No 68 December 2012

# IPBA JOURNAL

IPBA NEWS AND LEGAL UPDATE

INTER-PACIFIC BAR ASSOCIATION

**LexisNexis**
(a division of Reed Elsevier
(Greater China) Ltd)

Publisher
**Karen Taylor**

Editor
**Wilda Fong**

Editorial
**CY Mak**

Design
**Zoe Yau**

Advertising Sales
**Jonathan Martin**
Tel: 852-2965-1473
Fax: 852-2976-0840
Email: jon.martin@lexisnexis.com

LexisNexis®

An imprint of
**LexisNexis**
(a division of Reed Elsevier
(Greater China) Ltd)
3901, 39/F, Hopewell Centre,
183 Queen's Road East,
Hong Kong
Tel: 852-2965-1400
Fax: 852-2976-0840

Internet:
www.lexisnexis.com.hk

Email address:
karen.taylor@lexisnexis.com

ISSN 1469-6495



Single back issues: HK$280 (US$36)

To order back issues
call +852 2965 1473 or
email jon.martin@lexisnexis.com

# IPBA Journal

The Official Publication of the Inter-Pacific Bar Association

**No 68 December 2012**

## IPBA News

4 **The President's Message**

6 **The Secretary-General's Message**

8 **IPBA Events**

11 **IPBA Event Calendar**

12 **IPBA Mid-Year Council Meeting**

## Legal Update

19 **Veta Richardson, President of the Association of Corporate Counsel**
*The Association of Corporate Counsel (ACC) held its 2012 Annual Meeting in Orlando between 30 Sept-3 Oct 2012. The ACC gathered 30,000 members from over 75 countries. Anne Durez, Chair of the Corporate Counsel Committee attended the meeting on behalf of the IPBA. She spoke with Veta Richardson, President and CEO of the ACC, who shared some thoughts about the evolving role of corporate counsel*

21 **Asian M&A Transactions in Switzerland: an Overview**
*Switzerland has recently seen an increase in the number of M&A transactions driven by Asian investors. There is expected to be further growth in inbound investments both from individuals looking for real estate or other private investments, as well as from companies on the buyer's side. This article provides a short overview of the business framework in Switzerland*

26 **Vietnam's New Draft Regulations on Online Games**
*With 13 million gamers, Vietnam is an attractive destination for enterprises operating in the online gaming industry. The Government has worked for a long time on new draft regulations governing online gaming issues. Once this draft is enacted, there may be significant changes for gaming providers, as well as gamers*

29 **Patent Enforcement in India**
*Intellectual property assets are touted as the cornerstone of competitiveness in international trade and are the driving factors behind socio-economic development in India. However, it is of prime importance that strong IP laws be framed and complemented by an equally strong and substantive enforcement mechanism. This article looks at the enforcement mechanism in place regarding patent infringement in India.*

36 **Discover Some of Our New Officers and Council Members**

38 **Members' Notes**

INTER-PACIFIC BAR ASSOCIATION

# IPBA Leadership (2012–2013 Term)

## Officers

**President**
Lalit Bhasin
*Bhasin & Co, Advocates*, New Delhi

**President-Elect**
Young-Moo Shin
*Shin & Kim*, Seoul

**Vice President**
William A Scott
*Stikeman Elliott LLP*, Toronto

**Secretary-General**
Alan S Fujimoto
*Goodsill Anderson Quinn & Stifel*, Honolulu

**Deputy Secretary-General**
Wai Ming Yap
*Stamford Law Corporation*, Singapore

**Program Coordinator**
Christopher To
*Construction Industry Council*, Hong Kong

**Deputy Program Coordinator**
Allan Leung
*Hogan Lovells*, Hong Kong

**Committee Coordinator**
Ada Ko
*Garvey Schubert Barer*, Seattle

**Deputy Committee Coordinator**
Sylvette Tankiang
*Villaraza Cruz Marcelo & Angangco*, Taguig

**Membership Committee Chair**
Suresh Divyanathan
*Messrs Oon and Bazul LLC*, Singapore

**Membership Committee Vice-Chair**
Mitsuru Claire Chino
*Itochu Corporation*, Tokyo

**Publications Committee Chair**
Caroline Berube
*HJM Asia Law & Co LLC*, Guangzhou

**Publications Committee Vice-Chair**
Maxine Chiang
*Lee, Tsai & Partners*, Taipei

## Jurisdictional Council Members

Australia: Bruce Lloyd
*Clayton Utz*, Sydney

Canada: Robert Wai Quon
*Fasken, Martineau DuMoulin LLP*, Vancouver

China: Audrey Chen
*Jun He Law Offices*, Beijing

France: Patrick Vovan
*Vovan & Associes*, Paris

Germany: Gerhard Wegen
*Gleiss Lutz*, Stuttgart

Hong Kong: Annie Tsoi
*Deacons*, Hong Kong

India: Praveen Agarwal
*Agarwal Jetley & Company*, New Delhi

Indonesia: Nini N Halim
*Hutabarat Halim & Rekan*, Jakarta

Japan: Ryosuke Ito
*TMI Associates*, Tokyo

Korea: Chang-Rok Woo
*Yulchon*, Seoul

Malaysia: Dhinesh Bhaskaran
*Shearn Delamore & Co*, Kuala Lumpur

New Zealand: Neil Russ
*Buddle Findlay*, Auckland

Pakistan: Badaruddin Vellani
*Vellani & Vellani*, Karachi

Philippines: Aleli Angela G Quirino
*Angara Abello Concepcion Regala & Cruz (ACCRALAW)*, Makati City

Singapore: Vi Ming Lok
*Rodyk & Davidson*, Singapore

Switzerland: Bernhard F Meyer (acting)
*MME Partners*, Zurich

Thailand: Anuphan Kitnitchiva
*Dherakupt International Law Office, Ltd*, Bangkok

UK: Roger Best
*Clifford Chance LLP*, London

USA: Ken Stuart
*Becker, Glynn, Muffly, Chassin & Hosinski LLP*, New York

## At-Large Council Members

China: Yunchuan Jing
*Beijing Gaotong Law Firm*, Beijing

Hawaii & South Pacific Islands: Mark Shklov
*Mark T Shklov, AAL, LLLC*, Honolulu

India: Sumeet Kachwaha
*Kachwaha & Partners*, New Delhi

Latin America: Shin Jae Kim
*Tozzini Freire Advogados*, São Paulo

Osaka: Hiroe Toyoshima
*Nakamoto Partners*, Osaka

Webmaster: TBD

## Regional Coordinators

Asia-Pacific: John West
*Barrister at Law*, Sydney

Europe: Jean-Claude Beaujour
*Smith Violet*, Paris

North America: Cedric Chao
*Morrison & Foerster LLP*, San Francisco

Sri Lanka and Bangladesh: Mahinda Haradasa
*Varners*, Colombo

## Committee Chairpersons

**Aviation Law**
Kala Anandarajah (acting Chair)
*Rajah & Tann*, Singapore

**Banking, Finance and Securities**
Hajime Ueno
*Nishimura & Asahi*, Tokyo

**Competition Law**
Harumichi Uchida
*Mori Hamada & Matsumoto*, Tokyo

**Corporate Counsel**
Anne Durez
*Total SA*, Paris

**Cross-Border Investment**
Yong-Jae Chang
*Lee & Ko*, Seoul

Jose Cochingyan III
*Cochingyan & Peralta Law Offices*, Makati City

**Dispute Resolution and Arbitration**
Mohanadass Kanagasabai
*Mohanadass Partnership*, Kuala Lumpur

Juliet Blanch
*Weil, Gotshal & Manges*, London

**Employment and Immigration Law**
Fiona Loughrey
*Simmons & Simmons*, Hong Kong

**Energy and Natural Resources**
Robert Kwauk
*Blake, Cassels & Graydon LLP*, Beijing

**Environmental Law**
Agustina Supriyani Kardono
*Soewito Suhardiman Eddmurthy Kardono*, Jakarta

**Insolvency**
Byung-Joo Lee
*Shin & Kim*, Seoul

**Insurance**
Angus Rodger
*Steptoe & Johnson*, London

**Intellectual Property**
Juan Carlos Marquez
*Stites & Harbison, PLLC*, Alexandria

**International Construction Projects**
Keith Phillips
*Watt, Tieder, Hoffar & Fitzgerald, LLP*, McLean

**International Trade**
Jeffrey Snyder
*Crowell Moring LLP*, Washington, D.C.

Rafael Vergara
*Carey y Cia*, Santiago

**Legal Development and Training**
Lawrence Foster
*University of Hawaii School of Law*, Shanghai

**Legal Practice**
Satoshi Moriguchi
*Nagashima Ohno & Tsunematsu*, Tokyo

Hee-Chul Kang
*Yulchon*, Seoul

**Maritime Law**
Timothy Elsworth
*Stephenson Harwood*, Singapore

**Scholarship**
Varya Simpson
*SNR Denton*, San Francisco

**Tax Law**
Michael Butler
*Finlaysons*, Adelaide

**Technology and Communications**
Edgar Chen
*Tsar & Tsai Law Firm*, Taipei

**Women Business Lawyers**
Priti Suri
*PSA, Legal Counsellors*, New Delhi

## Committee Vice-Chairpersons

**Aviation Law**
Shishir Sharma, *Tatva Legal,* Haryana
Scott D Cunningham, *Condon & Forsyth LLP,* Los Angeles

**Banking, Finance and Securities**
Mee-Hyon Lee, *Lee & Ko,* Seoul
Robert Postema, *Piper Alderman,* Sydney
Jan Peeters, *Stibbe,* Brussels
Mona Bhide, *Dave & Girish & Co,* Mumbai

**Competition Law**
H Stephen Harris Jr, *Baker & McKenzie LLP,* Washington, D.C.
Shawn CD Neylan, *Stikeman Elliott,* Toronto
Shigeyoshi Ezaki, *Anderson Mori & Tomotsune,* Tokyo
Anand Pathak, *P&A Law Offices,* New Delhi

**Corporate Counsel**
Aseem Chawla, *Amarchand & Mangaldas & Suresh A Shroff & Co,* New Delhi

**Cross-Border Investment**
Eriko Hayashi, *Oh-Ebashi LPC & Partners,* Tokyo
Bjorn Etgen, *Beiten Burkhardt,* Shanghai
Shikhil Suri, *Crowell & Moring LLP,* Washington, D.C.

**Dispute Resolution and Arbitration**
Bernhard Meyer, *MME Partners,* Zurich
Gary Soo, *Gary Soo's Chambers,* Hong Kong
Mohan Pillay, *Pinsent Masons MPillay LLP,* Singapore
Eckart Brödermann, *Brödermann & Jahn Rechtsanwaltsgesellschaft mbH,* Hamburg
Vikram Nankani, *Economic Laws Practice,* Mumbai
Hiroyuki Tezuka, *Nishimura & Asahi,* Tokyo
Yoshimasa Furuta, *Anderson Mori & Tomotsune,* Tokyo
Ariel Ye, *King & Wood Law Firm,* Beijing
Young Seok Lee, *Yulchon,* Seoul
Stacey Wang, *Holland & Knight LLP,* Los Angeles

**Employment and Immigration Law**
Emerico O De Guzman, *Angara Abello Concepcion Regala & Cruz (ACCRALAW),* Makati City
Leonard Yeoh, *Tay & Partners,* Kuala Lumpur
Jacqueline Bart, *Bart & Associates,* Toronto
Mustafa Utkuseven, *Overseas Research & Consulting, Ltd,* Istanbul
Roland Falder, *Taylor Wessing,* Munich
Poorvi Chothani, *LawQuest,* Mumbai
Aki Tanaka, *Kitahama Partners,* Osaka
Sandra R McCandless, *SNR Denton US LLP,* San Francisco

**Energy and Natural Resources**
Jeffrey Holt, *Saipem SA,* Saint Quentin en Yvelines
Ramesh Vaidyanathan, *Advaya Legal,* Mumbai

**Environmental Law**
Shweta Bharti, *Hammurabi & Solomon, Advocated & Corp Law Advisors,* New Delhi
Doil Son, *Yulchon,* Seoul
Douglas Codiga, *Schlack Ito LLLC,* Honolulu

**Insolvency**
Lynn Harrison 3rd, *Curtis Mallet-Prevost Colt & Mosle, LLP,* New York
Pradeep Pillai, *Shook Lin & Bok LLP,* Singapore
Samir Shah, *SU Shah & Associates,* Ahmedabad
Shinichiro Abe, *Baker & McKenzie GJBJ, Tokyo Aoyama Aoki Koma Law,* Tokyo
Masahiro Otsuki, Abe, *Ikubo & Katayama,* Tokyo

**Insurance**
Sim Chan Cheng, *Pacific & Orient Insurance Co Bhd,* Kuala Lumpur
Krishan Gopal Singhania, *Singhania & Co, Solicitors & Advocates,* Mumbai
Denis Brock, *Mallesons Stephen Jaques,* Hong Kong

**Intellectual Property**
Riccardo G Cajola, *Cajola & Associati,* Milan
Pravin Anand, *Anand & Anand,* Noida
Kazuto Yamamoto, *Daiichi Law Office, PC,* Osaka
Jaime Castillo, *Calderon y De La Sierra y Cia, SC,* Mexico
Daniel Ying Sin Lim, *Stamford Law Corporation,* Singapore
Jaime Chang, *Lee, Tsai & Partners Attorneys-at-Law,* Taipei

**International Construction Projects**
Nusrat Hassan, *DH Law Associates, Advocates & Solicitors,* Mumbai

**International Trade**
Jong Ku Kang, *Bae, Kim & Lee LLP,* Seoul
Takamiki Nishikawa, *Ralph Lauren Japan Corporation,* Tokyo
Ronaldo Veirano, *Verano Advogados,* Rio de Janeiro
Jin Xiao, *King & Wood PRC Lawyers,* Beijing
Atul Dua, *Seth Dua & Associates,* New Delhi
Paolo Vergano, *Fratini Vargano – European Lawyers,* Brussels
Turenna Ramirez-Ortiz, *Sanchez DeVanny Eseverri, SC,* Mexico City
Raj Bhala, *University of Kansas School of Law,* Lawrence
Manjula Chawla, *Phoenix Legal,* New Delhi
Edmund Walter Sim, *Appleton Luff Pte Ltd,* Singapore

**Legal Development & Training**
Suchitra A Chitale, *Chitale & Chitale Partners, Advocates & Legal Consultants,* New Delhi

**Legal Practice**
Bengchai Tay, *Tay & Partners*, Kuala Lumpur
Jose Vincente E Jimenez, *JGLaw (Jimenez Gonzales Bello Valdez Caluya & Fernandez),* Makati City
Mark Stinson, *Fasken Martineau DuMoulin LLP,* Toronto
Charandeep Kaur, *Trilegal,* New Delhi
Hee-Chul Kang, *Yulchon*, Seoul

**Maritime Law**
Ikwei Chong, *Clyde & Co Shanghai,* Shanghai
Siva Kumar Kanagasabai, *Skrine,* Kuala Lumpur
Saurabh Misra, *Saurabh Misra & Associates,* Mumbai
Masahiro Amemiya, *Yoshida & Partners,* Tokyo

**Scholarship**
Kumkum Sen, *Bharucha & Partners,* New Delhi
Amit Acco, *Kan-Tor and Acco,* Ramat Gan
Tatsuki Nakayama, *Miyake & Yamazaki,* Tokyo
Kwon Hoe Kim, *Yoon & Yang LLC,* Seoul

**Tax Law**
Yushi Hegawa, *Nagashima Ohno & Tsunematsu,* Tokyo
Terence Conrad H Bello, *Baniqued & Baniqued,* Pasig City
Dominic Hui, *Ribeiro Hui,* Hong Kong
Anil Harish, *DM Harish & Co,* Mumbai
Peter de Ridder, *Loyens & Loeff,* Singapore
Stuart Hutchinson, Simpson Grierson, Auckland

**Technology and Communications**
Michael Christian Cartier, *Walder Wyss Ltd,* Zurich

**Women Business Lawyers**
Shivpriya Nanda, *J Sagar Associates,* Haryana
Haixiao (Helen) Zhang, *Zhong Lun Law Firm,* Shanghai

## Past Presidents

Shiro Kuniya (2011-2012)
*Oh-Ebashi LPC & Partners,* Osaka

Suet-Fern Lee (2010-2011)
*Stamford Law Corporation,* Singapore

Rafael A Morales (2009-2010)
*SyCip Salazar Hernandez & Gatmaitan,* Makati City

Gerold W Libby (2008-2009)
*Zuber Lawler & Del Duca LLP,* Los Angeles

Zongze Gao (2007-2008)
*King & Wood Law Firm,* Beijing

James McH FitzSimons (2006-2007)
*Clayton Utz,* Sydney

Felix O Soebagjo (2005-2006)
*Soebagjo, Jatim, Djarot,* Jakarta

Sang-Kyu Rhi (2004-2005)
*Rhi & Partners,* Seoul

Ravinder Nath (2003-2004)
*Rajinder Narain & Co,* New Delhi

Vivien Chan (2002-2003)
*Vivien Chan & Co,* Hong Kong

Nobuo Miyake (2001-2002)
*Miyake & Yamazaki,* Tokyo

John W Craig (2000-2001)
*Davis LLP,* Toronto

Dej-Udom Krairit (1999-2000)
*Dej-Udom & Associates Ltd,* Bangkok

Hon Justice Susan Glazebrook (1998-1999)
*Court of Appeal,* Wellington

Cecil Abraham (1997-1998)
*Zul Rafique & Partners,* Kuala Lumpur

Teodoro D Regala (1996-1997)
*Angara Abello Concepcion Regala & Cruz (ACCRALAW),* Makati City

Carl E Anduri, Jr (1995-1996)
*Lex Mundi,* Lafayette

Pathmanaban Selvadurai (1994-1995)
*Tan Rajah & Cheah,* Singapore

Ming-Sheng Lin (deceased) (1993-1994)
*TIPLO Attorneys-at-Law,* Taipei

Richard James Marshall (1992-1993)
*Glencore International AG,* Baar

Kunio Hamada (1991-1992)
*Mori Hamada & Matsumoto,* Tokyo

## Past Secretaries-General

Gerald A Sumida (2009-2011)
*Carlsmith Ball LLP,* Honolulu

Arthur Loke (2007-2009)
*Arthur Loke & Sim LLP,* Singapore

Koichiro Nakamoto (2005-2007)
*Anderson Mori & Tomotsune,* Tokyo

Philip N Pillai (2001-2005)
*Shook Lin & Bok,* Singapore

Harumichi Uchida (1999-2001)
*Mori Hamada & Matsumoto,* Tokyo

Takashi Ejiri (1995-1999)
*Nishimura & Asahi,* Tokyo

Nobuo Miyake (1991-1995)
*Miyake & Yamazaki,* Tokyo

# The President's Message

Dear Colleagues,

I have just returned from Auckland after a hectic but extremely fruitful Mid-Year Council Meeting. In addition to the main Council Meeting, I attended the Officers Meeting and Nominating Committee Meeting. I also attended the Jurisdictional Council Members (JCM) and At-Large Council Members Meeting, and the Committee Chairs and Programs Meeting.

What I found amazing was extreme cordiality and bonhomie amongst the participants besides the stimulating intellectual input in all the meetings. As the IPBA President, this was my first experience to chair the Council Meeting and also attend the other meetings which I found extremely rewarding because of the interaction. Since there was some time left before the scheduled closure of the Council Meeting, I invited suggestions, comments and observations from all members/proxies present regarding the function of the IPBA, improvements therein and how to increase our membership. There were generally good responses and we managed to get very useful and meaningful contributions from the Council Members.

The Mid-Year Council Meeting in Auckland was a great success thanks mainly to the Host Committee and Mr Neil Russ, our JCM for New Zealand. Neil's efforts were supported by other eminent law firms. By engaging the Hon Justice Susan Glazebrook and the Hon Mayor of Auckland to speak to our Council Members at the Reception and Dinner, it was a significant achievement. The Seminar held on 5 November was very well organized and well attended.

The arrangements in Auckland were impeccable and the hospitality was lavish. It was also gratifying to see New Zealand crossing the 25-member mark to be eligible to maintain a Jurisdictional Council. I place on record our gratitude to Neil and all other individuals and law firms for making this a memorable event.

It is such events and the deep commitment that the host committees have for the IPBA which distinguishes the IPBA from other lawyers' organizations. Ours is an organization with familial bonds whereas others are just for networking. We maintain and keep the highest traditions of law and we are not elitist business lawyers.

## Perceptions About the Legal Profession

Perceptions about lawyers are reflected in jokes about lawyers. Jokes about lawyers have been around for a long time. At the turn of the 21st century nearly 1000 lawyer jokes were circulating in the United States with an equal number in India. We live in an epoch of heightened anti-lawyerism as reflected in lawyer jokes. The jokes do tap into a vein of society's genuine shared sentiment and perception about lawyers.

As one listens to the jokes, it becomes apparent that a number of themes and figures recur repeatedly. These are organized into nine clusters. Five of these focus on substantive complaints about the things lawyers do, namely, that they are: (1) corrupters of discourse; (2) economic predators; (3) fomenters of strife; (4) betrayers of trust; and (5) enemies of justice. The other four clusters focus not on the deeds of lawyers but on their character and standing, and on our response to them. They characterize lawyers as being: (6) allies of the devil; (7) morally deficient; (8) objects of scorn; and (9) candidates for elimination. Some illustrative examples of these are provided in the following:

> As a minister and a lawyer were riding together, the minister asked, "Do you ever make any mistakes in your pleading?" "Oh, yes," the lawyer replied. "And what do you do in those cases?" "Well," said the lawyer, "if they are important mistakes I correct them, and if they are small ones I pay no attention to them, but just go on. And do you ever make any mistakes in your preaching?" "Oh, yes," said the clergyman, "and I observe the same rule as you do. For instance, one Sunday not long ago I meant to say to my congregation that the devil is the father of all liars and my tongue slipped and I said 'all lawyers' instead. But the mistake was so small that I let it go at that."

> There is an old story of a lawyer named Strange and his wife having a conference as to the things he wished done after he had departed this life.
> "I want a headstone put over me, my

> dear," said the lawyer, "with the simple inscription: 'Here lies an honest lawyer'."
> The wife expressed surprise that he did not wish his name put on the headstone.
> "It will not be needful," he responded, "for those who pass by and read that inscription will invariably remark: 'That's Strange'."

According to Mark Galanter who produced the masterpiece literary work *Lowering the Bar – Lawyer Jokes and Legal Culture* from where the jokes have been extracted, lawyer jokes represent a 'jaundiced view'. Effective steps must be taken to eliminate the hostility towards the profession and restore it to its glory. The IPBA is an organization that can help to dispel the negativity about the legal profession worldwide.

I have placed my Vision Statement before the Council. I have constituted a Presidential Committee for this purpose with Alan Fujimoto as the Chair, Gerald Sumida, Suet-Fern Lee, Suresh Divyanathan and Yap Wai Ming as its members. I strongly urge you to support the work of this Committee.

The IPBA has deep commitment for Professional Social Responsibility (PSR) and not superficial lip service for this cause. This is another presidential initiative I will embark upon. The IPBA should be seen to be committed to PSR and at every Conference or Council Meeting there should be a focus on PSR. I hope I will have your full support. I submit my proposal to the officers and thereafter to the Council for consideration.

## Seoul

Our eyes are now on Seoul. Under the Chairmanship of the President-Elect Dr Young-Moo Shin, the Seoul Host Committee presented very engaging and colourful presentations in Auckland for the forthcoming Annual Meeting. The programme is taking shape nicely. The Committee Chairs/Vice-Chairs have finalized the speakers for their respective sessions. The cultural and social events will be the highlights of the Seoul Annual Meeting and Conference. The Host Committee has not left any stones unturned for making this Conference a *grand* success. I encourage IPBA members throughout the world to attend the Seoul event in large numbers so that it would be a fitting tribute to the ceaseless and remarkable efforts being made by Dr Shin and his team to make this a *historic* Conference.

## Paris

Between now and the Annual Meeting and Conference, the European Regional Conference in Paris will be held on 25 and 26 January 2013. The theme of the Conference is 'Corporate Social Responsibility and Fair Competition from a European and Asian Viewpoint'.

This will be a unique opportunity to interact with law firms from Europe, the UK, Middle East and Africa. Mr Jean-Claude Beaujour is coordinating the event and I thank him for organizing this conference.

I hope to see you – in large numbers – in Paris and Seoul, and encourage you to recruit more members in your region to become IPBA members and to attend the IPBA events.

I wish all of you, your families, your colleagues and support staff a Merry Christmas and a very Happy New Year!

My special greetings to the officers who are doing a commendable job and also to the wonderful Secretariat – Rhonda, Midori and Yukiko.

*Lalit Bhasin*
*President*

# The Secretary-General's Message

Dear IPBA Members,

Another eventful year is coming to a close. After a tremendously successful annual conference in New Delhi, India in February, the IPBA recently completed its Mid-Year Council Meeting in Auckland, New Zealand in November.

The success of the Mid-Year Council Meeting was punctuated by the fact that membership in New Zealand increased from a low of 13 earlier in the year to 26. The credit for the successful recruitment of members goes to Neil Russ, the Jurisdictional Council Member for New Zealand, and his fellow members in New Zealand. Neil and the other members put together an excellent set of meetings and social gatherings, which undoubtedly played a part in the recruitment of the new members.

A dinner at the Harbourside Bar & Grill in the venerable Ferry Building in Auckland was highlighted by a talk by the Hon Susan Glazebrook, a past President of the IPBA, who is now a justice of the New Zealand Supreme Court.

After the official meetings were completed, the New Zealand members presented a seminar on the morning of 5 November covering the topics of foreign direct investment in New Zealand and the Trans-Pacific Partnership. Speakers from New Zealand and members of the IPBA on the panel provided keen insights on the topics.

As an American, while I was in New Zealand, I took the opportunity to ask the many attorneys from different parts of the world what they thought about the forthcoming American elections. In the end, I learned that the sentiments of the attorneys were overwhelmingly in favour of President Obama. This was not a scientific poll but it was still quite a contrast to the divided thoughts among Americans where polls showed the Presidential race too close to call. Ultimately, President Obama won reelection, but the popular vote indicated the division that the polls indicated.

We Americans do not agree on every issue as the division regarding the Presidential election shows. I have noted in other columns that Council Members of the IPBA do not necessarily agree on every issue before them. But where there are differences, Council Members engage in serious discussion to try to bridge the gap among the members to come to a consensus.

Over the course of the past few years, the officers of the IPBA noted varying ideas among the members on the direction the IPBA should take as it entered its third decade of existence. The officers felt that perhaps it was time to take a serious look at these issues.

In 2006, the IPBA, led by such IPBA stalwarts as Past President Suet-Fern Lee and Past Secretary-General Jerry Sumida undertook the effort of organizing a Strategic Plan for the IPBA. This plan was intended to give a road map for the IPBA to follow as it approached its 20th anniversary. This plan has served the IPBA well, but the officers felt that perhaps it was time to review this plan and to see if the road map created in 2006 may need to be realigned.

These days, changes happen instantaneously in our digital world, and what may have been a solid road map in 2006 may not necessarily meet the needs of an ever-changing world.

In New Zealand, the IPBA Council approved the suggestion of its officers, which was instigated by suggestions from our President, Lalit Bhasin, to appoint a Presidential Ad Hoc Committee to review the Strategic Plan of the IPBA that was established in 2006 and asked the Committee to offer an updated plan for the IPBA as soon as practically possible. I have been asked to chair this Committee and will have the able assistance of several other members of the IPBA. In addition, many other IPBA members will be asked to offer insights, suggestions, comments and thoughts on our planning process and on the updated plan itself. If, as a member of the IPBA, you should have ideas on the direction the IPBA should be taking in the next decade, please voice your thoughts to the officers of the IPBA whose names and contact information you can find on the IPBA website or in the inside cover of the *IPBA Journal*. We look forward to working hard to establish this road map for the IPBA's future.

Aloha,

*Alan S Fujimoto*
*Secretary-General*

# 2013 IPBA Silent Auction Fundraising Event

The Inter-Pacific Bar Association (IPBA) will again be holding a Silent Auction fundraising event at the Annual Meeting and Conference in Seoul, Korea to benefit a worthy cause. Funds will be raised at the Silent Auction through competitive bidding for items donated by IPBA Members, clients and friends.

## Cause

The funds raised at the 2013 Silent Auction will be used primarily to provide scholarships for North Korean refugee students pursuing legal education in South Korea, as well as to provide scholarships, as we are able, for other North Korean refugee students attending colleges and universities in South Korea.

Each year approximately 2000 people risk their lives in order to escape from North Korea into the South, and there are currently more than 1000 North Korean refugee students enrolled in colleges and universities in South Korea pursuing opportunities that were previously unavailable. However, many have had to give up their dreams due to financial hardships.

The Silent Auction Committee hopes to help these young people in their educational endeavours. Perhaps this assistance will make a difference to these students, Korea and its future, and our global society as a whole.

## How

Please donate an auction item to the IPBA Silent Auction by 1 April 2013. A donation form will be provided upon request. For further information, please contact Kwon Hoe Kim at kkim@hwawoo.com.

Donors will be well publicized and your donation will be on display during the event.

By donating an item, you'll be making a contribution that will help the IPBA provide support to this worthy cause. Additionally, you'll benefit from exposure of your firm or company's name in materials provided to those who attend the IPBA Annual Conference. Please consider donating items to support the continued work of the IPBA Scholarship Committee.

## Report on the Latest Trends in Project Financing and Procurement of Construction Projects

*Christopher To, Construction Industry Council*

With the sponsorship from the Construction Industry Council, along with Hogan Lovells and King & Wood Mallesons, the IPBA seminar on 'Latest Trends in Project Financing and Procurement of Construction Projects' held on 30 October was remarkably successful.

The seminar consisted of six presentations and two panel discussions. Speakers and panelists were representatives from King & Wood Mallesons, the MTR Corporation, KPMG, Hogan Lovells, the Drainage Services Department, and Rider Levett Bucknall.

The seminar was attended by a total of 58 participants (including the seven speakers) from various sectors including the Airport Authority Hong Kong, the Drainage Services Department, the MTR Corporation, as well as major law firms, consultancies, construction companies, real estate services firms and universities. The participants not only enjoyed a series of quality presentations, but also actively shared their ideas and thoughts in the panel discussions.

Mr Christopher To, IPBA Program Coordinator, speaking to the audience at a special seminar in Hong Kong.

Delegates of the IPBA Seminar were among the first to attend a function in Hong Kong's Zero Carbon Building.

## Competition Law in the Asia-Pacific Region

*Harumichi Uchida, Mori Hamada & Matsumoto*
*Chairman, Competition Law Committee*

We had a very successful regional specialist conference in Tokyo on 9 November. The theme of the conference was 'Competition Law in the Asia-Pacific Region'. The conference was jointly hosted with the Japan Competition Law Forum (JCLF).

Close to 200 participants registered their attendance. To share with you the purpose of the conference and how it was organized, I have provided an extract of the opening remarks I gave at the conference:

> Thanks on behalf of the JCLF and the Competition Law Committee of the IPBA. As chairman of both, I would like to express our deepest gratitude to the former chairman of the Japan Fair Trade Commission, Mr Takeshima, for agreeing to give a keynote speech at this conference. I am also grateful to those speakers and moderators who have devoted their extremely valuable time to prepare for the sessions of this conference. I particularly thank speakers from abroad for travelling all the way to Japan. Lastly, but not least, I sincerely thank and welcome the invited guests and the participants who recognized the value and the importance of this conference and registered their attendance.
>
> *JCLF/IPBA Joint Conference*
> This conference is organized as a joint effort of the JCLF and the Competition Law Committee of the IPBA, and is supported by cooperating entities, the Fair Trade Commission of Japan, Korea Bar Association, Korea Competition Forum, Asia Competition Association and the Keidanren-Japan Business Federation. We appreciate the support of those organizations. Let me introduce the JCLF and the IPBA.

*JCLF*

The JCLF was established in 2005 as an organization of practitioners, mostly lawyers in Japan, who practice or are involved in competition law. The JCLF now has over 200 members. Considering the total number of competition law practitioners in Japan, the membership of the JCLF would constitute almost all of the practitioners in Japan. By that I believe and am proud that the JCLF now represents the voice of antitrust law practitioners in Japan.

One of the major activities of the JCLF has been an annual conference, which focuses on the issues and topics of competition law of most interest to the members in each respective year. This conference is such an annual conference for the JCLF for this year.

*IPBA*

The IPBA was established in 1991, as an association of business and commercial law practitioners in the Asia-Pacific region. Its inaugural ceremony and conference was held in Tokyo. The mother country of the IPBA is Japan. Thanks to the development of Asian legal markets, the IPBA has grown dramatically and has become the most powerful organization of business lawyers in the region. I served as Secretary-General of the IPBA and am now the chairman of its Competition Law Committee.

For the IPBA too, the most important event is the annual conference, which is organized and hosted by a different jurisdiction each year. One of the highlights of these annual conferences, if permitted to speak from my personal preference, I believe, would be the dinner receptions, which reflect the local culture and history of the host country.

*Kyoto*

One such IPBA annual conference was planned to take place in Kyoto/Osaka in 2011. Just one month before the conference, the disastrous Great East Japan Earthquake and tsunami tragically hit the Tohoku region of Japan. This disaster was followed by further serious problems caused by the series of accidents involving the nuclear power plant in Fukushima. Despite the disaster the annual conference went ahead and was very successful.

The highlight in my memory was the dinner reception in Kyoto at an old temple. The spring flowers, the Japanese garden, the quiet atmosphere, and the structure of the old temple provided a wonderful spiritual feeling. Furthermore, the food from a Michelin three-starred restaurant in Kyoto was great. Many IPBA members from abroad came to Kyoto to show their support despite cautions about visiting Japan. While participants of the reception enjoyed such an atmosphere, beautiful garden and food, I felt a deep sense of the prayers of all participants for those who suffered or were suffering from the earthquake and tsunami. It was a memorable moment. I would like to invite you all to register for the Seoul Conference next year to support the IPBA, which is a wonderful association of friendly lawyers.

*Specialist Conference*

In addition to the annual conference, the IPBA has recently gone a step further in its efforts to organize a regional specialist conference. Today's conference is one such IPBA specialist conference with a focus on competition law in the Asia-Pacific region. When I was asked by the IPBA leadership to organize such a specialist conference for 2012, I decided to hold it in Japan. I thought it would show to IPBA members how much Japan has recovered from the damage and suffering caused by the earthquake and tsunami after one year.

## Chairman Takeshima

This conference is an annual conference for the JCLF and a specialist conference for the IPBA to review the recent development of competition law in the region. At the same time, this conference is intended to provide recognition of the achievements of Chairman Takeshima during his 10-year tenure as chairman of the JFTC.

His strong leadership brought more strict enforcement of competition law in Japan. Furthermore, his deep understanding of the importance of international cooperation among the enforcement authorities and his activity based on such understanding greatly helped the development of competition law enforcement in the Asia Pacific region.

Since his retirement in September, I believe, this conference would be the first international conference where Mr Takeshima will give a speech reflecting on his experiences. Today's conference could be described as an epoch-making 'historical' event in the world of competition law enforcement in this region.

### Competition Law in the Region

Given the increased impact of competition law enforcement over business operations in the region, a practitioner is unable to give appropriate advice to clients without knowing and understanding competition law in the Asia-Pacific region.

For the successful completion of mergers and acquisitions, merger control in each relevant jurisdiction in the region must be handled adequately. Stricter cartel enforcement in the region requires business entities to drastically change business conduct in the region. Also, heavier and more serious sanctions would require more careful responses to government investigations, as well as more careful compliance programs for avoiding such sanctions.

Through this full day conference, I believe you will learn all the significant issues and problems involving the enforcement of competition law in the region. I sincerely hope that this conference will bring you meaningful and fruitful understanding and knowledge.

The conference was very successful and was greatly appreciated by all the participants. Participants' feedback included the high quality of speakers, the very high quality of presentations and discussions, and the excellent session topics which dealt with the interests and concerns of practitioners in the region. Please visit: http://ipba.org/media/fck/files/JCLF%20IPBA%20Seminar%20EN.pdf for an outline of the conference program.

I sincerely hope the conference has encouraged IPBA members who attended the conference to get more involved in IPBA activities, and non-members to become IPBA members. I also hope many of the conference participants attend the Seoul Annual Conference of IPBA next year.

Mr Won Joon Kim of Kim & Chan, Korea, inviting delegates to next year's IPBA Annual Meeting and Conference in Seoul.

## IPBA Membership Dues Payment for 2013 Now Being Accepted!

For quick dues payment, log in to the Member Only section of the IPBA website and use the Membership Renewal Form. Contact the Secretariat if you need your password.

You can also arrange automatic membership dues payment on an ongoing basis. Just contact the Secretariat for an authorization form.

Membership dues payments for 2013 will be accepted until 31 March. Remember that you must be a member in good standing for the 2013 membership year in order to take advantage of the special 'IPBA Member' rate for the 23rd Annual Meeting and Conference in Seoul, 17-20 April, 2013.

Contact the IPBA Secretariat if you need further information about membership dues payment.

**The IPBA Secretariat**
Phone: +81-3-5787-6796
FAX: +81-3-5786-6778
E-mail: ipba@ipba.org
Roppongi Hills North Tower 7F
6-2-31 Roppongi, Minato-ku, Tokyo 106-0032 Japan

## IPBA Event Calendar

| Event | Location | Date |
|---|---|---|
| **IPBA Annual Meeting and Conference** | | |
| 23rd Annual Meeting and Conference | Seoul, Korea | April 17–20, 2013 |
| 24th Annual Meeting and Conference | Vancouver, Canada | May 8–11, 2014 |
| **IPBA Mid-Year Council Meeting** | | |
| 2013 Mid-Year Council Meeting and Seminar | Zurich, Switzerland | October 25–28, 2013 |
| **Regional Events** | | |
| IPBA Conference: "Corporate Social Responsibility and Fair Competition Between Companies: a Comparative Approach Between Europe and Asia" | Paris, France | January 25–26, 2013 |
| **Supporting Events** | | |
| Beacon's "Advanced Anti-Corruption Compliance Strategies" | Beijing, China | December 4–6, 2012 |
| Kluwer Law's "Korea: International Arbitration Summit and the New Hub of Asia" | Seoul, Korea | December 4, 2012 |
| IFLR Asia M&A Forum | Hong Kong | February 27–28, 2013 |
| Beacon's "Corruption & Compliance Asia Summit" | Shanghai, China | March 12–14, 2013 |
| ABA International's Annual Spring Meeting 2013 | Washington, D.C., USA | April 23–27, 2013 |

**More details can be found on our website:**
**http://www.ipba.org, or contact the IPBA Secretariat at ipba@ipba.org**

## 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 by *16 February, 2013* to both **Caroline Berube** at cberube@hjmasialaw.com and **Maxine Chiang** at maxinechiang@leetsai.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 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.

# The Honorable Justice Susan Glazebrook, Supreme Court of New Zealand

Caroline Berube

**On 2 November, during the 2012 IPBA Mid-Year Council Meeting and Seminar in Auckland, New Zealand, I was given the opportunity to interview The Honorable Justice Susan Glazebrook for the *IPBA Journal*. The following is a condensed version of the interview.**

**Interviewed by Caroline Berube***
**Managing Partner, HJM Asia Law & Co LLC**

**Q:** What initially attracted you to becoming a lawyer and thereafter move across to the bench?

**A:** There had never been any lawyers in my family. So the decision to become a lawyer was made with little idea of what being a lawyer entailed. I wanted a profession and did not want to be a teacher (like many in my family). I considered medicine (and my sister took that route) but I was probably more arts than science orientated – so I decided on law as a career.

As to becoming a judge, I was asked to become one. Mine was not a usual path to the bench as I had been a commercial lawyer and not a litigator. I was not the first in that category and not the last, but appointments are still largely made from litigators. I think the idea was to have more people on the bench who understand commercial law, those who weren't litigators but have commercial experience. It was slightly surprising and obviously flattering to be asked in such circumstances and also to have the opportunity to provide an important public service of this nature, using my commercial experience.

**Q:** What was the most interesting aspect of being the President of the IPBA from 1998-99?

**A:** The most challenging aspect of my involvement with the IPBA was actually as President-Elect when I was responsible for organizing the Auckland

* Caroline Berube is currently serving as the Chair of the IPBA's Publication's Committee

conference. This was a huge organizational task for all involved. Getting delegates to attend was particularly challenging because of the major financial crisis in Asia at the time, but in the end we had about 550 delegates which I was very happy about.

The most rewarding aspects of my involvement with the IPBA (and not just as President) have been the strong friendships I formed and also the cross-fertilization between jurisdictions. Involvement in the IPBA exposes participants to different legal systems, to other cultures and to different ways of doing business. This not only helps in cross-border work but can also help participants in their work within their own jurisdictions. The ideas they are exposed to from other jurisdictions can lead to finding better ways of doing things in their own.

I also very much enjoyed the representation role as President, both through visiting a number of jurisdictions and meeting with IPBA members on their home ground but also meeting with other organizations, such as the IBA and ABA. This was important in order to raise the profile of the IPBA on the world stage.

**Q:** What has been the most rewarding and the most challenging moment in your career thus far?

**A:** By far the most challenging moment in my career to date was the first criminal trial I presided over as a new judge. I had never had any criminal experience in practice. Although we had the opportunity to sit and observe other judges for a week or two and colleagues were always ready to help, nothing can really prepare you for that first solo experience.

Other rewarding aspects of my career, apart from the legal work, were appointments to the board of a major hospital in Auckland and also to the Board of Trustees of a superannuation fund. These appointments enabled me to experience things from a different perspective: that of the commercial entity as against that of legal advisor. This gave me a deeper understanding of commercial issues. I also served on a number of government advisory bodies and this was interesting too as it involved the development of policy rather than its application.

Another rewarding aspect of my career to date has been the international involvement. The crowning moment in that regard was of course as President of the IPBA. But, since being on the Bench, I have continued my international involvement and in particular in the Asia-Pacific region. For a number of years, I was on the Advisory Council of Jurists for the Asia-Pacific Forum of National Human Rights Institutions. I have also been involved with the International Organisation for Judicial Training and am currently a board member of the International Association of Women Judges as one of their Asia-Pacific representatives. Finally, I was involved in the early stages with the World Justice Project (of which the IPBA is one of the strategic partners).

**Q:** What are your thoughts on judicial specialization as opposed to every justice/judge having a broad area of competence and expertise?

**A:** For a small jurisdiction like New Zealand it is impractical to have specialist courts in particular specialist areas, such as intellectual property, as there are too few cases to sustain such courts. Totally specialist courts in narrow areas also, in my view, risk becoming insular – there is benefit in cross-fertilization with other areas of law. There is an added danger in small jurisdictions, even if there are sufficient cases, as the law risks being concentrated in too few hands.

Justice Susan Glazebrook

On the other hand, de facto specialization (where particular types of cases get funneled to particular judges who are perceived to have expertise) has dangers as it is behind the scenes and therefore not open to public scrutiny.

For myself, I favour a panel system similar to that in the Federal Court of Australia. Under that system, as I understand it, judges can choose to join panels on particular specialist areas and they then must undertake to educate themselves and keep current with the law. There is a fair system of allocating cases to those on the panel. There is probably merit in having rotation on panels so the law does not become stultified and concentrated in too few hands. Judges on panels continue to sit on cases in the general jurisdiction of the courts and so continue to reap the benefits of cross-fertilization with other areas of the law. My personal view is that this system means the best of both worlds: expertise and cross-fertilization.

**Q:** What are your thoughts on how the international commercial community views the New Zealand Judiciary? In this light, what do you believe to be the most challenging points, and how should these be addressed?

**A:** New Zealand has a stable, independent judiciary which is evidenced by the latest Rule of Law Index results. New Zealand scored third out of 14 countries in the Asian-Pacific region for civil justice and ninth out of 97 countries surveyed worldwide. It also scored first in the Asia-Pacific region and sixth in the world for absence of corruption.

There have been a number of measures taken over the years to make the New Zealand court system more responsive to the needs of commercial clients, such as changes to discovery rules and case management. There have also recently been changes to the process of fixture allocations and the organization of judgment writing in the High Court, which have served to speed up the process of civil litigation. According to its 2011 report, these changes have meant that fixtures for civil trials are now available in the High Court well within 12 months of filing a claim. There are also projects on hand for electronic filing and the early identification of issues. In addition, New Zealand's judicial education programme is very well developed, through its Institute of Judicial Studies.

In my view, courts must adapt and remain relevant to commercial clients. If they do not, then they risk being sidelined. There is an obvious long term danger to the rule of law if that regularly occurs in cases of legal importance and high precedential value.

**Q:** Being established in 2004, the Supreme Court of New Zealand is still relatively new. What excites you the most about being involved in the future development of the Supreme Court?

**A:** As a new appointee to the Supreme Court, I am very much looking forward to being involved in the continuing process of defining the role of the Court as a final court in the New Zealand context. This includes finding the proper balance between domestic jurisprudence and responsiveness to increasing globalization.

**Q:** Do you think that being a female Supreme Court judge faces different challenges than being a male Supreme Court judge? Do you think that there are additional challenges because you are a woman?

**A:** To sidestep the question a bit, I think it is important to have a diverse judiciary that, as far as possible, reflects the society it serves. Those from diverse backgrounds will have different life and professional experiences, and thus will bring different perspectives to the task of judging. These different perspectives are particularly important in a collegial court and lead to better judgments.

Having said that, I do not think that differences between judges as to the law and the application of the law arise on gender lines. Nor do the challenges differ. All Supreme Court judges, male and female, are very conscious of their responsibility to litigants and to the legal system as members of the final court.

**Q:** Any special message for our IPBA members?

**A:** The IPBA is a fantastic organization. It has, to its credit, stuck to its core business as an association of business lawyers grounded in the Asia-Pacific region. Long may it continue.

# Highlights from the Mid-Year Council Meeting, Auckland, New Zealand

## An Overview of the Mid-Year Council Meeting

The Mid-Year Council Meeting and educational seminars took place in Auckland, New Zealand from 2-5 November. It was a real pleasure for members of the New Zealand Host Committee to welcome IPBA Council Members, members of the Judiciary, local dignitaries and local lawyers to a series of interesting events around Auckland.

Council Members were welcomed at a reception at the offices of Buddle Findlay on 2 November. The Mayor of Auckland, Len Brown, welcomed IPBA members in numerous languages and discussed the role and importance of Auckland, New Zealand's largest city, in the Asia-Pacific region, the links which he and other members of recent trade delegations have been forging with cities in Korea, China and Japan, as well as the importance of the role lawyers can play to increase trade and to promote the rule of law in the region. A lawyer himself, the Mayor noted that many initiatives commenced and facilitated by lawyers, are often 'behind the scenes', to assist the work of politicians and number decision makers.

Council Members were hosted at Chapman Tripp's offices for various pre-Council Meetings on 3 November. That evening, Council Members and local lawyers were treated to an interesting and thought provoking speech by Her Honour Justice Susan Glazebrook, a former president of the IPBA and now a member of New Zealand's highest appellate court, the Supreme Court. Her Honour was introduced by Jim FitzSimons (also a former president of the IPBA) and thanked by our current president Lalit Bhasin, in two very entertaining speeches.

The highlight of the main Council Meeting held on 4 November, for many, was the impromptu dance lesson, where Council Members were introduced to 'Gangnam style' dancing. A (hopefully short) promotional video was shot for the Seoul conference. No doubt IPBA members will see the video in due course – perhaps it will suffice to say that most Council Members should stick to their vocation as lawyers!

In the evening, Richard Fyers, one of the founding members of IPBA and the former New Zealand JCM, hosted a very successful farewell cocktail party at his private residence.

On 5 November, IPBA members and local lawyers were hosted at Bell Gully offices for two seminars on foreign direct investment and the Trans-Pacific Partnership. Summaries of the seminars appear elsewhere in this Journal, and the organizers were very grateful to the IPBA Council Members who provided their expertise and perspectives on the issues surrounding foreign direct investment and free trade agreements involving their respective jurisdictions.

One major benefit of the IPBA meeting in Auckland was a doubling of the number of local IPBA members, from 13 to 26. This was very pleasing, particularly as it will enable us to introduce new members to the IPBA to continue to sustain the organization in coming years.

Finally, I would like to offer my personal thanks to the members of the Host Committee and of the major law firms that helped to make the Mid-Year Council Meeting such a success – particularly Richard Fyers, Denis McNamara, Dermot Ross, Barry Brown, David Boswell and James Jung. Without their assistance, this would not have been possible.

*Neil Russ, Partner, Buddle Findlay*
*Jurisdictional Council Member for New Zealand*

Secretary-General Alan Fujimoto addressing the delegates at the welcome reception at Buddle Findlay.

IPBA officers with Host Committee members and the Mayor of Auckland. (Photo by Buddle Findlay)

From left to right: IPBA Vice-President William Scott, President-Elect Dr Young-Moo Shin, and President Lalit Bhasin at the Officers' Meeting.

From left to right: Deputy Committee Coordinator Sylvette Tankiang, Publications Committee Chair Caroline Berube, and future Deputy Secretary-General Miyuki Ishiguro at the Officers' meeting.

Mr Neil Russ, JCM for New Zealand, addressing the Welcome Reception attendees. (Photo by Buddle Findlay)

The Hon Justice Susan Glazebrook, past IPBA President, looks on as IPBA President Lalit Bhasin speaks at the Council Dinner.

The Honourable Justice Susan Glazebrook (a past IPBA President) addressing the audience at the Council Dinner.

Sharing a laugh at the Council Dinner.

Practicing the 'Lawyer Style' dance.

IPBA camaraderie is exemplified by President-Elect Dr Young-Moo Shin and Richard Fyers of Fyers Joyce.

Seminar attendees networking and enjoying refreshments at the offices of Bell Gully.

Up and coming young lawyers from Auckland Gordon Tian and James Jung worked hard to help make the events successful.

At the conclusion of all meetings and events, a group of Council Members explored the beauty of Auckland on a neighboring island.

Jumping for joy at the bright future of IPBA!

## The Trans-Pacific Partnership Agreement Seminar

The IPBA organized a short seminar in Auckland on 5 November on the topic of the Trans-Pacific Partnership (TPP) Agreement. The TPP will be one of the world's biggest free trade agreements and the IPBA panelists came from current negotiating countries: Singapore, New Zealand, Australia, USA and Canada.

The seminar was moderated by Auckland lawyer Richard Fyers. Daniel Kaldermis from Chapman Tripp, New Zealand provided a detailed power point presentation. He pointed out there was a lot at stake in these negotiations with new areas being covered such as supply chains, regulatory coherence and increased obligations, including in agriculture, services and IP. He also mentioned the controversial issues around investment, labour and the environment. Bruce Lloyd from Clayton Utz presented the Australian viewpoint which included the fact that the TPP was his government's highest regional trade negotiation priority. Bruce also talked about the tobacco litigation being brought against Australia under international treaties. Suresh Divyanathan from Oon and Bazul noted that Singapore had been founded as a trading post and that Singapore was a keen supporter of free trade. Singapore does not have any agriculture which is often a major impediment to many countries when entering into free trade agreements. Kenneth Stuart, from Becker, Glynn, Muffly, Chassin & Hosinski LLP a New York firm, said that it was hard to find any US media comment on the TPP but there was some opinion in the blogsphere and he produced a range of detail. Robert Quon from Fasken Martineau's Vancouver office discovered that Canada had no free trade agreements with any Asian country and he quoted an interesting table showing how many free trade agreements various nations had entered into.

The Trans-Pacific Partnership Agreement being discussed in the second-half of the Seminar.

*Richard Fyers*
*Partner, Fyers Joyce*

## Direct Foreign Investment Seminar

One of the two short seminars organized by the IPBA on 5 November was on the topic of the Direct Foreign Investment.

The seminar started off with a presentation by Andrew Petersen from Bell Gully, New Zealand, on the regulation of foreign direct investment in New Zealand providing an overview of the current overseas investment regime and topical issues in New Zealand. This included comments about a recent New Zealand High Court decision resulting from a controversial purchase of 16 dairy farms by an overseas investor. He was then joined by four IPBA panelists, Yong-Jae Chang (Lee & Ko) practising in Korea, Wai Ming Yap (Stamford Law Corporation) practising in Singapore, Caroline Berube (HJM Asia Law & Co LLC) practising in China and Robert Postema (Piper Alderman) practising in Australia, in a panel discussion led by David Boswell from Bell Gully, New Zealand, about the regulation of direct foreign investment in each panelist's jurisdiction. Valuable comments were made by the panelists about which type of land is considered 'sensitive' in each jurisdiction (such as residential property in Singapore and Australia and defence facilities in Korea) and any incentives offered to attract foreign investment (such as in China and Singapore).

The seminar was well received by the attendees and it was a great opportunity to hear about how various jurisdictions regulate direct foreign investment.

*Andrew Petersen*
*Partner, Bell Gully*

The IPBA Seminar on Direct Foreign Investment was well attended.

## IPBA goes Gangnam-style

South Korean rapper Psy's eccentric song and dance sensation called 'Gangnam style' has inspired numerous YouTube parodies starring an NBA superstar, an MIT professor, and now a group of lawyers at the IPBA Mid-Year Council Meeting in New Zealand.

On the night of the Council dinner, a small group of our Council Members came up with the idea of creating a Gangnam style parody video to promote the upcoming IPBA Annual Conference in Seoul. A team was quickly put together to work on the dance moves and members practiced until the wee hours of the morning. The next day at the Council Meeting, I had the privilege of leading the Gangnam style dance (IPBA version) to a room full of IPBA Council Members.

Who said lawyers can't dance? Everyone participated and showed great (and somewhat creative) dance moves. In particular, please keep an eye out for the IPBA President dance video, a trio dance which is MUST see! It was a truly unforgettable and entertaining experience for me, and I look forward to dancing along to an improved version of the dance with a greater number of IPBA-member participants at the Seoul conference. Who knows? – Psy could be leading the dance this time!

*Vicky Kim*
*Senior Solicitor, Buddle Findlay*

Gangnam Style Dance Lesson

# Veta Richardson, President of the Association of Corporate Counsel

Anne Durez

**The Association of Corporate Counsel (ACC) held its 2012 Annual Meeting in Orlando between 30 Sept and 3 Oct. The ACC gathered 30,000 members from over 75 countries. Anne Durez, Chair of the Corporate Counsel Committee attended the meeting on behalf of the IPBA. She spoke with Veta Richardson, President and CEO of the ACC, who shared some thoughts about the evolving role of corporate counsel.**

**Interview by Anne Durez***
**Senior Legal Counsel, Total SA**

**Q:** In 2012, the ACC is celebrating its 30th anniversary. As President of the ACC what is your message to all in-house counsel?

**A:** The ACC has been proud to serve as an international voice for in-house counsel for 30 years. The role of General Counsel is evolving a lot, in particular, because legal issues are increasingly important to execution of the company's business strategy and some of the key issues include ethics and compliance, together with sustainable development. The ACC therefore adapts itself and increases its resources to improve its members' knowledge, information and training. We are always growing in response to our members' needs.

**Q:** Your prior job was president of the MCCA (Minority Corporate Counsel Association) where you fought for the expanded hiring, retention and promotion of diverse attorneys for in-house legal departments and law firms. Has diversity improved or is there still a lot to do in this respect? If so, what is the involvement of the ACC and its members on the topic?

**A:** In the course of the 10 years during which I led the MCCA, many strides were made in corporate law departments both to increase the number of women and to promote diversity. At the time the MCCA was founded, there were around 20 women leading the legal departments of the Fortune 500 companies. Some 15 years later, that number is now 108 women. Yet females hold only around 15% of board seats on Fortune 500 companies and among the 85% of men, more than 77% are white

* Anne Durez is currently serving as the Chair of the IPBA's Corporate Counsel Committee.

men who dominate the boardroom. Therefore, diversity leadership has to be an issue at the CEO and board levels.

It is also very important to be more culturally sensitive. Although diversity is discussed very proactively in Northern America (USA and Canada), I believe that Europe is also very concerned about diversity and probably, the most diverse.

**Q:** As a woman lawyer, do you believe that the glass ceiling is still difficult to pierce for women? How do you believe that women can be helped?

**A:** There remain a number of challenges for women. When I speak of diversity I speak of inclusion. Women have not yet achieved parity and in this respect the ACC has an important role to play. Women really need to be visible at the leadership level within the organization – whether that organization is the ACC, one of our members'companies, or other bar associations.

I believe that mentoring is one ingredient to one's success. This is why showcasing the expertise and talent of women is so crucial. Women need to look at the various ways to manage their career and seek mentors. The ACC allows them to connect quite easily. An online mentoring programme was set up less than a year ago and around 50 people matched through it.

**Q:** The role and position of in-house counsel has considerably evolved through the past few decades. What are the most important challenges they are facing in the 21st century?

**A:** There are a lot of challenges that in-house counsel have to face. Among the most important ones are: paying attention to company activities that may have legal implications, facing the challenge to do more with less resources, keeping up with the changes of law on a global basis, reducing outside counsel legal costs. Regarding the last challenge, the 2011 CLO (Chief Legal Officer) survey showed that CLOs are looking for increased value from their outside law firms and are looking for improved budget and matter management, including value-based arrangements.

**Q:** The career of an in-house counsel tends to remain confined in the legal field, even if many in-house counsel hold brilliant positions. Do you believe that in-house counsel can evolve towards top executive positions?

Veta Richardson

**A:** Yes, definitely. Several CEOs are former GCs or attorneys. I am thinking of Kenneth Frazier, a former Harvard-trained lawyer and the first African American to head Merck, a major pharmaceutical company. Or Brian Thomas Moynihan, a former lawyer and current CEO of Bank of America. Or Kenneth Chennault, another former Harvard-trained lawyer who is CEO and Chairman of American Express. And Tim Mayopoulos who was Bank of America's GC is now the CEO of Fannie Mae.

Beyond these examples, I believe that CEOs and top executives need to hold critical skills. They have to be great communicators, problem solvers and manage board relationships well. GCs who also hold the position of corporate secretary are well trained in this respect although it is not essential, these experiences do help.

As already mentioned, mentoring is really one of the best ways to prepare to become a board member. This year, I have the chance to be part of the American programme called DirectWomen. It is the only programme specifically designed to identify and support a select group of women attorneys to provide qualified directors needed by US public company boards. DirectWomen provides strategic career development and networking opportunities to women and reinforces the merits of gender diversity in the minds of corporate directors.

# Asian M&A Transactions in Switzerland: an Overview

Dr Beat Brechbühl

Christophe Scheidegger

**Switzerland has recently seen an increase in the number of M&A transactions driven by Asian investors. There is expected to be further growth in inbound investments both from individuals looking for real estate or other private investments, as well as from companies on the buyer's side. This article provides a short overview of the business framework in Switzerland.**

**Dr Beat Brechbühl**
Co-Managing Partner, Kellerhals Attorneys at Law

**Christophe Scheidegger**
Associate, Kellerhals Attorneys at Law

Recently, we have seen an increase of M&A transactions in Switzerland driven by Asian investors. In 2010, Asian investors accounted for 5% of the deals; in 2011, the number doubled and reached 11% – an all time high, both in numbers and size (ie one of the largest deals in Europe in 2011 was the acquisition of the Swiss-based pharma-multinational Nycomed by Takeda, based in Japan).

Switzerland is, with 8 million inhabitants, a small country but accounts for one of the most liberal, competitive and stable economies in the world. The 2011 GDP amounted to US$ 635.6 billion, the inflation rate is about 1%, the unemployment rate is at 2.7% and the political situation has been very stable in the last 50 years with very few strikes due to a coalition government including all major parties. Switzerland consists of 26 Cantons (states) and has four official languages, the most important of which are German and French. Partially, in light of the internal diversity, the country is open and internationally focused: One of two Swiss Francs (CHF) (one Swiss Franc is currently worth slightly more than one US$) is earned abroad. English is an important business language and many international organizations have their legal seats or major institutions in Switzerland (such as WTO, FIFA, IOC, WHO). Switzerland respects open markets and is not only a member of the European Free Trade Association (EFTA), OECD, WTO and other multilateral treaties but favours bilateral Free Trade Agreements (eg with Japan, Singapore and Hong Kong) and is currently negotiating with other major Asian economies such as China, India, Vietnam, Thailand and Indonesia. The judicial system is efficient and based on civil law; this is the reason, Swiss law and/or Swiss arbitration is often used as common grounds in major international business contracts by foreign parties.

We expect a further growth in inbound investment in the near future, both from individuals looking for real estate or other private investments, as well as from companies on the buyer's side. For this very reason, the authors of this article provide a short overview of the business framework in Switzerland.

## Overview of the Swiss Commercial Law and Business Regulation

*1. Business Organizations*

A company limited by shares (a corporation) is by far the most common business organization in Switzerland. The minimum share capital is CHF 100,000. Besides the contribution of the share issue price, the shareholders have no other duties ie they can remain anonymous. The nominees can form such a company in a week. The articles of incorporation provide for the organizational basis of the corporation that is very flexible. Swiss share companies have a one-tier board, unlike many Continental jurisdictions, which have both a supervisory and an executive board.

The limited liability company is gaining more popularity although it is still less used when compared with other European countries. In addition to small enterprises, it can be a useful vehicle for Asian-Swiss joint ventures.

*2. Taxation and Social Security*

Switzerland remains in general one of the most tax efficient business locations in Europe. The tax rates can differ from canton to canton. The following types of tax are relevant to companies: (i) corporate income tax, which amounts on a national level to 8.5% and is payable on the net profit shown by the statutory accounts; (ii) withholding tax, which is payable by the debtor on income from movable capital assets (especially interest and dividends) at a tax rate of currently 35%. The tax is generally refundable when the creditor is a Swiss resident. Creditors from all major Asian countries benefit from Double Taxation Treaties that reduce the rate for subsidiaries and substantial holdings to only 5-10%; (iii) value added tax, which is currently at 8%; and (iv) stamp duties, which arise mainly on the issuance of shares and amounts to 1% with an exemption limit up to CHF 1 million.

Social security contributions are payable on the gross income of employees and are equally owed by the employee and the employer. The total cost for employers depends on the industry and age of the employee and averages about 9%.

*3. Accounting*

The basic reporting and accounting principles are described in the Swiss Code of Obligations (SCO). The board of directors must draw up a management report for each financial year, comprising the annual accounts, the annual report and, where required by law, the consolidated accounts. In general, the financial statements have to be prepared in accordance with recognized accounting standards (completeness, clarity and materiality, going-concern and consistency). Under Swiss law the board of directors has discretion to create hidden reserves by undervaluing assets and overvaluing liabilities. Larger companies and subsidiaries of international groups, however, more often apply stricter standards such as Swiss GAAP, IFRS, or US GAAP. Listed companies must apply either IFRS or US GAAP.

*4. Employment Law*

Swiss employment law is favourable to foreign investors and is considered by far the most employer-friendly of all the leading countries in Europe. Unlike the rigid labour laws of neighbouring countries, Swiss law allows most of the rules to be modified by the parties. Swiss law does not provide for any minimum wages; however, in certain industries collective labour agreements do have such provisions. Employment contracts do not have to be in writing and are usually agreed for an indeterminate period of time. A minimum of four weeks paid holidays must be granted. Termination

is at will, and notice periods vary from a minimum of one to three months (by law) and six months (for executives by contract).

*5. Regulatory Approvals*

In general, running or acquiring a business does not require governmental approvals except for regulated industries such as pharma, banking, energy, and real estate: The Federal Law on Acquisition of Real Property by Foreigners (referred to as Lex Koller), prohibits the acquisition of real estate by foreign persons, unless they obtain a permit from the cantonal authority. No permit is needed when the property is used as a (permanent) business establishment.

Depending on the size of a transaction (one with a turnover of CHF 2 billion/500 million in Switzerland *and* at least a turnover of CHF 100 million in Switzerland of two of the undertakings), Swiss merger control is mandatory and the merger must be notified by the Swiss Competition Commission. If a notification is required, the Competition Commission decides within one month whether to conduct an investigation or to clear the transaction. If an investigation is conducted, the Competition Commission must complete the examination within four months, resulting either in the approval of the concentration or in its (partial) prohibition.

## How to Acquire a Business in Switzerland

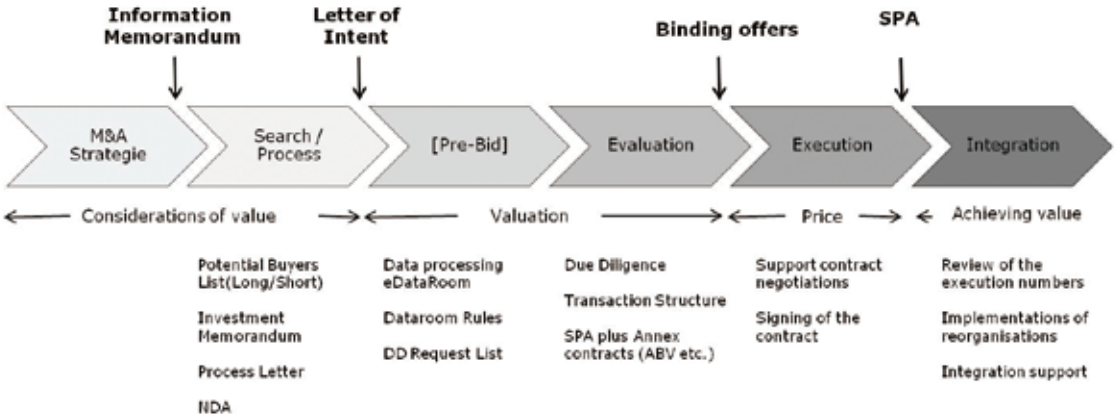
*1. Private Acquisition*

Control in a private company can be obtained through: (i) the purchase of a controlling block of shares; (ii) the acquisition of a business (assets and liabilities); (iii) the participation in a share capital increase; or (iv) a merger. The most commonly used technique is the *purchase of a controlling block of shares* as 70% of Swiss-listed companies are controlled by a group of shareholders. In addition, the share deal is preferable for individual sellers, who generally realize a tax-free capital gain on the sale of shares. In contrast, an asset deal is generally applied when the purchaser wants to purchase only parts of the business, or if there are hidden liabilities that cannot be dealt with by warranties of the selling party or the target company has tax losses. In both structures, the directors must approve the deal whilst the shareholders vote is required in special cases only.

The *share deal* is conducted under a share sale and purchase agreement (SPA). Although M&A documentation follows an international standard, Swiss transaction documents are more concise and shorter than their UK or US equivalents due to the fact that they are based on statutory law and general principles of honesty and fair dealing. The SPA usually provides that a certain number of shares are to be sold free from all liens and encumbrances. It specifies, according to the type of shares, whether they must be simply handed over (bearer shares) or also need to be endorsed (registered shares), and whether the directors of the target company must approve the transfer (registered shares with transfer restrictions). The core of each SPA is the representations and warranties section. In a Swiss SPA, warranties are usually included in the main document and not listed in a separate schedule. They are not given by the target company itself as it is sometimes common in other jurisdictions. The Swiss Federal Supreme Court has determined in a constant but largely criticized legal practice that the statutory remedies for defects in purchased goods only apply to the share certificates and not the business. Therefore, it is important that the purchaser ensures that warranties given by the seller mainly concern the business (eg that the business is conducted in compliance with all applicable laws, that there are no defaults under any material contract, no claims against the target are pending etc). Since rescission is generally not the most appropriate solution for breach of warranties, it is common to provide for other remedies such as reduction of the purchase price. Caps, thresholds and *de minimis* clauses are rather standard. Finally, the agreement may also contain a number of conditions precedent that must be fulfilled prior to the closing (ie approvals, change of control issues etc).

*Asset deals*: The introduction of the Merger Act in 2004 was a giant leap for asset deals. It introduced a new tool called 'asset transfer'. Registered companies are now able to transfer assets and liabilities without the need to consider the different conditions governing the transmission of different types of assets and liabilities. The requirements of such an asset transfer are low: (i) an asset transfer agreement; (ii) the entry of the transfer into the commercial register; and (iii) the top management of the company must inform the shareholders about the asset deal in the notes of the financial statements. In contrast, shareholder approval is not required. Despite its advantages, the asset transfer is little used in practice, due to the fact that the transferring company will remain jointly liable with the new owner for a period of three years for liabilities incurred before the asset transfer was entered into the commercial register. Also, the employment relationship and all attendant rights and obligations pass to the acquirer as at the day of the transfer, unless the employee refuses such transfer.

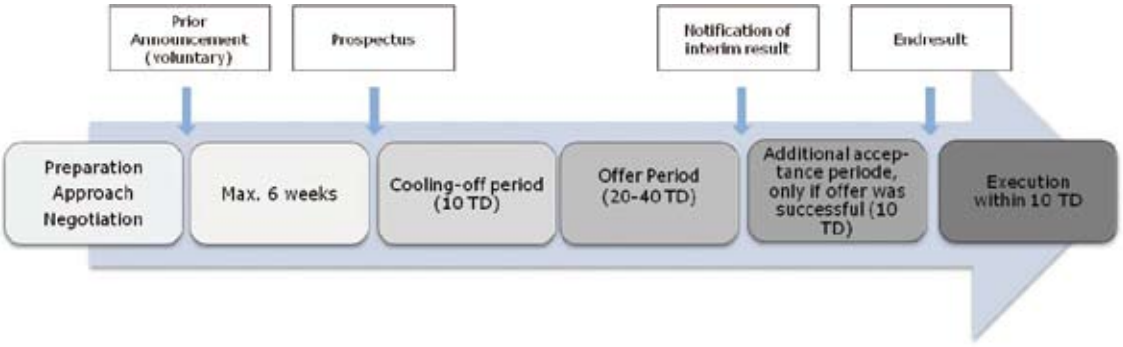
The acquisition process can be summarized as follows:




*2. Public Acquisition*

The Federal Act on Stock Exchanges and Securities Trading (SESTA) regulates, among other things, public offers and mandatory disclosures of shareholdings. The rules are applicable for public offers of shares of a Swiss company of which at least one class of equity securities is listed on a Swiss stock exchange. Offers for shares of foreign companies listed on a Swiss stock exchange are also subject to SESTA if they are managed in Switzerland. The Swiss Financial Market Supervisory Authority (FINMA) appoints the Takeover Board (www.takeover.ch), which is responsible to ensure compliance with the takeover rules. The Takeover Board also approves the takeover documents (eg prospectus). Therefore, it is common for the offeror to contact the Takeover Board at an early point of the process. This provides the possibility to submit drafts of the takeover documents to the Takeover Board for a preliminary approval.

The following table gives an overview of the takeover procedure (TD = Trading Days):




According to Article 29 of SESTA, the directors of the target company are not allowed to effect any transactions that would alter the assets and liabilities of the company in a significant way during the course of an offer. In contrast, decisions of shareholders are not subject to this restriction. Although this means that in general defensive measures by the directors of the target company are somewhat restricted, there are still steps the directors can take to defeat a hostile bid. For example, the Articles can restrict transferability of registered shares (so-called 'Vinkulierung') such that no shareholder may exceed a certain percentage of the outstanding share capital. Furthermore, it is possible to limit shareholders' voting right to a certain percentage. Finally, it is allowed to find a white knight that is willing to acquire the company.

For the protection of minority shareholders, under SESTA a person may be required to make a public offer to buy all the share capital of a company. A person will be required to submit an offer for all outstanding shares of the company, who acquires, directly and (together with the papers already in his or her possession) exceeds a threshold of 33.33% of the voting rights of the target company, whether exercisable or not (provided that the target company did not – in its articles of incorporation – up-out so that there is no mandatory offer requirement or to opt-up so that the threshold is lifted up to 49%). There is a well established doctrine of 'acting in concert' applying this threshold.

Mandatory offers are generally governed by the same rules and regulations as voluntary bids. The

offer price must be at least the same level of the higher of either: (a) the market price; or (b) the highest price that the vendor has paid in the last 12 months. The payment of a control premium is therefore not possible. Also, mandatory offers can usually not be made subject to conditions. It is worth mentioning that the breach of takeover law can result in a fine of up to CHF 10 million.

Finally, the offeror has the possibility to squeeze-out shareholders if it reaches a certain amount of the share capital; with 90% of the shares in the target company, it may do that by way of merger, with 98% of the shares it may choose to do it by way of court procedure.

A buyer may also acquire a listed company through a statutory merger based on the Merger Act. The acquiring and the target companies sign a merger agreement based on financial statements and audit reports, and submit them to their respective General Assemblies for approval with a super majority of two-thirds of the votes and more than 50% of the share capital. Normally, the acquiring company will increase its share capital so as to issue shares to former shareholders of the target company. The merger becomes effective by entry of the commercial register. Whether to structure the process as a merger or as a public exchange offer must be decided on a case-by case-basis. The timing is similar; in international acquisitions, a statutory merger might not be possible.

## Conclusion

Asian investors will discover in Switzerland a stable and proven legal system that is based on the principle of private autonomy and provides therefore the flexibility to realize most business ideas. Private acquisitions are mostly conducted under a 'European style' Purchase Agreement and the Merger Act provides for the necessary framework in asset transactions. Public acquisitions are regulated by the Federal Act on Stock Exchange and the precedents of the Swiss Takeover Board. Additionally, Switzerland provides for Asian investors a favourable environment with low tax and unemployment rates, few regulatory approvals and a stable environment combined with a high education level and life quality.

# Vietnam's New Draft Regulations on Online Games

**With 13 million gamers, Vietnam is an attractive destination for enterprises operating in the online gaming industry. The Government has worked for a long time on new draft regulations governing online gaming issues. Once this draft is enacted, there may be significant changes for gaming providers, as well as gamers.**

**Thom Thi Mai Nguyen**
Attorney-at-Law, Tilleke & Gibbins

Vietnam is considered to be an attractive market for online gaming in Asia. With more than 13 million gamers, Vietnam is becoming a popular destination for investors in the online gaming industry. For gaming clients (games installed on computers and played on online) only, the expected market value for 2012 is VND5600 billion (approximately US$269 million).[1] However, a complete legal framework for online gaming in Vietnam is still in the drafting process.

The Vietnamese Government is currently working on the final draft of the Decree on the Management, Supply and Use of Internet Services and Information Content on Networks ('Draft Decree') for official issuance. At the time of writing this article, the implementation date of the new regulations remains unclear. Nevertheless, once it is launched, it will have a significant impact on the online gaming business in Vietnam.

## Managing More Games

Currently, only internet-based games that have interaction among the players, or between the players and the servers of the gaming providers, are governed under the online gaming regulations. Other types of games that have no interactions among the players or between the players and the supplier's server, such as downloaded games, are not included in the regulations. As a consequence, downloaded games are not managed as tightly as online games.

However, downloadable games which are played without any interaction also fall under the governance of the Draft Decree, along with other types of online games and are collectively called 'electronic games on networks'. Specifically, electronic games here include: (i) games that players would play concurrently via the server system of the gaming providers; (ii) games with interaction between the players and the provider's servers; (iii) games with interactions among the players but without interactions with the provider's servers; and (iv) downloadable games without interactions of the players and the provider's servers. This changes the traditional thought that only online games are under licensing requirements. The definition of electronic games also provides more specifics on the devices that gamers use for playing games, which include any terminal devices such as computers and mobile phones. This makes the coverage of electronic games much more comprehensive and will help enterprises avoid confusion in classifying whether their games are covered by the Draft Decree.


## More Permits Required

The Draft Decree retains the same requirement that enterprises entitled to supply games must be established in Vietnam. Furthermore, a new type of permit requirement was added to the draft. Accordingly, any enterprises intending to provide electronic games on networks must obtain a license from the Ministry of Information and Communications (MIC). The Draft Decree also requires the licensed enterprises to apply for amendment of the license whenever they add a new game to category (i) above (ie games concurrently played among the players and the games provider's server). As a result, an enterprise in the gaming industry may have to apply to amend its license many times after the first time. As for the remaining games, the enterprise must register with MIC to launch a new game.

The enterprise must also apply for amendment of the license if there is any change to the name of the enterprise, name of the game, or place for locating the enterprise's server, or if the enterprise ceases or suspends supplying the licensed games within six months of the licensing date.

A license for provision of electronic games on networks has a maximum term of 10 years. This maximum term includes the term for extension of the license. If the license has a term of 10 years as its first license, any extension of such license will be no more than one year.

No cash deposit or fee for issuing the license is mentioned under the Draft Decree.

## Virtual 'goods'

Similar to many other jurisdictions around the world, virtual items are not recognized as assets under Vietnamese laws. Currently, under the Joint Circular No 60/2006/TTLT-BVHTT-BBCVT-BCA on Online Game Management ('Circular 60'), virtual items are prohibited from being created for profit-earning purposes.

The Draft Decree does not provide such explicit prohibition like Circular 60. It stipulates that virtual items, as well as bonus points, are not allowed to 'be exchanged into money or assets in any form'. It seems clear under this regulation that gamers are not allowed to convert virtual items into money or any kind of real property. However, it is not expressly provided whether gaming providers are also prevented from creating such virtual 'goods' for selling to gamers. The question may be clarified in the official version of the Decree or further confirmation under a circular.

If the Draft Decree is issued with the intention to prohibit enterprises from creating virtual 'goods' in games for commercial purposes (as provided by the current law), there are many games that may not be activated in Vietnam due to this barrier. In fact, the online gaming industry is developing rapidly and many games are offering virtual items to gamers as a type of goods. Purchases of such virtual 'goods' in certain games are conditions for participating in the games.

Despite these prevailing and draft regulations, a number of cases have arisen in practice where gamers sell and purchase virtual 'goods' and then have disputes with each other. In the future, where players have to pay a huge amount of money for a virtual item, or in a situation where thousands of players ask for the real value of the virtual items, it would not only be an issue on legal paper, but would become a major social issue. A legal consequence of a civil transaction which contradicts laws such as a 'commercial transaction' of virtual 'goods' may not be recognized and settled by the relevant authorities and court.

## Payment for Online Games

Gamers often use credit cards (eg Visa, MasterCard), debit cards, or electronic banking to buy hours for playing games, or to buy games (and to buy virtual items in a number of games). However, in Vietnam, many gamers are youths or students. Most of them are not able to earn money and rarely use international payment cards, internet banking or debit cards. Rather, they often use cash to buy certain types of payment cards, such as game cards or calling cards to make game account payments.

It would be more convenient for a gaming provider to directly collect the payment and provide a payment facility for the gamers, especially for gaming providers that issue a virtual currency for use in their games (eg for buying virtual items in a game). These virtual currencies can be converted from real money paid by the gamers.

However, in Vietnam, while the laws are silent on the subject of issuance of a virtual currency, the granting of licenses to conduct payment services is very limited for organizations that are not banks, like a gaming provider. To date, only nine non-banking organizations have been licensed to provide intermediate payment services. Several of these enterprises are companies operating in the information technology area. A license to a non-banking organization is considered by the State Bank of Vietnam (SBV) on a case-by-case basis only. Practically speaking, possible reasons for the SBV to limit foreign non-banking organizations in providing payment services may be to control the potential risks, such as international gambling on the internet or money laundering.

A new draft on non-cash payment provides stricter conditions for non-banking organizations to be able to provide these types of services. Further conditions are proposed under this new draft. Specifically, the organization must have a minimum of VND50 billion in charter capital and sufficient financial capacity to establish engineering equipment systems, and maintain operations which are appropriate for the scale of service provision. With these conditions, it seems the SBV tends to limit enterprises in a completely different industry, eg the games industry, from conducting payment services.

## Gamers and Internet Cafes

For fear of an increase in crimes due to the possible impaired physical and mental health of gamers, gamers will have to register their personal information each time in order to be able to play and they will be limited to a maximum of three hours per game. Gaming providers and internet cafes are not allowed to provide gaming services between 10pm and 8am. Internet cafes are not permitted to serve customers in school uniforms between 8am and 5pm. These facilities must verify and save personal information of gamers, including name, age, permanent address and an identity card number or passport. Gaming content including violent or sexual acts, brutal fighting or bleeding, is strictly prohibited.

Internet use is now a major part of people's daily lives. Online gaming, as a form of entertainment, has become very popular especially among the youth in society. While people expect to have varied forms of entertainment made available to them, this must be balanced with mechanisms in place to prevent gaming addiction, as well as other negative consequences arising from online gaming. Enterprises operating in the gaming industry are concerned about tighter restrictions which could be burdensome. Meanwhile, enterprises may be influenced while waiting for the Decree to be issued, eg because there is a limitation on granting new licenses to gaming providers. The Decree, therefore, is greatly anticipated by gamers as well as relevant enterprises.

*Note:*

[1] http://laodong.com.vn/Sci-Tech/Game-lau-xam-chiem-thi-truong-Viet/81980.bld.

# Patent Enforcement in India

**Intellectual property assets are touted as the cornerstone of competitiveness in international trade and are the driving factors behind socio-economic development in India. However, it is of prime importance that strong IP laws be framed and complemented by an equally strong and substantive enforcement mechanism. This article looks at the enforcement mechanism in place regarding patent infringement in India.**

**Vikrant Rana**
**Managing Partner, SS Rana & Co**

The intellectual property system plays a pivotal role in framing industrial, trade and financial policies, for scientific and technological development of any country.

The infringement of intellectual property rights (IPR) has become a bane and is a major hindrance for India's economic development. It is of prime importance that strong IP laws be framed and complemented by an equally strong and substantive enforcement mechanism. It is imperative to have strong and equitable IP enforcement because it gives impetus to innovation, encourages innovative technologies and provides financial incentives to the owners.

## Infringement and Enforcement

The Patent Act of 1970 (IPA) provides for the enforcement of patents by way of suits for infringement. Post-WTO TRIPS Agreement, various methods have, however, been adopted by legislators in India to improve patent enforcement measures. The TRIPS Agreement has introduced several domestic enforcement mechanisms in an attempt to overcome the shortcomings of pre-existing international IP laws. The 2005 Amendment of the IPA was a significant breakthrough as it marked the beginning of a product patent regime in chemicals, food and drugs, and also some of the notable patent litigation between innovator companies and the Indian generic drug industry.

Before delving into the enforcement measures, it is pertinent to discuss activities amounting to infringement, the provision in the statute that exempts certain activities from infringement liability and the defences available in case of an infringement suit.

## Infringing Activities

The IPA does not specifically define activities that constitute infringement of patent rights. Section 48[1], however, confers exclusive rights upon the patentee to exclude third parties from making, importing, using, offering for sale or selling the patented invention. It can therefore be concluded that violation of aforementioned monopoly rights would constitute infringement of a patent.

## Non-Infringing Activities

*Government Use*

An invention can be used anytime after the application for a patent is filed, or after the patent is granted by the 'Central Government' and by 'any

person authorized by it'. The patented product may be imported or made by or on behalf of the government. Similarly, the patented process may be used by or on behalf of the government for its own use.

*Research Exemption*
Any person may use or make the patented invention merely for the purposes of experiment or research including and imparting instructions to students.

*Supply of Patented Drugs to Health Institutions*
A patented invention in respect of any medicine or drug may be imported by the Government for the purpose merely of its own use or for distributing in any dispensary, hospital or medical institution maintained by or on behalf of the government.

*Use of Patented Invention on Foreign Vessels*
Patent rights are not considered to be infringed where the foreign vessel/aircraft/land vehicle temporarily or accidentally comes to India and uses the invention in the body of the vessel/in machinery/tackle/apparatus/in its construction or working. However, this provision is applicable only to the foreign vessel/aircraft/land vehicle of those foreign countries that provides reciprocity to Indian vessel/aircraft/land vehicle.

*The Bolar Exemption*
The patented invention may be used, constructed, made, sold or imported for the reasons solely related to the development and submission of information to the regulatory authority of India or elsewhere. This provision particularly helps generic companies as they can use the patented drug for carrying out their bioequivalent studies and submit the result to the regulatory agencies for getting marketing approval. This would ultimately aid them in entering the market as soon as the product patent has expired.

*Importation of Patented Products*
Importation of patented products by any person from a person (who is duly authorized under the law to produce and sell or distribute the product) will not be considered as an infringement of patent rights.

## Jurisdiction

A patent holder can file a suit for infringement in the District Court or High Court. However where counter-claims for revocation of the patent is made by the defendant, the suit along with the counter-claims are transferred to the High Court for a decision on the validity of the patent.

The IPA, however, is silent as to which courts will have the jurisdiction to hear the case. According to s 19 of the Civil Procedure Code 1908, the patentee can bring the suit for infringement in the court which has jurisdiction in the area where he/she resides or carries on a business or personally works for gain. The patentee can also bring the suit for infringement in a court which has jurisdiction in the area where the infringing activity took place.

The flip-side of the above provision is that there are more than 600 District Courts in India which virtually enables the patentee to do the any kind of *forum shopping*. Invariably, in an infringement case, the defendant would also challenge the validity of the patent which would lead to a transfer of the case to the High Court. Therefore, to avoid any delay, it is better to file the case in the High Court only. It is worth also noting that the suit for infringement can only be brought once the patent has been granted. However, if the court decides in favour of the patentee then he/she can claim damages for the infringement that was committed between the date of publication of the patent application and its grant.

The suit for infringement can also be initiated by the licensee. The licensee may call upon the patentee to initiate proceedings to prevent infringement of the patent. If the patentee does not take any action within two months, the licensee can institute proceedings for infringement in his/her own name.

The Indian Limitation Act governs the period of limitation for bringing a suit for infringement of a patent, which is three years from the date of infringement. Therefore, it is pertinent to note that the limitation period for the suit runs from the date of infringing act and not from the date of grant.

Another point worth noting is that if the patent has ceased to have an effect due to non-payment of the renewal fee, then the patentee will not be entitled to institute the proceedings for the infringement committed between the date on which patent ceased to have an effect and the date of publication of the application for restoration of the patent.

## Burden of Proof

Where there is an alleged infringement of a patented invention that is in the form of a product, the burden of establishing that an infringement has occurred lies on the patentee. However, in the case of a process patent, the burden may shift to the defendant/infringer provided the patentee is able to prove to the court that through reasonable efforts he/she has not been able to determine the process which has been used by the defendant.

## The Legal Interface of IPR

It is worth noting that all the IPR laws (excluding patent and designs laws) provide penal provisions to prevent infringement.

*Administrative Remedy*

If and when infringing goods are imported into Indian Territory, the IP owner can approach the Collector of Customs and prevent the entry of these goods into the Indian market. The IP owner must provide the name of the exporter, consignee, port of entry, name of the ship, etc to avail him/herself of this remedy.

*Civil Remedy*

To claim damages, the IP owner will have to pay a court fee on the damages claimed. The Chartered High Courts in India, namely, Bombay, Madras Calcutta and Delhi have different and liberal laws for the computation of the court fee.

The courts in India grant two types of injunctions.

A. Interim Injunctions

Interim injunctions are granted during the pendency of the case even before a full-fledged trial. This relief is granted by a summary procedure based on the admitted facts and by establishing:

1. a *prima facie* case where the burden of proof lies on the patentee to establish the patent violation. There are more chances of proving the *prima facie* case if the patent is sufficiently old; and
2. a balance of convenience in favour of the plaintiff as per the doctrine of relative hardships. The plaintiff would suffer irreparable loss if his/her prayer for a temporary injunction is not allowed.

Usually, in patent infringement cases, an interim injunction is not normally granted before a full-fledged trial. It is a kind of norm that whenever the patentee files a suit for infringement, the defendant/infringer counter-claims for invalidity. For example, in the case of *Novartis AG v Mehar Pharma* 2005 PTC 160 (para 28), as soon as the defendant counter-claims for invalidity it becomes difficult for the patentee to establish a *prima facie* case as a result of which the court does not grant any injunction against the defendant.

Under Indian law, there is no presumption of the validity of a recent patent. In the case of patents older than five years, the court may presume the validity of a patent. However, in the case of patents where a Certificate of Validity has been granted under s 130 of the IPA either by the High Court or by the Intellectual Property Appellate Board (IPAB), then the patentee can demand an interim injunction.

B. Permanent Injunctions

Permanent injunctions are granted after a full-fledged trial. In the event that the court concludes,

after a full-fledged trial, that the plaintiff had unjustly obtained an interim injunction before trial, then the Court will direct the plaintiff to compensate the defendant for the losses that the defendant had suffered due to the subsistence of the injunction prior to the trial.

### Relief of Delivery Up

Shortly after the initiation of a case, Indian courts usually grant an interim order for the preservation of suit properties to ensure that the available evidence is not destroyed by the infringer. Order XXXIX rule 7 of Civil Procedure Code empowers Indian courts to appoint a Commissioner to visit the defendant's premises and take inventory of the infringing articles that are present in the defendant's premises. Such orders are normally granted without notice to the infringer; this provision is similar to Anton Piller orders granted by English courts. The Commissioner will give notice of the inspection to the defendant just prior to the commencement of the search by the Commissioner.

*Criminal Remedy*

The Indian Penal Code provides for penal remedies against infringement of IPR. Criminal sanctions are warranted to ensure sufficient punishment and deterrence of wrongful activity. Criminal remedies against infringement of various forms of IPR are as follows:

- the filing of a criminal complaint before the chief judicial magistrate/chief metropolitan magistrate of the relevant jurisdiction;
- leading evidence with respect to infringement;
- the filing of application u/s 91/93 of the Criminal Procedure Code for the issue of search and seizure warrants;
- orders/directions issued by the court to the police for the search and seizure of infringing material or alternatively, a direction by the court to the police for investigation by lodging a First Information Report (FIR) and search and seizure under s 156 of the Criminal Procedure Code 1973; and
- the filing of a complaint/FIR with the police.

### Relief

The relief that a court may grant in any suit for infringement includes an injunction and at the option of plaintiff, either damages or an account of profits. The court may also order that the goods which are found to be infringing and materials and implements the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed.

However damages or account of profits shall not be granted against the defendant who proves that at the date of infringement he or she was not aware and had no reasonable grounds for believing that the patent existed. It further provides that a person shall not be deemed to have been aware or to have had reasonable grounds for believing that a patent exists by reason of application to an article of words 'patent' or 'patented' or any other words implying that the article is patented unless the number of patent accompanies the word or words in question.

Further, if in an infringement proceeding it is found that any claim of the specification, being a claim in respect of which infringement is alleged, is valid, but that any other claim is invalid, the court may grant relief in respect of any valid claim which is infringed provided that the court shall not grant relief except by way of injunction (and not in the form of damages or account of profit.) However, if the plaintiff proves that the invalid claims were framed in good faith and with reasonable skills and knowledge then the court may, subject to its discretion, grant relief in the form of damages or account of profit.

The Indian judicial system has not provided for the constitution of Special Courts for hearing patent infringement matters. Hence, the Presiding Officers may not have expertise to pronounce on complicated questions involving state of the art technology. In such cases, the Patents Act provides for appointment of Scientific Advisors who will advise the court on questions of fact or give an opinion on technology that does not involve interpretation of laws. Unlike an expert who will have to be paid for by the parties calling the expert, the Scientific Advisor will be paid from the Consolidated Funds of India.

### Defences in Suit for Infringement

Every ground on which a patent may be revoked will be available as a ground for defence.

Usually, as an alternative counter-claim, the defendants would seek a compulsory license of the patent if the patent is more than three years old. In this case, the court will be guided by the views of the Patent Office. Sometimes the plaintiff may also seek an amendment of the claims in order to escape the challenge of invalidity. In such a situation, the court would be comfortable with the recommendations from the Patent Office.

### Parallel Proceedings

The IPA does not provide for provisions dealing with parallel proceedings. If a person has filed a petition for revocation of a patent in IPAB and then starts selling the (said patented) product in the market without patentee's permission, and the

patentee sues for infringement in the High Court, the person can then defend him/herself by using a counter-claim for invalidity. The two cases would be pending – one in IPAB to determine whether the patent is invalid and the other in the High Court where the case of both invalidity and infringement will be examined. The High Court may stay infringement proceedings until the final decision is reached by IPAB, however, it is totally at the discretion of the High Court.

In *Dr Aloys Wobben & Enercon GmbH v Enercon India (Delhi High Court)* FAO(OS) No 7/2011, it was, however, held that counter-claim before the court and the revocation before the IPAB are two separate actions which can be pursued simultaneously.

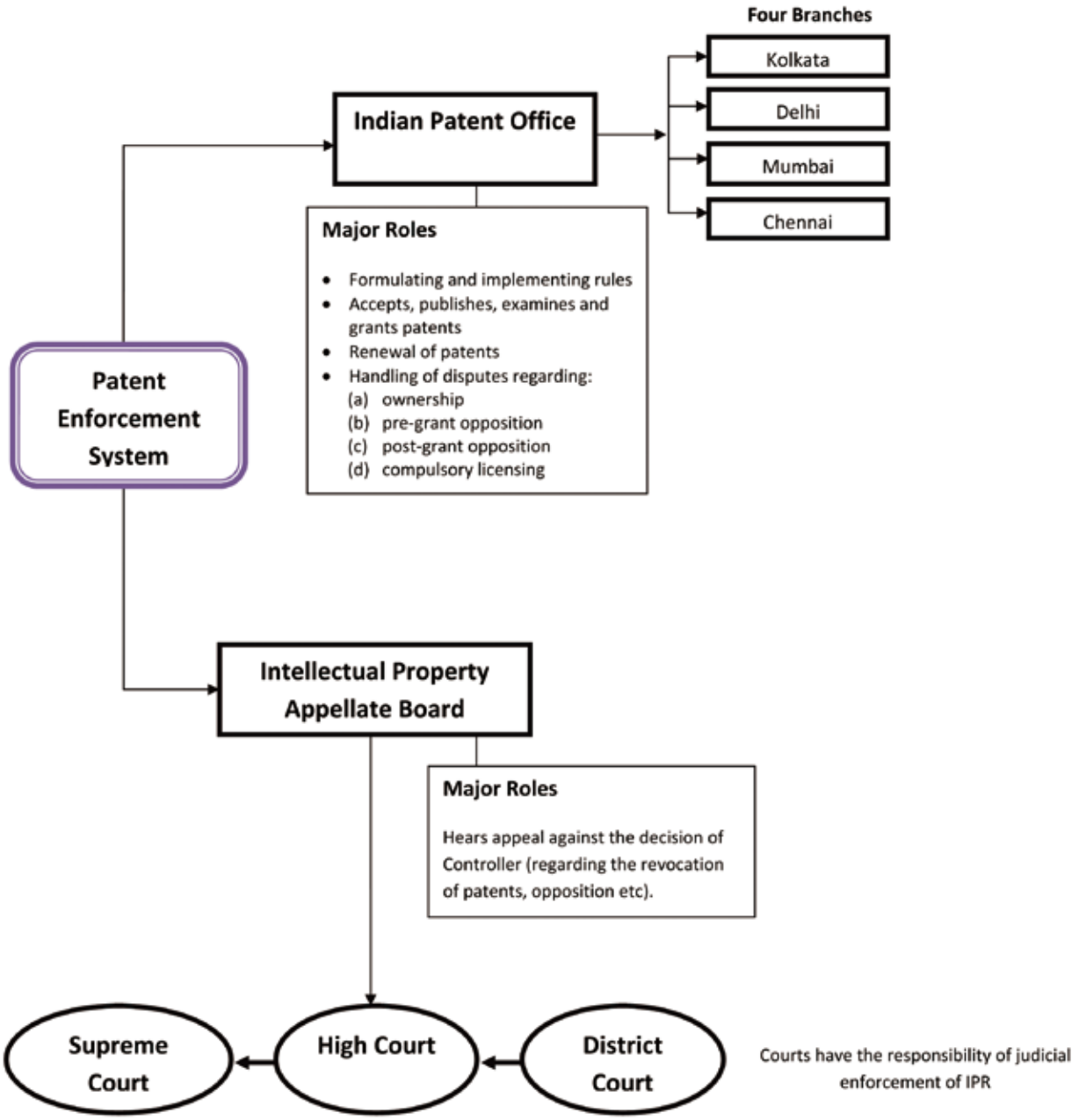
## Relief in Case of Groundless Threats of Infringement

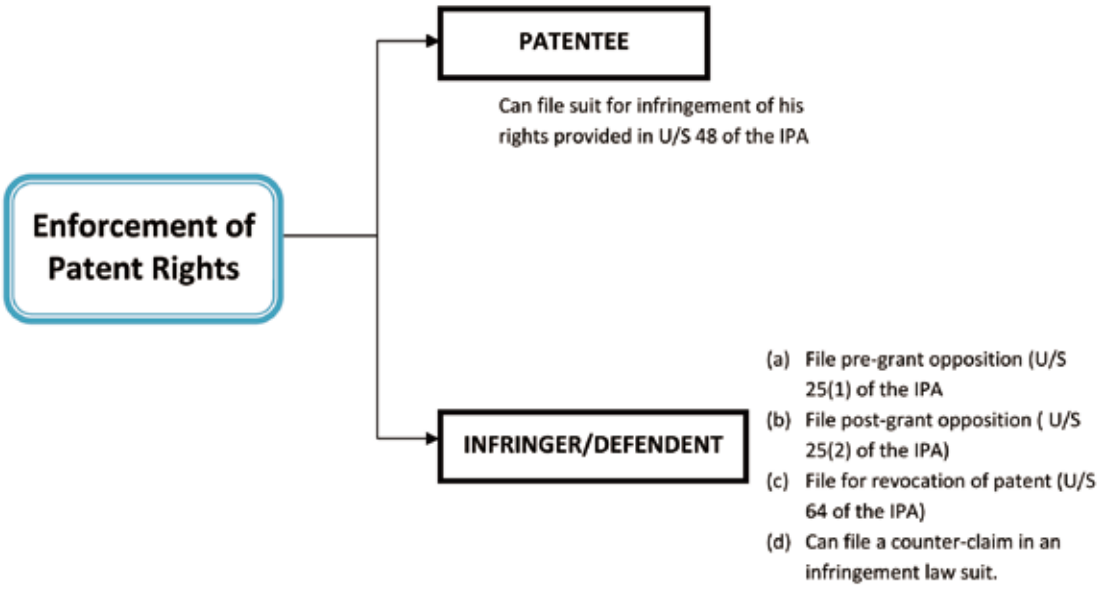
Where any person (whether entitled to or interested in a patent or an application for patent or not) threatens another person with proceedings for infringement of a patent, the person aggrieved may bring a suit against him/her for the following relief:

1. a declaration that the threats are unjustifiable;
2. an injunction against the continuance of such threats; and
3. such damages as he/her has sustained thereby.

For the grant of an injunction, the burden of proof lies on the plaintiff to show that a *prima facie* case has been made out.

**Overview of the Patent Enforcement System in India**






IPAB is an administrative body that has the appellate jurisdiction over the decision of the Controller of Patents. However, IPAB has no statutory powers to trial infringement proceedings. Subject to s 117G of the IPA, all cases that are related to decisions or orders of the Controller which are pending in the High Court must be transferred to IPAB. When Novartis appealed against the decision of the Controller denying the grant of the patent covering a new form (beta crystalline form of imatinib mesylate) of the known drug imatinib mesylate in the High Court, the case was transferred to IPAB. In fact, it was the first case in India that was transferred from the High Court to the IPAB.

## Conclusion

Since patent litigation is quite expensive and time intensive, companies should contemplate patent infringement risk at the early stages of research and commercialization of the relevant technology. It is generally recommended that companies may conduct a 'Freedom to Operate' analysis to rule out any risk of infringement.

*Note:*

[1] Unless otherwise specified, all the sections and rules refer to the sections and rules of The Patent Act of 1970.

# Discover Some of Our New Officers, Council Members and Members

## Robert Wai Quon
## Jurisdictional Council Member for Canada

**What was your motivation to become a lawyer?**
I was motivated to become a business lawyer because I tend to think like a business person, have an MBA, and understand financial statements and balance sheets. I find it useful to be able to bring business skills to help clients and their transactions, together with the legal skills we must bring as business lawyers, such as, being current on the law that impacts the clients we serve and staying abreast of how technology is changing the practise of law.

**What are the most memorable experiences you have had thus far as a lawyer?**
I have had the opportunity to travel to other locations in Canada for transactions. One such transaction took place in St John's, Newfoundland and Labrador, which is located on the other side of Canada from where I live. All parties to the transaction celebrated the closing over a memorable dinner consisting of large lobsters and the local alcohol, Screech.

Another experience I can share is one of cross-cultural differences. I had been dealing with the Canadian manager of one our Chinese SOE clients and he had been resident in Vancouver for a few years already. He requested, with short notice, a brief meeting at the accountant's office. I was commuting to and from work by bicycle at that time for exercise, and was cycling home when I received his phone call to meet. I told him that I would head straight to the accountant's office and that I was commuting on bicycle. My Chinese client was still surprised to see his lawyer arriving by bicycle. For a few months, usually over a meal and drinks, and always with other people present, I would hear him laughingly say that 'his lawyer is so poor that he cannot afford a car and must ride a bicycle!'

I have memorable experiences working with my partners, current and retired, and mentoring our associates. I cannot detail those experiences in this survey but I will say that I am privileged to be a partner of my law firm.

**What are your interest and/or hobbies?**
The one interest that takes most of my focus and time outside of work is the raising of my two children. I occasionally ask them how the 'child-raising experiment' is going in their view – and the question usually confuses them. My spouse and I have not raised any other children before them so they are experiments of a sort for us. I also enjoy skiing, sailing, cycling, the occasional golf, and travelling as a family and travelling only as a couple.

**Share with us something that IPBA members would be surprised to know about you.**
Before becoming a lawyer, I worked in the economics research department of one of the Finnish banks and lived in Helsinki, Finland (or Suomi in Finnish).

**Do you have any special messages for IPBA members?**
After attending the Seoul 2013 IPBA Conference, do plan, together with your spouse or significant other, to attend the Vancouver 2014 IPBA Conference, 8-11 May 2014.

The Vancouver Steering Committee and the Vancouver Host Committee are working to help make your experience in Vancouver memorable. I invite you to see and experience for yourself why Vancouver is consistently rated as one of the world's most liveable cities, if not the world's most liveable city.

**Thom Thi Mai Nguyen**
**Attorney-at-Law, Tilleke & Gibbins**

**What was your motivation to become a lawyer?**
My main motivation was to contribute to the legal development of Vietnam. This is because Vietnam's laws are still at an embryonic stage and many of the laws have not been able to catch up with changes in everyday life. The enforcement of laws, in particular, is still quite weak and most people do not know what to do when they are faced with a legal problem. As a lawyer, I can provide clients with legal advice and help them resolve any legal issues they may face.

**What are the most memorable experiences you have had thus far as a lawyer?**
A client came to me and he said he wanted to develop an area in Vietnam. However, his plans could not come into fruition because Vietnam was not a party to the particular treaty of which was required to conduct the business in such an area. Time has passed, but despite the efforts and availability of resources, those who want to access and use such resources may still encounter difficulties. As a lawyer, I think the law can be used in many ways to improve people's lives but it also has its limits.

**What are your interest and/or hobbies?**
I really enjoy reading. Like many people, I believe that you can learn a lot from reading books especially books about legal practice which help understand legal issues in greater detail. I also like reading books about other legal systems worldwide because I can learn about what's happening in other jurisdictions without even setting foot in the country!

**Share with us something that IPBA members would be surprised to know about you.**
When I was young I loved writing fiction. However, since becoming a lawyer it's been difficult to get back into writing. Perhaps I can find time to do it again sometime in the future.

**Do you have any special messages for IPBA members?**
It is my pleasure to join the IPBA, which is a great organization for me to offer insight into legislation and business in Vietnam, and also where I can learn from other colleagues as well.

# Members' Notes

## Corey L Norton

*US may Ease Restrictions on Exports to Asia*
US law prohibits the export of many types of products to Asian countries unless a license is obtained. Shipments of those products within Asia can also be prohibited. The US government has been pursuing an export control reform effort that would ease some burdens on many US exports to Asia, particularly products used in military applications. With President Obama's reelection, the likelihood that these export control reforms will become reality increased significantly. US exporters and their Asian partners may soon benefit. Stay tuned for developments in the near future.

## Vikrant Rana

Vikrant Rana is the Managing Partner of SS Rana & Co. He is an advocate-on-record with the Supreme Court of India. He specializes in Intellectual Property laws including all aspects of Trademarks, Patents, Designs and IP litigation across India. For over 15 years he has been advising many Fortune 500 companies and some of the world's most esteemed corporations from multifarious fields, on a range of contentious and non-contentious IP matters. He is involved in sensitizing awareness on IPR in India and is a frequent speaker and panelist in seminars and conferences conducted by organizations like TIFAC, FICCI, CII, WIPO etc. He has been nominated by esteemed clients for the ILO Client Choice Awards 2012 (International Law Office) for providing exceptional legal services pertaining to IP Law. He was also nominated by the Legal Era and ALB SE Awards in the category of 'Managing Partner of the Year'.

## Dr Anton G Maurer, LLM

Anton G Maurer has written a book titled *The Public Policy Exception under the New York Convention: History, Interpretation, and Application*. It was published in June 2012 by Juris Publishing (ISBN: 978-1-937518-03-5). The book elaborates especially on the application of the public policy exception under Art V (2)(b) in BRIC countries and 20 other countries, especially in the Americas, Asia, and Europe.

## Cintya Fuly

*Veirano Advogados presents six new partners*
In November, Veirano Advogados announced the arrival of two new partners: Olavo Chinaglia and Rodrigo de Castro. The addition of these highly regarded lawyers strengthens our ability to serve our clients in the areas of anti-trust/competition law and real estate law.

Effective 1 January 2013, Veirano Advogados is proud to announce the elevation of six senior associates to partner. The promotion of the six was announced internally during the firm's annual meeting in late-November. The six new partners are: Felipe Bastos (civil and insurance), Ricardo Gama (civil and labor), Demian Guedes (public law), Ana Luci Grizzi (environmental), Carlo Verona (arbitration, litigation and real estate) and Fernando Verzoni (international trade). The six were promoted as the result of their talent, hard work and contributions to the firm.

The hiring of two well-known partners and elevation of six senior associates between the last quarter of 2012 and the first quarter of 2013, demonstrates the health and continuing growth of the firm in several key areas of law, and the firm's recognition and appreciation of its most important resource – its lawyers.

"It always gives me great pleasure to announce our new partners. It is exciting to increase our partnership through retaining the talent we have in the firm. Each year we are very fortunate to be able to promote outstanding professionals. This year was no exception," said Ronaldo Veirano, Founding Partner of Veirano Advogados.

# 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@tga.co.jp 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@tga.co.jp 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@tga.co.jp