determine whether any changes to those documents should be made in line with the new CO. If a Hong Kong company currently only has a corporate director, it should appoint an individual director before the end of the six-month grace period.

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Arbitration in Switzerland – the Fine Art of Dispute Resolution

Switzerland has a long-standing tradition in arbitration that dates back to the late nineteenth century. Today, it is one of the leading hubs of international commercial and investment arbitration in the Western hemisphere, which is also of particular interest to companies from the Asia-Pacific region that do business with European and American companies.

Legal Framework of International Arbitration in Switzerland (Chapter 12 of the Swiss Private International Law Act)

In Switzerland, international arbitration is governed by Chapter 12 of the Swiss Private International Law Act ('Swiss PILA'), an independent, lean and clear legal code for international arbitration containing only 19 articles. It is applicable to all arbitrations carried out in Switzerland involving at least one party that was neither domiciled nor had resided in Switzerland when the arbitration agreement was concluded.

Since its adoption in 1988, Chapter 12 of the Swiss PILA has proven to be a legal basis that is greatly appreciated for its efficiency and arbitration-friendliness by companies using international dispute resolution services in Switzerland (institutional arbitration, such as under the Swiss Rules of International Arbitration or the ICC Arbitration Rules, or ad hoc arbitrations). Besides the lean and pragmatic regulation of the arbitration procedure, these positive reactions are due to the list of very limited grounds for setting aside an award in Article 190 of the Swiss PILA, and the fact that such actions are to be brought directly before the highest court of Switzerland, the Federal Supreme Court, i.e., there is only one level of appeal. In fact, if all the parties to a dispute are domiciled outside of Switzerland, they may even completely waive their right to set aside proceedings.

The arbitration-friendly approach of the Swiss PILA is also followed by the Federal Supreme Court as the court of appeal by favouring a pronounced policy of non-interference. For instance, only about five percent of all appeals filed pursuant to Article 190 of the Swiss PILA have been successful. As a rule, the Federal Supreme Court will render its decision within six to eight months of being seized; this helps to avoid cost-intensive and time-consuming post-arbitration litigation, which parties are often confronted with in other jurisdictions. In this way, Chapter 12 of the Swiss PILA ensures that the parties are provided with a final and binding award within a reasonable period of time and at a reasonable cost.

This is also supported by the straightforward and pragmatic approach of Swiss arbitration practitioners and their rather sceptical attitude towards the Anglo-American style of dispute resolution, which is often influenced by extensive discovery practice and other typical features of United States' litigation, leading to complex and expensive proceedings. Time and cost efficiency, along with flexibility and confidentiality, have been and shall remain, the pivotal idea and crucial advantages of arbitration proceedings as a means for international dispute resolution. This is also in line with the legitimate expectations of potential users of dispute resolution services from various jurisdictions in the Asia-Pacific region.

The selection of Switzerland as the seat of arbitration may be combined with the choice of Swiss law as the applicable law to the contractual relationship. The Swiss Code of Obligations of 1911 is known and widely accepted as a statute leading to fair and reasonable solutions in international commercial disputes.

A growing number of parties to disputes under the Swiss Rules come from the Asia region.

The Swiss Rules of International Arbitration 2012 of the Swiss Chambers' Arbitration Institution ('SCAI')

On 1 January 2004, the unified Swiss Rules of International Arbitration entered into force as successor rules of the various arbitration rules of the Cantonal Chambers of Commerce and Industry, some of which have existed for almost one hundred years. Although the UNCITRAL Arbitration Rules 1976 were taken into consideration by the drafters, the Swiss Rules were an autonomous and considerably less complex set of rules, which has been well received by the international arbitration community in the last ten years. This is why most of the provisions in the revised Swiss Rules of International Arbitration, which entered into force on 1 June 2012 ('Swiss Rules'), were maintained without material amendments, and other provisions were only slightly modified to account for the most recent developments in international arbitration and to make the proceedings even more efficient and cost effective.

Arbitrations under the Swiss Rules are administered by the Swiss Chambers' Arbitration Institution ('SCAI'), a separate legal entity from the Chambers of Commerce and Industry. It is supported by the Arbitration Court, a body composed of experienced arbitration practitioners. The Arbitration Court renders the decisions provided for under the Swiss Rules, such as decisions on the challenge of arbitrators. Internal rules govern the internal organisation and make sure that the Arbitration Court fulfils its tasks in a highly professional and efficient manner.

The SCAI administers cases not only in English, but also in German, French and Italian, which are the official languages in Switzerland. The knowledge and application of various languages goes hand-in-hand with an understanding of the cultural differences of the parties involved in international disputes and is one of the strengths of the SCAI. Therefore, it is not surprising that a growing number of parties to disputes under the Swiss Rules (and of other institutional arbitrations such as ICC that make Switzerland their place of arbitration) come from the Asia region.

Under the Swiss Rules, the SCIA and its Arbitration Court have a light administrative function that respects party autonomy and the discretion of the arbitral tribunal to structure proceedings in the most appropriate way for the individual case. The parties may appoint the arbitrator of their choice and, together with the arbitral tribunal, work out the details of the proceedings. After its constitution, the arbitral tribunal is responsible for conducting the proceedings within the legal framework of Chapter 12 of the Swiss PILA, the Swiss Rules and the individual terms agreed upon by the parties. The Arbitration Court's control function is basically limited to assuring the quality of the proceedings by confirming the arbitrators, monitoring the duration of the proceedings and approving the adequacy of the cost decision. However, it does not scrutinise the award on the merits rendered by arbitral tribunals.

Switzerland has become one of the world's leading venues for international arbitration.

To ensure efficiency in arbitral proceedings, the Swiss Rules provide for short time limits and require all participants, i.e., the parties to the dispute and the arbitral tribunal, to make every effort to contribute to the efficient conduct of the proceedings and to avoid unnecessary costs and delays (Article 15.7 of the Swiss Rules).

The Swiss Rules also contain a specific article on the so-called expedited procedure (Article 42 of the Swiss Rules). The main characteristics of these proceedings are that the case will be heard by a sole arbitrator, there will be only one exchange of briefs, and only one hearing will take place, if at all; the arbitral tribunal is expected to render the award within six months from the date on which the files are transmitted to the arbitrator. The parties to a dispute may freely agree to have the expedited procedures applied. In addition, they apply by virtue of the Swiss Rules in cases where the amount in dispute is less than one million Swiss francs (which is currently equal to approximately US$1.125 million). The most recent statistics show that about 40 percent of all cases administered by the SCAI are subject to the expedited procedure.

In Article 43 of the Swiss Rules, an emergency relief scheme was introduced in order to allow the parties to the dispute an alternative to state court proceedings in case provisional measures are required prior to the constitution of the arbitral tribunal. Should the parties prefer not to have this option for emergency relief by a sole arbitrator, they can agree to opt out of this provision.

Another crucial aspect that furthers efficient dispute resolution is the possibility of arbitral tribunals to offer settlement facilitation (Article 15.8 of the Swiss Rules). Being aware of the fact that amicable settlement is not only the most efficient, but often also the most satisfying way to solve a dispute, it is widely accepted in Switzerland (and other civil law jurisdictions more than in common law jurisdictions) that the arbitral tribunal may play a role in settlement discussions if the parties agree to the tribunal's involvement (thereby waiving their right to challenge the arbitrator as a consequence of its participation in settlement negotiations).

Overall, the Swiss Rules are very modern, state-of-the-art rules for efficient and cost-effective dispute settlement subject to lean, yet quality assured administration.

Switzerland is One of the World's Leading Venues for International Arbitration

Apart from the arbitration-friendly legal framework, a number of other factors have led Switzerland to become one of the world's leading venues for international arbitration.

Located in the centre of Europe, with its democratic and consensus-oriented culture, political, economic and judicial stability, as well as knowledge of various languages, Switzerland is an ideal venue for the resolution of disputes between parties of different legal and cultural backgrounds. And thanks to modern infrastructure with punctual and well-functioning public transport systems and numerous well-equipped hotels and meeting facilities, Zurich and Geneva, the two cities hosting most of the arbitration hearings in Switzerland, can easily and comfortably be reached from across the globe.

Besides the SCAI, Switzerland is also home to other internationally renowned arbitral institutions, such as the Court of Arbitration for Sports in Lausanne ('CAS'), which hears and resolves by arbitration and mediation more than 300 cases per year involving sports-related disputes from all over the world. The WIPO is the leading institution in resolving domain name disputes and hears more than 2,500 cases per year. The Dispute Settlement Body of the WTO, located in Geneva, deals with international trade disputes between member states or between at least one member state and individuals of another member state.

Last but not least, a large number of cases under the ICC Arbitration Rules have their place of arbitration in Switzerland and the Swiss National Committee of the ICC is very often consulted in the process of searching and nominating arbitrators, whenever the ICC Court of Arbitration must appoint an arbitrator (e.g. when a party fails to nominate its arbitrator or the parties are unable to agree on a sole or presiding arbitrator). Some of the reasons for this are the large community of experienced arbitration practitioners who come from a long tradition and have handled innumerable arbitration cases. Many of these practitioners are versed in handling complex multi-jurisdictional cases, both as counsel and arbitrators. Their experience not only includes the professional handling of cases, but also efficient organisation of meetings and evidentiary hearings.

Due to these cultural, legal and geographical considerations and its established arbitration expertise, Switzerland is frequently chosen by parties from all over the World as the seat of arbitration and venue for hearings (often in combination with the choice of Swiss law as the applicable substantive law). In fact, while Switzerland has always ranked among the most popular places of arbitration, the latest ICC surveys show that it was the most frequently selected place of arbitration for ICC arbitrations in 2012. Moreover, Swiss arbitration practitioners constitute the lion's share of arbitrators appointed in ICC proceedings.

All the previously stated factors are also of interest to parties from Asia-Pacific countries, which can choose arbitration in Switzerland in cases where they are not in a position to agree with the jurisdiction of an arbitral tribunal that is subject to a regional arbitration institution, such as the SIAC, HIAC, CIETAC, BJAC or KLRCA.

Institutes and Organisations in Switzerland Offering Post-Graduate Training in Dispute Resolution

Most of the arbitration practitioners in Switzerland are associated with the ASA, the Swiss Arbitration Association, which has more than 1,000 members (including more than 350 from outside of Switzerland). The ASA strongly contributes to the development of international arbitration both in Switzerland and abroad by organising conferences, workshops and local group meetings and by issuing the 'ASA Bulletin' on a quarterly basis.

Switzerland also offers a variety of educational programmes in the field of international arbitration. The Swiss Arbitration Academy, in association with the Universities of Lucerne and Neuchâtel, offers a unique post-graduate programme (Certificate of Advanced Studies) in arbitration, which combines the benefits of academic education with practice-oriented training taught by renowned international practitioners. Furthermore, the Geneva University Law School offers the Geneva Master (LL.M.) in International Dispute Settlement (MIDS), while the Faculty of Law of the University of Zurich runs a specialisation course in international contract law and arbitration law as part of the LL.M. in International Business Law. This institution also plans to launch an LL.M. in International Litigation and Arbitration programme in September 2014.

Important Addresses of Arbitration Organisations, Institutions, and Providers of Post-Graduate Training in Switzerland

Swiss Arbitration Association (ASA)
http://www.arbitration-ch.org/pages/en/asa/index.html#.UwnN6meYafA

Swiss Chambers' Arbitration Institution (SCAI)
https://www.swissarbitration.org/sa/en/

Swiss Commission of Arbitration (National Committee) of ICC Switzerland
http://www.icc-switzerland.ch/en/arbitration/swiss-commission-of-arbitration

SwissArbitrationHub
http://www.swissarbitrationhub.com/sah/index.php/page/1/home

Swiss Arbitration Academy (SAA) (in cooperation with the Universities of Lucerne and Neuchâtel)
http://www.cas-arbitration.ch/

MIDS – Geneva LL.M. in International Dispute Settlement
http://www.mids.ch/

University of Zurich LL.M International Litigation and Arbitration
http://www.weiterbildung.uzh.ch/programme/detail.php?angebnr=421

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Government Support for Private Research and Development Startups in Israel

The office of Chief Scientist of the Ministry of Economy of Israel implements government policy for the support and encouragement of research and development projects, by way of non-recourse funding. This article provides an overview of the 'Technological Incubators' programme headed by the Israeli chief scientist as well as other types of government support for private R&D companies, and their contribution to the Israeli economy.

'*The Start-up Nation*' is the name of a book ranked fifth on the business best-seller list of '*The New York Times*' in 2010. The book tried to answer the question: 'How is it that Israel – a country of 7.1 million people which is only sixty years old – produces more startup companies than many other larger and more mature nations?' In other words, why does Israel have more high-tech start-ups per capita than any other country in the world?

Any attempt to comprehensively explain the success of Israel's high-tech sector over the past two decades deserves a separate article, as it involves numerous reasons and requires setting forth the background and circumstances which resulted in an eco-system which encourages entrepreneurs to go ahead and try to realise their dream.

The purpose of this article is to focus on one factor which has contributed to the success of the Israeli high-tech arena, which is governmental support for research and development projects conducted by private companies ('R&D Projects') in the framework of what are known as 'Technological Incubators', as well as a short review of additional methods of government support for privately led technological programmes.

Office of Chief Scientist

The office of Chief Scientist (the 'OCS') is a division in the Ministry of Economy of Israel which implements government policy with respect to the support and encouragement of industrial research and development. This policy is governed by the Law for the Encouragement of Industrial Research and Development, 5744-1984 (the 'Law') and various Industrial Research and Development Regulations.

Pursuant to the Law, government funding in the form of grants and other benefits is provided to support approved R&D Projects in exchange for the payment of royalties from revenues generated by the products (or services) developed by such R&D Projects.

Objectives

The main purpose of the Law is to encourage Israeli companies to invest in R&D Projects, with the Government sharing the risk factor which is inherent in such projects. Other objectives of the Law are to enhance the development of local science-based industry, to improve Israel's balance of trade by increasing the manufacturing and export of high-tech products developed within Israel, and to create new employment opportunities in the industrial sector.

The primary goal of the programme is to transform innovative technological ideas.

Technological Incubators

One of the programmes that the OCS administers in order to implement its policy and execute for the purposes of the Law is the Technological Incubators Programme. The primary goal of the programme is to transform innovative technological ideas, the implementation of which is too risky for private initiatives, into viable startup companies. The main goal is to provide initial funding and a supportive environment enabling those companies to initially 'stand on their own two feet', so that after they leave the incubator (normally after two years, and sometimes after three years) they will be able to raise money from the private sector and operate independently. Additional goals, as stated by the OCS itself, are: to promote R&D activity in peripheral and minority-dominated areas; to create investment opportunities in the private sector (including venture capitalists); the transfer of technologies from research institutes to industry; and to create an entrepreneurial culture.

The technological incubators are private profitable legal entities which, in most cases, are located in the peripheral areas of Israel and offer their portfolio companies (i.e., the companies in which they choose to invest) financial (governmentally originated) support, a physical workplace in an innovative environment, administrative services, business guidance and assistance in legal and other matters, including the raising of additional funds from external investors and the localising of strategic partners and alliances for their portfolio companies.

There are more than 20 technological incubators operating in Israel, some focus on specific areas (bio-technology, renewable energy and a planned incubator designated for water-related technologies) and others are open to companies in varied fields (pharmaceuticals, software, optics, semiconductors, mobile, cyber and others). These technological incubators are operated by franchisers who won tenders which governed the competitive procedure for selection of an incubator licensee. The franchise is given for eight years, at the end of which a new tender process is completed to determine the franchiser for the following eight years. The process is open to both local and foreign entities. Among the operators of technological incubators and among those bidders which submit offers for the tenders, you may find venture capital funds, private equity groups, angels, and corporations (including well-known multi-national corporations).

These technological incubators support between 150 to 200 startup companies at any given time. The support given to these portfolio companies at their early stage is primarily financial, but no less important is the valuable support mentioned above of business guidance, the raising of additional funds, 'opening doors' to the main players in the relevant industry, and 'mentoring' by an experienced team who assist with the navigation of the portfolio company. The portfolio companies enter the incubator for a term of two years (extendable under certain conditions to a third year) during which time they receive support of approximately $500,000 to $800,000, depending on their field of activity (for example, medical devices and bio technology projects are entitled to greater grants than software companies) and the location of the incubators (peripheral incubators are entitled to a small additional budget). The incubator (i.e., the franchiser) itself finances 15 percent of the total budget and 85 percent of the total budget is financed by the Government as a nonrecourse grant, which is to be repaid by way of royalties only upon success of the portfolio company. Generally speaking, the company will pay the government 3-4.5 percent in royalties from revenue generated, until the full amount of the grant (the aforesaid 85 percent of the total budget + LIBOR interest) is repaid.

Though the franchiser provides only 15 percent of the financing, it receives 30-50 percent of the share capital of the Company. The advantage to the franchiser is obvious; in the first two years – the very early stage in which there is a higher risk – most of the risk is taken by the Government.

Many believe that without the Government taking the risk and making the initial investment in these initiatives, the portfolio companies would never have been established, and accordingly, the private investment they had successfully raised would not have materialised. Assuming this argument is correct, and taking into consideration the fact that a significant portion of Israeli startup companies were established in the framework of technological incubators (around 70-80 new startup companies are established in the framework of technological incubators every year), the contribution of the incubator programme to the Israeli high-tech sector is well demonstrated.

Realisation of Governmental Goals through Legal Requirements

Bearing in mind governmental objectives, the Law and the regulations (including the legal guidelines of the OCS itself) set forth a legal framework within which OCS-funded companies should operate and state the requirements with which they need to comply. These requirements apply with respect to all research and development ('R&D') projects funded by the OCS, whether as part of the incubator programmes or as part of other programmes administrated by the OCS.

Here is a brief review of this legal framework. It should be noted that this review constitutes only a general description of the legal framework, that the policy of the OCS may change from time to time and that each case should be evaluated individually, in light of the specific circumstances of each company.

The main limitations set forth by the Law refer to the transfer by the portfolio companies of their know-how and/or production rights.

Production Rights:

The OCS aims for the manufacturing of the product(s) derived from the projects to be carried out in Israel, and therefore a company funded by the OCS must undertake to carry out its manufacturing in Israel. The OCS's intention is to ensure the development of a local science-oriented industry, to improve Israel's balance of trade by increasing the manufacturing and export of high-tech products developed within Israel, as well as to create new employment opportunities in the industrial sector. According to the Law, a project may not be approved unless firm assurances have been given to ensure that production by the company will take place in Israel.

Nevertheless, the OCS possesses the authority to permit the transfer abroad of production rights derived from research that was previously approved. In such cases, however, the cap on royalty repayments (from revenues generated by the products derived from the technology which was governmentally supported) may be increased up to a maximum of 300 percent of the grant, depending on the scope of the manufacturing activities that are intended to be carried out outside Israel. In addition, the royalty rate will be increased by 1 percent. In many cases it is still cost effective to pay the increased royalty rate and manufacture outside of Israel.

It should be clarified that OCS approval is not required for the export of any products resulting from the R&D, but only for manufacturing of such products outside of Israel.

Transfer of Know-How:
The transfer of know-how related to the governmentally supported R&D requires prior written approval of the OCS. Transfer of know-how may occur in the cases of a licensing transaction or an asset purchase transaction.

In general, the OCS approves the transfer of know-how or technology developed within the framework of an approved programme outside of Israel.

Should know-how be transferred/sold abroad, the company is required to 'redeem' the OCS support. Such redemption entails payment to the OCS of a percentage of the consideration received in connection with the transfer/sale of know-how, determined by the ratio between OCS funding and total R&D costs.

The compensation paid for the transfer of the IP outside of Israel is limited to six times the total sum of OCS funds granted, and should the R&D centre remain in Israel, the limit shall be three times the total sum of OCS funds granted.

In the case of sale of the know-how within the scope of an asset purchase transaction, the consideration based on which the redemption shall be calculated will be a reduced consideration reflecting the part of the IP component in the transaction (bearing in mind that other than IP there are additional components of which the asset is comprised which were not governmentally supported, for which the total consideration is paid).

It should be noted, however, that a transfer abroad in return for the receipt of equivalent overseas know-how may be approved without payment to the OCS.

Transfer of know-how related to governmental-supported R&D requires OCS approval.

Change of Control – Transfer of Shares:
According to the Law, transfer of the ownership of the company (i.e., transfer of 50 percent or more of the company's share capital) needs to be reported to the OCS. However, transfer of the company's issued share capital to a foreign entity requires (in accordance with OCS internal regulations) in addition to the report, the approval of the OCS.

Such approval for change of control in the company involving a foreign entity is at the discretion of the OCS, but generally speaking it is usually given. In the case of an approval, the foreign entity will need to sign an undertaking letter which is, in principal, a commitment to observe the requirements of the Law (inter alia, the prohibitions on the transfer of know-how and/or production rights).

Other Types of Governmental Support in Privately Owned R&D Companies

Alongside the incubator programme, there are additional programmes aimed to support technological entrepreneurship and innovation which are operated by the OCS, mainly a programme known as 'Tnufa' (which is the Hebrew word for momentum) which is designated for individual entrepreneurs and companies at seed and pre-seed stages, and the R&D fund which is intended for companies at different stages including mature companies as well as companies at seed and pre-seed stages.

The Tnufa programme encourages and assists individual inventors and startup companies during early stages of projects. These early stages include evaluation of technological and financial feasibility, preparation of patent proposal, construction of prototype, preparation of business plan, establishing contact with the appropriate industry representatives as well as attracting investors, participation at exhibitions, preparation of advertising material etc. The Tnufa programme involves grants of smaller amounts in comparison to the incubator programme, in sums of up to approximately $50,000 for each project.

As in the case of the incubator programme, as well as all other OCS governmentally supported privately owned R&D Projects, technology derived from projects supported by the Tnufa programme is also subject to the Law and the requirements set forth above (mainly with respect to royalties up to a certain ceiling, the transfer of production rights and/or transfer of know-how).

There are examples of enterprises which were granted Tnufa funding, which later on entered the incubator programme in order to continue the development of the technology shaped in the course of the programme.

The R&D Fund is the main support programme administrated by the OCS in order to encourage innovation. The programme assists companies in funding the creation of new technological know-how with the purpose of transforming it into a product (or service). The support is provided to companies at all stages, including mature companies, and is therefore also relevant for high-tech companies at seed and pre-seed stages.

The R&D Fund has a yearly budget provided by the Government. Applications for grants are reviewed by a professional committee headed by the Chief Scientist. An approved application is granted a sum equal to 20 percent to 50 percent of the budget of the approved R&D plan. These R&D projects may operate in various fields, including among others nanotechnology, biotechnology, energy (including renewable and green energy), environment, water (CleanTech), and others.

In addition, there are other routes in which the OCS is involved in support of technological initiatives in early stages. One of those routes is cooperation with international corporations on technology projects, as well as cooperation in the form of bi-national funds. Another kind of cooperation in which the OCS is involved is inter-ministerial cooperation with other governmental offices, such as a venture recently launched, involving the OCS (which is an organ of the Ministry of Economy), the Ministry of Finance, the Ministry of Foreign Affairs, and the Ministry of Agriculture, for the support of high-tech companies that develop agricultural related technology.

Conclusion

For entrepreneurs and nascent startups, the incubator programme provides the groundwork and essential support for the development of their innovative technological ideas and the formation of new business ventures in order to attract private investors.

For franchisers operating the incubators, the incubator programme gives private investors (including corporations and others) an opportunity to become owners of incubators and to invest in nascent companies at an early stage, aiming for an anticipated 'Exit' event (of one or more of their portfolio companies) which may yield great return on their investment, and (in case of technologically characterised corporations owning incubators, including multi-nationals), enrich their own portfolio and produce technological opportunities for themselves.

The Government enjoys the fruits of the programme, which are reflected in the success of high-tech. This is an important factor in the state economy and reflects a major part of the nation's export. Furthermore, indirect profits such as the creation of workplaces and the increase of tax payments at a national level, combined with the direct payment of royalties, result in total profit for the state which exceeds the investment made. Research which was recently conducted for a governmental committee which examines the productivity of the high-tech sector reached an amazing conclusion, according to which the support provided by the OCS yielded to Israel's economy a return equal to six times the amount invested! The research concluded that there is a direct connection between the growth of the high-tech sector and the OCS support.

Importantly, in addition to the incubator programme there are additional governmental programmes for the purpose of funding technologically based (privately owned) enterprises. As this would appear to prove their cost-effectiveness, it should be no surprise that the Government is considering additional measures to assist technologically based companies, mainly startups, such as subsidising certain costs, tax relief, and others.

Sources:

- The Law for the Encouragement of Industrial Research and Development, 5744-1984
- The Ministry of Economy, Director General Directive No. 8.3
- The Ministry of Economy, Director General Directive No. 8.9
- The Ministry of Economy, Director General Directive No. 8.12
- The Ministry of Economy, Director General Directive No. 8.14
- The office of chief scientist official website http://www.moit.gov.il/CmsTamat/Rsrc/MadaanEnglish/MadaanEnglish.html
- Ora Koren, 'Small companies yield the highest return on chief scientist support', Themarker, August 6 2013.

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Intellectual Property Mediation in Italy

In Italy, as in most countries in the world, intellectual property ('IP') disputes deal with highly technical issues that involve considerable professional and court fees and expense. The need for faster and more efficient solutions to conflicts has opened up the path to experimenting with the tool of mediation for IP disputes. Mediation is growing in Italy, also on account of the efforts of the European Union – the OHIM has adopted a procedure for mediation and the Unitary Patent Convention provides for the establishment of a mediation and arbitration centre – and the change of mentality of the new generation of professionals who are attentive to a cost-effective performance as well as the excessive length of civil proceedings.

As in other countries, litigation costs for IP disputes, which are highly technical in nature, are expensive. Partly this is also due to the length of time taken to determine civil proceedings. Normally, an Italian court (even the IP sections) will take from two to four years to hand down a decision, whereas urgent procedures may entail between six to 18 months. Outcomes are mostly unforeseeable as court decisions tend to be appealed all the way up to the High Court (Corte di Cassazione), which in turn will take another six to eight years to issue a judgment.

The need for faster and more efficient solutions to conflicts has opened up the path to experimenting with the tool of mediation in IP disputes. Authors and specialists in this field – lawyers, IP attorneys, judges and companies – have questioned the efficacy of this system. We will analyse how this system has been shaped.

Aims of the Mediation System

Implementing the European Union Directive 2008/52/EC, the Italian Legislative Decree 28/10 introduced mediation for civil and commercial disputes. The main objective was to reduce the inflow of new cases into the Italian judicial system and to offer individuals and companies a simple system that may provide fast results with predictable costs.

Mediators and Mediation Centres

The mediation process may be performed individually, by one person, or collectively by more persons (co-mediators), who will try to bring the parties to a settlement of their dispute, but without any decision-making powers and who may not hand down binding judgments. The mediator is a professional who must be, and must stay, impartial and who must have received the necessary training (and must keep updated) from an authorised mediation training centre supervised by the Italian Ministry of Justice and registered with the appropriate mediation entities (private and public). The centres, supervised by the Italian Ministry of Justice, provide their services in compliance with all of the applicable Italian and European laws, the Ministry's regulations and according to their own rules approved by the Ministry of Justice.

Types of Mediation

There are three types of mediation, namely voluntary, referred and mandatory. These are discussed below.

Voluntary: There are few mediation centres specialising in IP disputes, a subject-matter in which mediation (in the absence of a pre-existing covenant) is optional and therefore voluntary (i.e., not imposed by the law), hence, one party or both parties by mutual agreement may freely chose to resort to mediation.

Referred: Where the nature and the status of the cause so permits and the parties agree, the court (one of the 21 so-called Companies Tribunals or the Court of Appeal – Companies Sections) may order the parties to submit their case to mediation with a mediation centre. In such a case, the mediation, or at least the first meeting, is mandatory and therefore the statute of limitations is suspended, and if mediation fails, the parties return to the court.

Mandatory: This applies in the following three cases:

- where the mediation procedure is provided for by a contractual clause (e.g. a licence agreement or a general settlement agreement).
- where the parties to a dispute decide to sign a mediation agreement. Some entities provide a specific model clause for disputes over IP matters or a free-of-charge service of assistance for drafting an *ad hoc* mediation clause.
- where the court, including the appellate court, orders the parties to refer the matter to mediation.

Whether to Use the Mediation Procedure or Not

The mediation procedure is not useful and effective for every IP dispute. International publications and practical case studies involving this matter offer some helpful examples to the parties and their representatives (i.e., IP attorneys and lawyers), and even to judges, as to when and when not to use the mediation process.

Favourable circumstances to use mediation include where:

- there are high court fees, disproportionate to the value of the dispute
- a fast solution is desirable
- the complexity of the issues of law, the facts and the relationship existing among the parties will likely lead to a long suit that will probably be appealed
- there is a multiplicity of actions between the parties in Italy and abroad
- there is uncertainty as to the results in the case of a lawsuit
- there is the existence of commercial relations and a

general interest to continue with and to protect such relations
- it is important to keep the controversy confidential
- the motivations are of relative nullity of intellectual property rights
- there is a fear that the prospective decision will set a legal precedent
- inventions by employees are involved
- there is a lack of or insufficient evidence to initiate a lawsuit in court
- there is a refusal by the IT Provider to transfer the domain name to the owner of IP rights because of arrears in the payment of hosting/annual registration fees/ website graphics, etc.

Unfavourable circumstances to use mediation include where:

- there is intentional or bad faith infringement/piracy
- a party is unwilling to negotiate and/or is anchored to positions of principle
- there is a need of an urgent/ interim measure
- there is a lack of interest in continuing relations
- there is a need to set a precedent
- there is a need of publicity
- the motivations are of absolute nullity of the industrial or intellectual property title
- the subject matter of the dispute is the payment of a sum and the debtor is insolvent

Preliminary Informational Meeting

Not every IP dispute may be successfully subjected to mediation. Therefore, even if not mandatory by the law, it is advisable that the parties take part in an informative meeting (at the cost of 40 euros for each party and no other fee should be paid) in which the Mediation Case Manager or a mediator will inform the parties or their representatives (IP attorneys or lawyers) as to the nature of the mediation procedure, for example, duration of the process, costs, powers of the mediator and characteristics of the mediator. In this way the parties may better evaluate the conditions for starting mediation. This meeting will be confidential and the results will not be binding on the parties.

If a party shows its intention to submit a dispute to mediation but is not certain of the concurrence of the other party, the first party may send a request (even by e-mail) with an indication of the subject-matter and the value of the dispute, for the mediation centre to invite the other party. The mediation centre will contact the other party and check their availability for the mediation. If the answer is positive, the mediation centre will arrange the date, time, place or mode (i.e., present or remote) for the meeting of the Mediation Case Manager with the parties or their representatives (IP attorneys, lawyers, etc.) and invitations will be sent to those concerned. The invitation will include the subject-matter of the dispute and mention the intention of one of the parties to submit the question to mediation, offering to arrange a preliminary meeting to receive information.

The mediator will hear the parties while refraining from entering into the merits of the controversy.

In this meeting, the mediator will hear the parties while refraining from entering into the merits of the controversy. The parties will receive an explanation about the aim and the scope of the mediation, the procedure, the rules, the advantages and the possibilities offered to the parties versus court procedures, the duration, costs and the possibility of maintaining any commercial relations existing between the parties.

The parties may request further Mediator explanations on the procedures and verify, with the help of the Mediator as to:

- whether all the parties to the dispute attending are available to participate in the mediation
- whether the dispute appears (at least in principle) likely to be settled by an alternative procedure to court litigation
- whether conditions and mutual interest exist to look for a solution other than by a lawsuit
- whether there is a firm will to negotiate.

The result of the meeting may be:

- Positive: That is, the invited party decides to join, or both parties decide to start the mediation. The mediator will then invite the parties to agree on a date for the filing of a joint request, to set the date of the first mediation meeting and establish the cost of the procedure, which can differ from the fees normally applied by the mediation centre, with its consent. Minutes (*verbale*) of the commencement of the mediation procedure will be drawn up, as well as a schedule of the procedure.
- Negative: That is, lack of an agreement or lack of interest in the mediation. No minutes (*verbale*) will be drawn up.

This preliminary meeting will allow the parties to assess, at a low cost (except for attorney fees), while preserving their confidentiality and without assuming any binding commitments, the existence of propitious conditions and of an actual mutual intent to submit the case to mediation. They will therefore be able to make a conscientious and knowledgable decision on whether to adhere or not to the mediation.

Advocacy

For an IP dispute, the parties may, and the mediation centre will recommend that they do, take part in the mediation procedure with the attendance of an IP Attorney or lawyer. A well-established international practice is also for an IP attorney to discuss and explain to the client the methods of out-of-court resolution such as mediation, expert determination, arbitration, a domains mandatory administrative proceeding, according to the so-called 'Alternative Dispute Resolution Pledge' approach (see for instance, INTA Pledge or 21st Century CPR Pledge).

When a settlement is reached, the parties and their lawyers sign an agreement that is enforceable. If parties are not represented by lawyers (i.e., by an IP attorney) the settlement agreement is attached to the minutes and the parties may request that the President of the Court validate the settlement by issuing the relevant decree.

Procedure for Commencement of Mediation

The mediation starts by filing a request with the mediation centre in the territory where the court has jurisdiction and where, if the parties so confirm, the mediation will be conducted. However, according to the Italian ministerial rules, the request should be filed (also online) with the registered office of the mediation centre. Upon receipt of the request by the centre, the mediation centre will provide the name and background information of the mediator, the place (the nearest possible, if the meeting is to take place in person by the parties), the date and the time of the preliminary meeting. The request will include the details of the mediation centre, the parties, the subject-matter of the claims and allegations in support thereof.

The request for mediation and acceptance by the party invited may be filed:

- by e-mail
- online, by attaching the relevant supporting documents, but not in the case of a request for a preliminary informational meeting
- by telefax
- in person, with a previous appointment by e-mail. Italian mediation law provides that the documents of request and acceptance may only be filed with the registered office of the mediation centre, whereas the meetings may take place at any operative offices or at any other place that the parties and the mediation centre may decide.

If more than one application is filed, the mediation will be conducted at the mediation centre where the first application was filed and served on the other party.

After commencement of the mediation procedure, the mediator organises one or more meetings, including distant meetings (for instance audio or video conferences) with the view of reaching a dispute settlement.

An agreement accomplished with the assistance of the mediator will be approved by the competent court having territorial jurisdiction over the registered office of the mediation centre. The agreement becomes enforceable in Italy and in all other countries of the European Union, except for Denmark. If no agreement is reached, with the prior consent of the parties, the mediator may file a proposal of settlement of the dispute, which the parties will be free to accept or reject.

In the case of failure of the mediation and if a lawsuit follows, the court may verify whether the election of the mediation centre was unreasonable, for instance, for lack of any connection between the office of the centre and the facts of the other of the dispute, or the place of residence, or the domicile of the other party.

Duration of Mediation Process

Italian law allows a maximum term of three months for the mediation process. A typical civil lawsuit involves an initial 90-day pause between the service of the summons and complaint to the defendant and the first court hearing. In addition, it is a confirmed practice that on this first hearing one of the parties requests an additional postponement for another 80 days.

The mediation allows an attempt at conciliation simultaneously with the initiation of a lawsuit in a court and, therefore, without the addition of time to the judicial proceedings. The process is not suspended during the judicial vacation (August 1st through September 15th). The period of time involved in the mediation procedure may not be calculated in establishing the reasonable duration of a court case set out in Article 6 of European Convention on Human Rights.

Mediator's Proposal

The parties may, by mutual agreement, request that the mediator makes a proposal to resolve their conflict. If this proposal is not accepted and a lawsuit is instituted or continued with a court, if the court's decision on the case is in agreement with the proposal, the costs of the process will be borne by the party that unjustifiably rejected the conciliating solution proposed by the mediator.

Confidentiality

Conditions of confidentially apply to the mediation process. By law:

- no declarations made or information provided by the parties in the context of the mediation procedure may be used in a judicial process
- no declaration or information data revealed by one party only to the mediator may be revealed to the other party and any violation to this rule will be sanctioned
- no confidential information revealed shall be used in a subsequent court case.

Results and Effects of Mediation

When the parties are assisted by a lawyer, the minutes of a settlement agreement signed by the parties and by their lawyer will become officially enforceable with respect to disposals, delivery and release, the obligation to do or not to do something and the registration of a judicial mortgage at the land registry. The lawyer will witness and certify that the settlement agreement complies with Italian law and public policy.

In all other cases, upon the request of one of the parties, the validity of the settlement attached to the minutes of the conciliation agreement will be confirmed by the court and will become enforceable with respect to disposals, specific performance and the registration of judicial mortgages at the land registry.

Once confirmed by an Italian court and where the unperformed obligation consists of the payment of a monetary sum, the settlement agreement and the minutes of the conciliation achieved during a mediation procedure in Italy may also be enforced in another Member Country of the European Union, except for Denmark (considered as an automatic recognition or free circulation in the European Union).

Court Referral

During a mediation procedure, any party may request the court's intervention concerning measures that are urgent under the law and should not be delayed. In addition, after evaluating the nature of the case, the status of the investigation and the behaviour of the parties, a court, including an appellate court, may order the parties to submit to mediation.

Effect in Relation to Court and Lawyers' Fees

The mediation procedure may also influence the cost of a subsequent lawsuit. At the end of the trial, there are two options: that the court decision coincides with the proposal delivered by the mediator or that the court decision is different from the proposal delivered by the mediator. If the court's decision fully coincides with the contents of the conciliation proposal the court may:

- refuse to award reimbursement of the court and lawyers' fees to the winning party if it had rejected the mediator's proposal, proportionately to the period following the proposal, and
- condemn such party to the payment of the court and lawyers' fees corresponding to the losing party for the same period, as well as to the payment of the court fee and the fee due to the mediator and to any experts that may have been appointed.

If, on the other hand, the court decision does not fully coincide with the contents of the proposal, for serious and exceptional reasons, the court may deny reimbursement of the lawyers' fees to the winning party with respect to the compensation to the mediator and any expert witnesses. Upon the unjustified refusal to participate in the mediation procedure by one party, the court may infer arguments of evidence in a subsequent lawsuit. In addition, when submitting to mediation is a pre-condition for the initiation or continuation of a lawsuit (i.e., mandatory mediation), the court may condemn a party that has unjustifiably not participated in the mediation to the payment of a sum equivalent to the court fee.

Costs

In IP disputes mediation costs are charged by the mediation centre based upon a schedule of fees approved by the Italian Ministry of Justice. Private mediation centres and parties are free to agree to a reduction of costs or to devise a contingency fee payment scheme. Public mediation centres' costs are fixed by ministerial rules.

Conclusion

Despite the open hostility of Italian lawyers (who have repeatedly gone on strike) and the scepticism of Italian IP attorneys, in the wake of the mediation instituted by OHIM and the recommendations of the Unitary Patent Convention, mediation in IP issues is a growing phenomenon in Italy.

Pierfrancesco C. Fasano
Managing Partner, Fasano Avvocati

Pierfrancesco C. Fasano is founder and naming partner of Fasano Avvocati, a Milan-based independent law firm. He has been admitted as an Avvocato to the Milan Bar, before the Italian Supreme Court (Corte di Cassazione) and Dubai International Financial Centre (DIFC) Courts. He is a Technical Expert before the Court of Milan, 'trademarks, domains and advertising' special fields. ICOM-WIPO Mediator in Art and Cultural Heritage.

IPBA New Members December 2013 - February 2014

We are pleased to introduce our new IPBA members who joined our association from December 2013 to February 2014. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

Argentina, Juan Francisco Arturo* *Brons & Salas*	**Hong Kong**, Sam Lam *Li & Partners*
Australia, Francisco Alvarez	**Hong Kong**, Wing Cheong Philip Wong *Gallant Y. T. Ho & Co.*
Australia, Anne O'Donoghue *Principal lawyer*	**Hong Kong**, Sherman Chuek Ning Yan *ONC Lawyers*
Canada, Andy Chan *Miller* *Thomson LLP*	**India**, Kaustuv Nath Chunder *Fox Mandal & Associates*
Canada, Zaichi Hu Blake, *Cassels & Graydon LLP*	**India**, Premkumar Rengasamy *King & Partridge*
Canada, Kang Hyuk Lee *Fasken Martineau DuMoulin*	**India**, Neha Saraswat *Saraswat & Co., Advocates & IP Attorneys*
Canada, Gary Matson *Remedios & Company*	**India**, Rishi Saxena *Neeraj Associates*
Canada, David Byung Kon Rhee *Blake Cassels & Graydon LLP*	**India**, Pankaj Singla *Corporate Professionals, Advisors & Advocates*
Canada, Don Waters *McMillan LLP*	**Indonesia**, Bono Daru Adji *Assegaf Hamzah & Partners*
China, Lei Li *Chu Beiping & Co.*	**Indonesia**, Mochamad Kasmali *Soemadipradja & Taher*
China, Susan Munro *Steptoe & Johnson LLP*	**Indonesia**, Midonal Midonal *Donald and Partners - Avocats et Notaires*
China, Zhiquan Sun *Beijing Liangbe Law Firm*	**Indonesia**, Sandro Mieda Panjaitan *Kandar & Partners*
China, Jie Ting (Teresa) Tang* *Guangdong Lawsons Law Office*	**Indonesia**, Rioavianto Soedarno *Soedarno Law Firm*
Denmark, Jens Blomgren-Hansen *Kromann Reumert*	**Indonesia**, Anggi Yusari *Kandar & Partners*
France, Cecile Dekeuwer *D2K Avocats*	**Japan**, Masaaki Ibaragi *Mori Hamada & Matsumoto*
Hong Kong, Sebastian Ko* *Debevoise & Plimpton LLP*	**Japan**, Yamato Kimpara *Mitsui & Co., Ltd.*

**IPBA Scholar 2014*

Japan, Yuta Kimura
Miyake & Yamazaki

Japan, Xin Ma
Yodoyabashi & Yamagami LPC

Japan, Makoto Matsumiya
Higashimachi, LPC

Japan, Hidetaka Mihara
Nagashima Ohno & Tsunematsu

Japan, Takuya Murao
Higashimachi, LPC

Japan, Masahiro Nakatsukasa
Chuo Sogo Law Office, P.C.

Japan, Keiju Ohno
Keiju Ohno Law Office

Japan, Tomokazu Otaka
Nakamoto & Partners

Japan, Christopher Thomas Rathbone
Catalyst Repository Systems

Japan, Koji Yasuda
Nakanoshima City Law Office

Korea, Tong Soo Chung
Yulchon LLC

Korea, Ben Hur
Yulchon LLC

Korea, Bokyung Lim
Shin & Kim

Korea, Doo Sik Kim
Shin & Kim

Korea, Myong Hyon Ryu
Shin & Kim

Korea, Suh-Young Shin
Shin & Park

Laos, Manichanh Philaphanh*
Rajah & Tann (Laos) Sole Co., Ltd

Malaysia, Hwee Li Chan
Maxis Berhad

Malaysia, Weng Hwee Tay *Lee*
Hishammuddin Allen & Gledhill

Nigeria, Ezekiel Goje
J.G. Taidi & Co

Pakistan, Ali Moiz Ansari
Vellani & Vellani

Pakistan, Syed Raza Makki
Vellani & Vellani

Pakistan, Nida Salim Rais
Vellani & Vellani

Philippines, Yvette Chua
Romulo Mabanta Buenaventura Sayoc & De Los Angeles

Philippines, Charito Rodriguez
C F Rodriguez Law Office

Philippines, Frances Yuyucheng
Romulo Mabanta Buenaventura Sayoc & De Los Angeles

Singapore, Abdul Jabbar Karam Din
Rajah & Tann LLP

Singapore, Daniel Koh
Eldan Law LLP

Singapore, Peter Megens
King & Spalding LLP

Singapore, Kim Beng Ng
Rajah & Tann LLP

Singapore, Eric Roose
Morrison & Foerster

Singapore, Paul Sandosham
Clifford Chance Asia

Sri Lanka, Lalith Ganlath
Varners

Sri Lanka, Naveen Marapana
Varners

Sri Lanka, Nithi Murugesu
Varners

Sri Lanka, Samanpriya Ramani Muttettuwegama
Tiruchelvam Associates

Sri Lanka, Dayanthi Samaranayake
Varners

Sri Lanka, Anil Tittawella
Varners

USA, Charles Hwang
Crowell & Moring LLP

USA, Brian Lebowitz
Alston & Bird LLP

USA, Frank Rocco
Frank Rocco & Associates

Vietnam, Net Le
LNT & Partners

Vietnam, Thi Ngoc Loan Nguyen*
Southern Sky Associates

**IPBA Scholar 2014*

Discover Some of Our New Officers, Council Members and Members

Anne O'Donoghue

Principal Lawyer,
Immigration Solutions Lawyers Pty Ltd.

What was your motivation to become a lawyer?
I remember my first encounter with a client who had a migration law problem. At that stage I was about to set up my practice and was horrified at what I perceived to be an unfair application of the law to the client's situation. This was my catalyst to become an immigration lawyer.

Migration Law requires both personal and intellectual skills. You need to balance both of these when assisting clients. I consider an immigration lawyer in essence to be a problem solver and I work with my clients on an ongoing basis to achieve good case outcomes. I find this part of the work very satisfying. I have, and continue to have, a passion for human rights law.

What are the most memorable experiences you have had thus far as a lawyer?
The most memorable case I worked on was the case of a young girl from Bangladesh. She had fought a rare and life-threatening condition since birth, only to face fresh worries that she would be sent back to Bangladesh, where a lack of specialist medical help could be a death sentence. The child was born with exomphalos, a condition that involved her abdominal organs remaining outside her body. I argued that sending the family back with the child would be the same as issuing a death sentence; only Australian doctors could provide the child with the proper medical attention she required. The Immigration Minister at the time intervened in the case and granted permanent residence to the family. This was a high profile case and received a great deal of media attention.

Another memorable experience was when I set up the Immigration Lawyers Association in 2003. I was the Inaugural Vice President of the Association. The organisation was set up so that Immigration Lawyers would have their own voice.

In 2005, ILAA joined with the Law Council of Australia (LCA) and became the ILAA Focus Group, which is now part of the International Law Section of the LCA as the Migration Law Committee. I am still actively involved with the Committee.

What are your interest and/or hobbies?
I enjoy swimming, reading, the opera and fine art history.

Share with us something that IPBA members would be surprised to know about you.
My grandfather and father were jewellers and gold and silver smiths in Melbourne. The firm was known as JW Steeth and Son. They designed the Melbourne Cup (Loving Cup Trophy). Since 1919, the cup was handmade by James W. Steeth (my grandfather) and his son Maurice Steeth (my father). Following my father's premature death in 1970, it was left to his able former apprentice to continue the tradition.

In 1980, the making of the cup was then entrusted to Hardy Brothers Jewellers and the same processes commenced in 1919 are still adopted today.

Consequently, I have developed a great interest in the history of the Melbourne Cup. All business records for JW Steeth & Son were gifted to the Melbourne University Archives as a donation to preserve the family's contribution to fine art history in Australia.

Do you have any special messages for IPBA members?
I look forward to working with my fellow IBPA members to exchange ideas, discuss legal issues and form new friendships.

Richard Briggs

Executive Partner, Hadef & Partners
Regional Coordinator for the Middle East

What was your motivation to become a lawyer?
To be honest, I slipped quietly into it after university and travelling. Motivation per se only took over once I discovered the pleasures of practising maritime law.

What are the most memorable experiences you have had thus far as a lawyer?
First, my early years as a maritime lawyer with Clifford Chance in Dubai between 1992 and 1995 and then in my early years as partner in the UAE firm, Al Tamimi & Co. I was young, the UAE and regional legal market was fast changing and developing, and I felt a sense of purpose and excitement. Indeed, throughout the 1990's, my legal work ranged from pure maritime work and oil pollution through to fraud, asset recovery and BCCI. The UAE was in a critical phase of rapid economic expansion with its economy and ambitions (the UAE Federation was founded only in 1972) moving quickly ahead of the capacity of its legal and administrative system. Much work was done in the 1990's in the UAE, particularly in Dubai, to bring the legal system into line to try to catch up with the rapidly developing economy.

Second, I must say that I did not particularly enjoy the UAE's boom from 2004 to 2008, and the problems this brought both to the UAE's legal system itself and the practice of law during that period. The UAE (and Dubai in particular) suffered the economic consequences of its real estate extravagance and lack of legal infrastructure during the worldwide downturn of 2009, and it has been an interesting time for our firm Hadef & Partners in the last few years to see the various and numerous legal claims play out through the UAE's legal system (including the development and more widespread use of arbitration), and to be involved with the economic recovery that has followed.

What are your interests and/or hobbies?
Nowadays, culture, travel and reading. I am very fortunate that my life as a lawyer has allowed me to participate in some of my hobbies as part of my job. My other great pleasure is of course my wonderful wife Nadia and sons Alexander and Leo.

Share with us something that IPBA members would be surprised to know about you.
I wish I could say something that would make me seem either surprising or different! However, I see myself simply as an English lawyer living overseas who has been fortunate enough to ride the wave of the UAE's rapid and exciting economic and legal development.

Do you have any special messages for IPBA members?
Yes. To those practising in quickly developing economic jurisdictions, I would hope that such members would share the excitement that comes from participating in the parallel development of such countries' legal systems.

Amit Acco

Partner, Kan-Tor & Acco
Co-Chair of the Scholarship Committee

What was your motivation to become a lawyer?
My motivation to become a lawyer came from a desire to help others and promote societal changes. I felt that being a lawyer would enable me to impact government authorities and affect change.

What are the most memorable experiences you have had thus far as a lawyer?
Years ago, pre-technology and before portable phones and computers, I had an introductory meeting with a large multi-national Japanese-based semiconductor company. We all sat down around the table when they all pulled out laptops, and I was in shock sitting there with my legal pad and a pen. Today this is the norm, but back then it was truly amazing to witness and I would have never thought sitting in that room that this would be our world today.

Another great experience was the creation of the Global Corporate Relocation Treaty (GCRT). I worked on the draft with my partner years ago and currently it is under review by the OECD. It is exciting for me to see this global mobility treaty alive and being discussed by attorneys all over the world today.

What are your interest and/or hobbies?
I enjoy swimming, bike riding and listening to music. My true passion lies in photography and graphic design of the photos I take.

Share with us something that IPBA members would be surprised to know about you.
I ride to work on an electric bicycle. Tel Aviv, Israel is a relatively small city and very bike friendly so it's the easiest and fastest way to get around!

Do you have any special messages for IPBA members?
I truly believe I have gained so much from my many years as an IPBA member and scholar. I think that active membership offers an amazing network of attorneys around the world and that this fosters opportunities to be a part of interesting and high-profile cases through references provided by others. In addition, I couldn't be more thankful for the opportunities provided to me through the IPBA Scholarship Programme I was a part of when I first started out and I am pleased that the scholarships are still being awarded today, while I am Co-Chair of the Scholarship Committee.

Members' Notes

Stephan Wilske

Stephan Wilske has published the following articles:

- Stephan Wilske, Legal Challenges to Delayed Arbitral Awards, Contemporary Asia Arbitration Journal, Vol. 6 No. 2 (November 2013), pp. 153-186.
- Stephan Wilske/ Claudia Krapfl, German Federal Court of Justice postpones decision on intra-EU jurisdictional objection, IBA Arbitration News, February 2014 (forthcoming).

Ning Zhu

Ms. Ning Zhu, Managing Partner of Chance Bridge Partners, currently is a PhD candidate of Renmin University of China majoring in Securities Laws. She focuses on M&A, FDI and IPOs and has notable experience in Investment, Project Financing, as well as Capital Markets. According to the resolution of the extraordinary general meeting of Wuhu Shunrong Auto Parts Co., Ltd. (Chinese listed company, 002555) released on 5 January 2014, Ms. Ning Zhu was elected as Independent Director of the said company.

Correction Statement

In the December 2013 issue of the IPBA Journal, on page 36, we incorrectly stated the article's author, Sandy HY Wong, as the Founder of Wortels Lexus. Sandy is a Consultant for Boughton Peterson Yang Anderson, and the Head of Legal at Maxim's Caterers Limited.

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 **Caroline Berube** at cberube@hjmasialaw.com and **Maxine Chiang** at maxinechiang@chianglee.com. We would be grateful if you could also send a lead paragraph of approximately 50 or 60 words, giving a brief introduction to, or an overview of the article's main theme and a photo with the following specifications (File Format: JPG, Resolution: 300dpi and Dimensions: 4cm(w) x 5cm(h)) 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 is written by an IPBA member. Co-authors must also be IPBA members.

An Invitation to Join the Inter-Pacific Bar Association

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

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

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

IPBA Activities

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

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

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

APEC

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

Membership

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

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

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

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

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

Corporate Associate

Any corporation may become a Corporate Associate of the IPBA by submitting an application form accompanied by payment of the annual subscription of (¥50,000) for the current year.
The name of the Corporate Associate shall be listed in the membership directory.
A Corporate Associate may designate one employee ('Associate Member'), who may take part in any Annual Conference, committee or other programmes with the same rights and privileges as a Member, except that the Associate Member has no voting rights at Annual or Special Meetings, and may not assume the position of Council Member or Chairperson of a Committee.
A Corporate Associate may have any number of its employees attend any activities of the Association at the member rates.

- Annual Dues for Corporate Associates ¥50,000

Payment of Dues

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

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

IPBA Secretariat

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

See overleaf for membership registration form

IPBA SECRETARIAT

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

IPBA MEMBERSHIP REGISTRATION FORM

Membership Category and Annual Dues:

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

Name: _____ Last Name _____First Name / Middle Name

Date of Birth: year_____ month_____ date _____ Gender: M / F

Firm Name: _____

Jurisdiction: _____

Correspondence Address: _____

_____

Telephone: _____ Facsimile: _____

Email: _____

Choice of Committees (please choose up to three):

[ ] Aviation Law
[ ] Banking, Finance and Securities
[ ] Competition Law
[ ] Corporate Counsel
[ ] Cross-Border Investment
[ ] Dispute Resolution and Arbitration
[ ] Employment and Immigration Law
[ ] Energy and Natural Resources
[ ] Environmental Law
[ ] Insolvency
[ ] Insurance
[ ] Intellectual Property
[ ] International Construction Projects
[ ] International Trade
[ ] Legal Development and Training
[ ] Legal Practice
[ ] Maritime Law
[ ] Scholarship
[ ] Tax Law
[ ] Technology and Communications
[ ] Women Business Lawyers

I agree to showing my contact information to interested parties through the APEC web site. YES NO

Method of Payment (Please read each note carefully and choose one of the following methods):

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

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

Signature:_____ Date: _____

PLEASE RETURN THIS FORM TO:

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

IPBA 2015 HONG KONG

Inter-Pacific Bar Association (IPBA)
25th Annual Meeting & Conference

VISION FOR THE FUTURE

6-9 May 2015, Hong Kong

The IPBA 25th Annual Meeting & Conference in Hong Kong will mark the 25th Anniversary of the IPBA. The discussion and debate at the Annual Meeting & Conference will focus on the theme "Vision for the Future", drawing on the views of renowned specialists across a wide spectrum of topical legal issues. The programme will also showcase the very best that Hong Kong has to offer day and night. Expect to be amazed by this vibrant city's colourful culture which will be brought to life at the various events around the city.

We welcome you to Hong Kong, Asia's World City!

SAVE THE DATE!

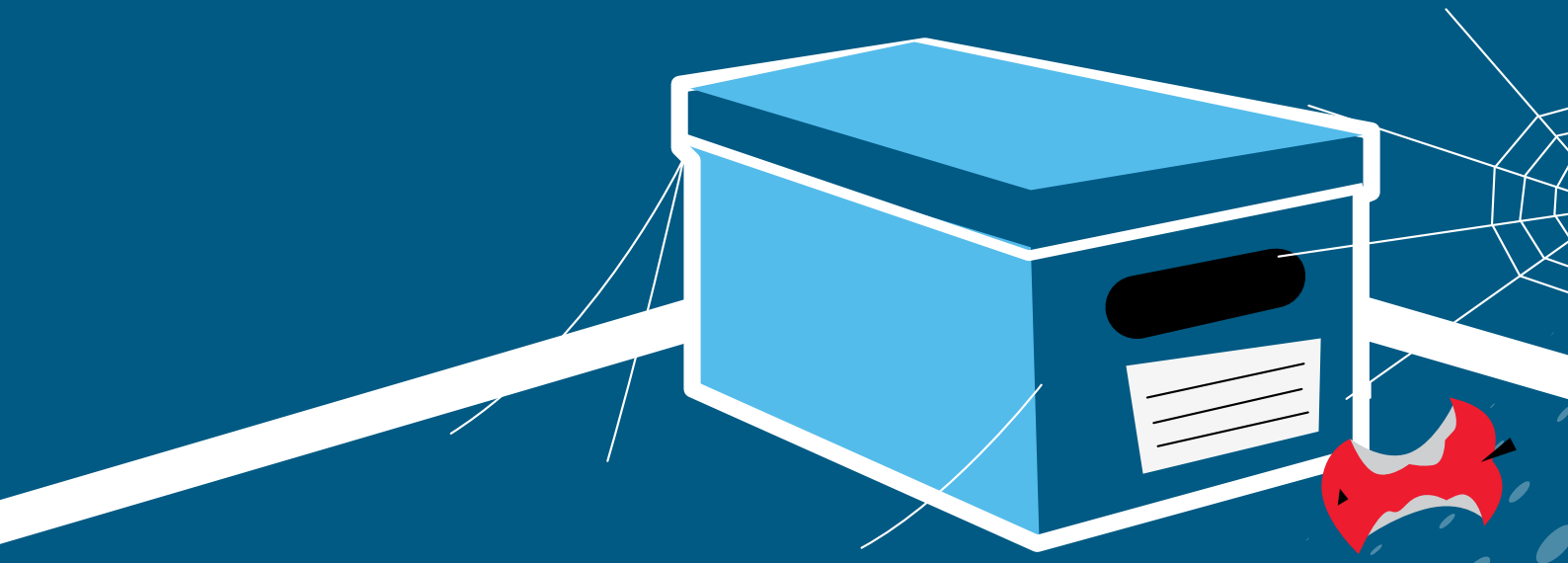
www.ipba2015hk.org

VISIT OUR STAND AT IPBA 2014 IN VANCOUVER TO LEARN MORE ABOUT THE IPBA 25TH ANNUAL MEETING & CONFERENCE IN HONG KONG AND TO ENJOY THE SUPER EARLY BIRD REGISTRATION RATE!

IPBA Annual Meeting & Conference 2015 Hong Kong
MCI Hong Kong, Suites 2807-9, Two Chinachem Exchange Square
338 King's Road, North Point, Hong Kong
Email: IPBA2015@mci-group.com Website: www.ipba2015hk.org

FOR THOSE WHO LIKE TO THINK OUTSIDE THE BOX, HERE'S A NEW CHALLENGE.

EVER WONDERED WHAT'S INSIDE?



Email us at sales.hk@crownrms.com

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