

## **IPBA SEOUL 2013**

### **Topic: "M&A Negotiation Trends and Practices in Pan-Pacific M&A"**

**Description:** Two questions that are always top-of-mind in any M&A deal: "What are the deal breakers?" and "What is market?" For cross-border M&A transactions, these questions are far more complex and challenging.

Based on the framework of leading benchmark studies published by the American Bar Association on market terms for commonly negotiated M&A deal points, the session compared and contrasted evolving market practices in Asia, as impacted by a hot pot of US, English, and European influences.

### **Topic: "Shareholder Activism and Corporate Governance"**

**Description:** Shareholder Activism, typically by minority shareholders, including institutional investors, is the pressure exerted by investors to generate corporate action or turnaround. The objectives can range from the limited goals of dividend payouts or management compensation to the broader issues of corporate social responsibility, such as those regarding the environment or on social issues.

The strategies can swing from the relatively benign private discussions to aggressive hostile takeovers and lawsuits. Hence, the session will explore shareholder activism for its motivations, the tactics used and its consequences, including important changes in corporate governance that has resulted from it. Ultimately, the session will go beyond a jurisdiction-by-jurisdiction analysis of shareholder activism, but will delve into its pros and cons and thus, the panelists will explore the very *raison d'être* for shareholder activism. The panelists will attempt to answer the question: does shareholder activism work and is there room for it in either the statutes or regulations?

**Topic: "Unusual Cross-border Contracts: Unravelling Mysterious Jurisdictions & Dynamic Investment Contracts - Discovering New Challenges & Opportunities"**

**Description:** This session took a refreshing look at cross-border investment contracts in jurisdictions where information is shrouded in misleading stereotypes or in areas that do not fall within the mainstream perception of what can be the subject of a cross-border investment contract.

The session bravely faced the realm of the unusual and unraveled that what appeared to be a mysterious could actually be defined by contract. We bridged the information gap and cleared the cobwebs created by generalizations with legal solutions. We tackled international football contracts and stabilization contracts between government and foreign investors guaranteeing tax rates or investment incentives. We explored how opening up territories may mean dealing with indigenous peoples, which may not have been considered during the planning of an investment. We took you to Latin America, China, Russia, Myanmar and the First Nations of Canada in the search for new challenges and opportunities.

**Topic: "Effect of Anti-Corruption Legislation, Criminal Enforcement & Administrative Sanctions on Expanding East-West Investment"**

**Description:** This session reviewed the effect of anti-corruption legislation, criminal enforcement and the use of administrative sanctions on cross-border investments, both those from the West to Asia and the rising volume of Asian investments going to Europe and North America. A panel of speakers from the World Bank and diverse selected jurisdictions discussed how anti-corruption legislation and the risk of administrative sanctions or other enforcement action impacts on such investments.

The session covered legislative and regulatory development; levels of enforcement and implementation; suggestions on how to create and manage a proper anti-corruption program, and how to mitigate or address consequences of violation of anti-corruption regulations.

**Topic: "Free Trade Agreement in Asia - Part of the Problem, or Part of the Solution?"**

**Description:** This session addressed such issues as trade liberalization, IP protection, or investment disincentives. We have all witnessed the growth of FTAs in the Asia-Pacific region; there are more of them and they cover more issues. Through the lens of investment, IPR, and trade, this session considered whether the proliferation of FTAs is a good thing or not - do the benefits outweigh the costs for international business?

**Topic: "Dealing with Foreign Ownership Constraints in Asia"**

In conjunction with the Tax Law Committee

**Description:** This session examined tax & non-tax issues in relation to minimizing legal exposures by working, on the one hand, with a nominee arrangement and, on the other hand, using tax tools such as technical fees, royalties operational leases, contract manufacturing, commissionaire arrangements, financing and pledges of shares by the nominee.