

Globalising your practice

Opportunities and challenges



the global voice of
the legal profession*



Bar Association of the
Kingdom of Cambodia



THE LAW ASSOCIATION FOR ASIA AND THE PACIFIC



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Globalising your practice

Opportunities and challenges

1 November 2018, Siem Reap

Introduction

The PPID Activity Fund of the International Bar Association (IBA) awarded funding for a conference held on 1st November 2018 in Siem Reap, Cambodia on helping lawyers from Asia to face the consequences of globalisation. It was organised in cooperation with LawAsia and the Bar Association of the Kingdom of Cambodia.

The conference – entitled ‘Globalising your practice: opportunities and challenges’ - followed on the success of its predecessors: ‘Helping Zimbabwe’s lawyers face globalisation’, which took place on 2 and 3 November 2016 in Nyanga, Zimbabwe; and ‘Globalising your practice: opportunities and challenges’, which took place in Nairobi, Kenya on 18 and 19 May 2017, and on 3 and 4 April 2018 in Livingstone, Zambia.

There were some IBA speakers that had spoken on previous occasions, and some new ones. Their presentations were adapted to local needs. The topics covered included:

- instruments on international trade in legal services and their applicability in the Asian region
- creation of joint ventures: different forms of international alliances and their benefits
- international sub-contracting for lawyers
- trends in law firm management
- raising capital in international markets
- arbitration of international commercial disputes

The substantive content of the conference contributions is summarised in the pages that follow.

The final number of registered participants was 79, and they came from the following countries: Cambodia, Malaysia, Indonesia, China, Thailand, Japan, India, Vietnam, Singapore, Philippines, Bangladesh and Nepal. The incoming President, and the incoming Chair of the Bar Issues Commission, of the IBA also attended, and participated as speakers.

Evaluation forms were handed out as always at these conferences. The evaluations received were of a high order, with an average of 4.03 points (5 was the maximum and 1 the minimum).

The conference programme is attached as Annex A.

Suon Visal, President of the Bar Association of the Kingdom of Cambodia, welcomed the participants to Cambodia. He said the conference was very timely, since the Cambodian government had recently asked the Bar to help with its WTO commitments. He spoke about the foreign lawyers who appear before the special tribunal for Cambodia. He thanked all those who had worked to make the conference possible.

Horacio Bernardes Neto, incoming President of the IBA, gave further welcoming remarks. He hoped that large numbers of local lawyers would come to the IBA's annual conference in 2019 in Seoul, South Korea. He mentioned that foreign lawyers are still forbidden to practise in Brazil and India, but that the IBA believes that the trend is to globalise. He spoke about the IBA's campaign to promote the rule of law, and drew attention to the accompanying videos on the IBA website, available for downloading and dissemination. The campaign's motto is: 'Take care of the rule of law, and the rule of law will take care of you'. He further mentioned the IBA's work on diversity and inclusion, bullying and harassment, which would be published soon.

Christopher Leong, President of LawAsia, gave the keynote speech. He said that globalisation is not new, but has been around from the Silk Road onwards. Nowadays its modern consequences can be seen in Brexit, the US pulling out of NAFTA and its trade war with China. Globalisation may not work perfectly, but turning away is not the answer, either.

Liberalisation of legal services in Asia brings its own problems. Each ASEAN country has a different legal system, some are common law, some civil law. There should be a harmonisation of legal structures. Legislation can introduce globalisation by allowing graduated integration. Importers of legal services can then become exporters. Governments should therefore encourage law firms working together, since it helps the economy.

He said that globalisation was inevitable. China has managed to invite law firms to practise in specific areas, which helps investment and transactions - but foreign lawyers are not allowed to practise Chinese law. Local law firms can work with foreign law firms, and the local firms are now exporting legal services. Competition was introduced, which has strengthened and helped local law firms.

In the questions afterwards, there was a discussion about the opening of ASEAN legal markets, and also the recognition of foreign judgements. Mr Leong said that the process is beginning slowly, and there was an ASEAN meeting on the topic a couple of months ago. The EU provides a model in this field.

Stephen Revell from Hong Kong said that it was important to distinguish between fly-in fly-out and establishment of law firms, because they have different consequences.

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Instruments on international trade in legal services and their applicability in Asia

Péter Köves, incoming Chair of the IBA Bar Issues Commission, spoke to his slides, and explained his title from Hindu mythology and the statues at Angkor Thom. The Churning of the Ocean of Milk relates the story of the beginning of time and the creation of the universe, a story about the victory of good over evil.

Globalisation – blessing or curse

- Globalisation is here to stay
- Globalisation facilitates economic development
- A robust legal framework (the rule of law) sustains globalisation and economic development
- A competent, independent and well-regulated legal profession is a key element of the rule of law
- The core values of our profession must be preserved to maintain trust
- Practitioners are reacting more quickly to globalisation than Bars
- Practitioners from developing countries want to become involved

Finding the right balance in professional regulation

- Maintain the independence of the legal profession
- Relevant to the realities of modern practice
- Incentivise to obtain international expertise
- Assist practitioners to cooperate with foreign lawyers
- Protect the legal profession from being “invaded”

Opportunities for practitioners

- Foreign offices where permitted
- “Best friends”
- Regional and international networks and other affiliations
- Participation in other international activities, *e.g.*, the International Bar Association (IBA)

Trade agreements – tools to assist

- Over the past 35 years, globalisation of many economic sectors has promoted a reexamination of the practices and structure of the world trading system
- This process culminated in the WTO Agreements in 1995:
 - These comprise a series of international treaties designed to liberalise international trade
 - Together they create an expanded, rule-based international trading system
 - For the first time, trade in services was covered

GATS was born

- The General Agreement on Trade in Services (GATS)
- Covers trade in services, including professional services, *including legal services*
- Contains provisions on “*domestic regulation*” of professional services
- “No more restrictive than necessary to protect the public interest”

The impact of trade agreements and the bars

- GATS imposes binding obligations on member governments
- New agreements are under negotiation
- Little coordination between governments and bars
- Trade agreements over time have caused bars to examine the ways in which they address international trade issues
- The principal issues involve lawyer mobility and association

- Trade agreements DO NOT require liberalisation, only a commitment that regulation not become more restrictive
- Legal services will continue to be on the table in trade negotiations

The essence of GATS

- All WTO members subject to its general provisions (governmental and non-governmental bodies [regulators] alike)
- Members not obligated to liberalise domestic regulation, but;
 - Members must “stand still,” *i.e.*, regulation cannot become more restrictive
 - Members may, however, make commitments to liberalise regulation
- “General Obligations and Principles” including:
 - “Most Favoured Nation Treatment”
 - Transparency
 - Regional integration – ASEAN Framework Agreement on Services (?)
 - Domestic regulation must be administered in a “reasonable, objective and impartial manner”

GATS commitments

- Predominantly concerned with regulatory measures that discriminate between local and foreign service providers
- Right to regulate is acknowledged, but subject to GATS principles
- Members not obligated to make commitments in legal services, but if they do, then subject to GATS principles
- Commitments cover:
 - “Establishment”
 - Association
 - Licensure (regulatory status and admission)
 - Scope of practice
 - Temporary Presence
 - Privileges
 - Relationship to courts and arbitral tribunals

GATS and AFAS Commitments – Cambodia

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
B. SECTOR-SPECIFIC COMMITMENTS			
I. BUSINESS SERVICES			
1. Professional Services			
(a) Legal services (CPC 861):	(1) None (2) None (3) In commercial association with Cambodian law firms ¹ , and may not directly represent clients in courts. (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
Foreign legal consultancy on law of jurisdiction where service supplier is qualified as a lawyer (including home country law, third country law, and international law)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	

Commitments of ASEAN Countries in legal services

- GATS and ASEAN Framework Agreement on Services (AFAS) commitments are almost the same
- Mode 3 (local presence) limited or not permitted
- Mode 4 (“fly-in fly out”) “unbound”
- Legal markets remain mainly closed
- Limited opportunities for ASEAN lawyers to join international or regional cooperation
- Bars should act!

The IBA and trade agreements

- No regulatory authority
- Advises its member bars on developments in international trade
- Speaks for the legal profession through resolutions of its Council
- Six resolutions have been passed by the IBA Council and communicated to the WTO, four are mostly relevant to the bars
 - “Core Values”
 - “Establishment”
 - “Skills Transfer”
 - “Mutual Recognition”

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Creation of joint ventures: different forms of international alliances and their benefits

Jonathan Goldsmith, a member of BIC ITILS from the UK but based now in Belgium, began by explaining the benefits of cooperation between Asian and foreign law firms, as follows:

For foreign law firms

- local law firms provide services they cannot, or do not want to, provide – e.g. to support investment, debt financing, infrastructure projects, as part of regional advice (e.g. to a client wanting to do something in Asia and needing advice from various Asian countries), etc
- in order to advertise to clients they have a pan-regional offering

For Asian law firms

- foreign law firms provide access to new clients/branding
- they enable economies of scale/sharing of back office
- sharing of experience/technology transfer can take place

As for forms of cooperation, he mentioned the following:

For individual lawyers

- employment of a foreign lawyer/by a foreign lawyer
- partnership with foreign lawyers

For law firms

- marketing cooperation (e.g. referral networks such as Lex Mundi, or best friends)
- law firm networks and alliances
- partial integration models (joint ventures, *vereins*, etc)
- full mergers

There are regulatory issues, and he listed the principal ones:

- with which foreign lawyers should cooperation be allowed (e.g. WTO list versus one-by-one approved list, etc)
- what work should such joint practices be allowed to do? (e.g. full/limited licences)
- what kind of vehicles should be allowed? (e.g. partnership, limited liability, ABS etc)
- what are the approval processes?
- how to maintain regulatory oversight, and to what level? – should there be regulatory/disciplinary recognition agreements with home country Bars?
- what about insurance/social security/compensation fund contributions
- at what level should the fees be set (they should reflect the true cost of administration and not be a penalty for, or obstacle to, joint practice)
- does the local Code of Conduct apply to the joint practice, and how to deal with particular challenges e.g. names of firms
- be aware that a mix of domestic regulation and international rules (e.g. WTO, trade agreements) will be applicable

He then described the impact of the WTO on joint practice, making the following points:

- the General Agreement On Trade In Services (GATS) covers trade in legal services
- Cambodia has been a WTO member since 13 October 2004
- the IBA has published a GATS handbook for bars, available on its website, which explains the workings of the GATS as regards legal services
- there are also IBA resolutions – see more below – on international trade in legal services which may be useful to lawyers, such as the one on classification of terms, or most particularly, on the transfer of skills

He showed on a slide the relevant part of the IBA resolution on transfer of skills:

‘WHEREAS the extent and the modalities of Skills Transfer in cross-border legal services by Foreign Lawyers in a given Host Jurisdiction necessarily depend, inter alia, on the extent to which Foreign Lawyers in such Host Jurisdiction are permitted to practice law and to associate with Local Lawyers;

WHEREAS a regime permitting the association of Foreign Lawyers with Local Lawyers likely provides the most efficient and effective means of Skills Transfer by permitting Local Lawyers to work with more experienced Foreign Lawyers within the same firm, thus enabling them to gain practical experience and substantive knowledge in a way that would otherwise be impermissible due to the risk of breach of confidentiality’

(B) A Foreign Lawyer who is permitted to practice through an establishment in a Host Jurisdiction in association with Local Lawyers may be required, in the course of his/ her practice, to provide, directly or indirectly, individual training and mentoring in relevant legal skills and disciplines, as well as supervised work experience, to Local Lawyers with whom the Foreign Lawyer practices in such association.’

He also briefly described how joint practice is dealt with in the EU.

Finally, he mentioned that the IBA had published a handbook on joint practice between foreign and local lawyers, to help guide Bars through their problems, available on the IBA’s website.

Michael S. Carl, Indonesia, spoke to his slides.

- Foreign law firm cannot open an office in Indonesia
- Types of cooperation with foreign advocate/ law firm in practice –
 - hire a foreign advocate
 - in association with
 - strategic alliance
 - Indonesian desk
- Requirements to become an advocate –
 - Indonesian citizen
 - Indonesian resident
 - bachelor of law

- PERADI educational programme
 - internship of minimum 2 years in an advocate's office
 - pass PERADI's bar exam
- Requirements to become a foreign advocate –
 - join Indonesian law firm as an employee or foreign consultant
 - participate in a professional advocate educational program held by PERADI
 - pass the advocate code of ethic exam held by PERADI
 - obtain recommendation from PERADI to become foreign advocate
 - obtain work permit from the Ministry of Law and Human Rights
- Obligation of a foreign advocate –
 - comply with the applicable laws and regulations
 - develop and improve the quality of legal services at the law firm where they work
 - transfer knowledge and professional skills to the Indonesian advocates
 - provide free legal services to legal education and research and government institutions at least 10 working hours each month
- Restrictions
 - may only join an Indonesian law firm as an employee
 - prohibited from holding a double position as an employee or business partner of an Indonesian law firm or representative of a foreign law firm or a foreign company or an Indonesian company
 - prohibited from appearing before the court, practicing and/or opening a law office
 - a maximum of 5 (five) Foreign Advocates for each Indonesian law firm

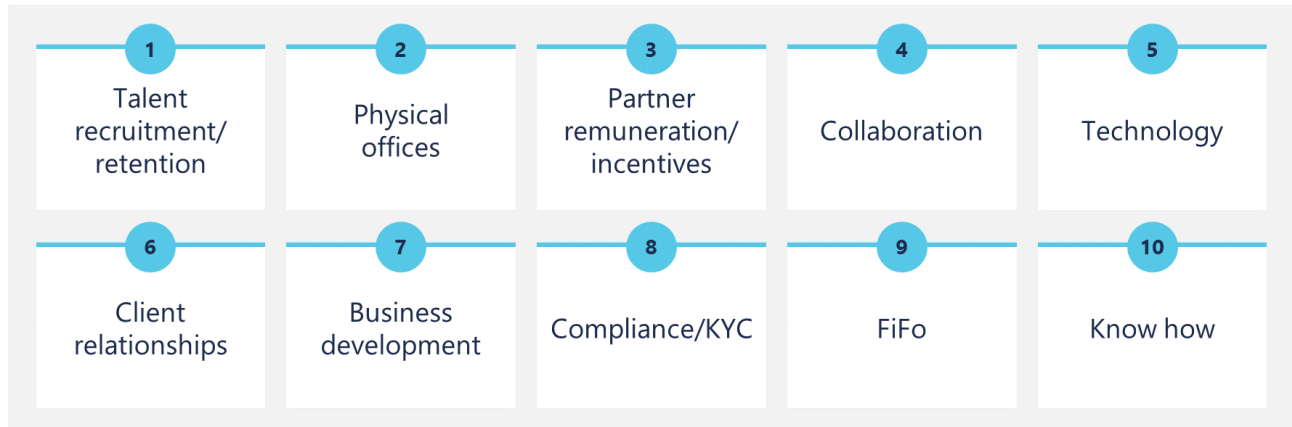
There were questions after the two presentations about Mr Carl's experiences in the transfer of skills in Indonesia, on topics like: who chooses the subjects on which the foreign lawyer has to transfer skills, is it spread around all of Indonesia or just based in the capital (he said there were efforts to ensure the provinces were covered), what do foreign lawyers think of it (they have accepted it), and what kinds of activities count (moots, lecturing, etc).

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Trends in law firm management

Stephen Revell, from Hong Kong and Singapore, spoke to his slides.

He began by saying that there ten things any law firm needs to be thinking about. But there needs to be more than thought – change is important.



He then went through the ten items separately, as follows:

Talent recruitment/retention

- The reality is that in any market the number of lawyers with the right skills is limited
- Many organisations are fighting to attract and retain the best professionals
- The legal market has become globalised and mobility is the norm
- Diversity and the retention of women

“The ability of law firms to adopt innovative and tailored recruitment and retention strategies for their size, culture and market has become a strategic priority and one of the biggest determinants for a firm’s competitive success” - Rebecca Normand-Hochman, Recruiting and Retaining Lawyers: Innovative Strategies to Attract, Develop and Retain Legal Talent

Physical offices

- ‘Young Lawyers Call For Revamping of Law Firm Offices to Meet New Industry Needs’ - consideration of millennial values, including how firms can improve their output by optimising the physical workspace
- Office design impacts day-to-day lawyers productivity and work product
- Importance of collaboration spaces/technology enabled spaces
- It’s your second biggest cost

Partner remuneration/incentives

- The answer is.....
- The client’s fundamental needs are the same globally – skill set, availability, accessibility, approachability and cost. Which of these are advanced by financial incentives?
- What do clients think?
- Do incentives really work in a law firm? If so, for whom?

- Is it actually possible to structure incentives that benefit the individual lawyer, the firm and the client simultaneously?
- Different cultures view financial incentives differently, some placing greater trust in them and potentially yielding greater utility

Collaboration

- Collaboration is not cross selling but.....
- Cross-collaboration yields a level of benefit far greater than imagined
- Can you reward collaboration or punish the lack of
- Collaboration mapping

Technology

- Integrated ‘tools’ for major processes (e.g. automated document review in due diligence process)
- Knowhow initiatives (e.g. AI assisted searching)
- Document automation
- Bespoke software solutions (e.g. a solution automating queries against a global database of regimes)
- Development of client facing and in-house apps
- Artificial intelligence – the end of lawyers?
- What to do? Second/third mover advantage?

Client relationships

- Unequal love? The 80:20 rule
- Importance of the ‘right’ relationship partners and teams
- Communication - listening to and understanding the client’s needs
- Understand the clients business
- Proactive – don’t wait for your client to reach out to you
- Regular reviews and feedback

Business development (BD)

- Good BD is central to differentiation and success – ‘viewing the firm as a marketable entity is central to future prosperity’
- Develop and nurture existing clients and proactively look for and attract new clients
- Building, managing and leveraging relationships based on trust and respect is fundamental to retaining and developing business
- Teach them young – make BD a central part to your associates career milestones. Being technically good is not enough.

Fly in/fly out (FIFO)

- Compliance rather than ignorance
- Immigration issues
- Tax implications

Should ‘local lawyers’ be afraid of temporary foreign lawyers?

Know-how

- Collection challenge
- Search challenge
- A 'sharing mentality'
- Training/quality standards

Compliance/Know your client

- New and increased technology along with the arrival of unprecedented regulations leaves a number of potential risks for law firms
- Data protection – EU General Data Protection Regulation
- Anti-Money Laundering
- Reputation protection
- Misuse of the profession

And another thing ... law firms relationships

- Important indirect providers of work
- Have a plan
- Responsiveness
- Regular conversation

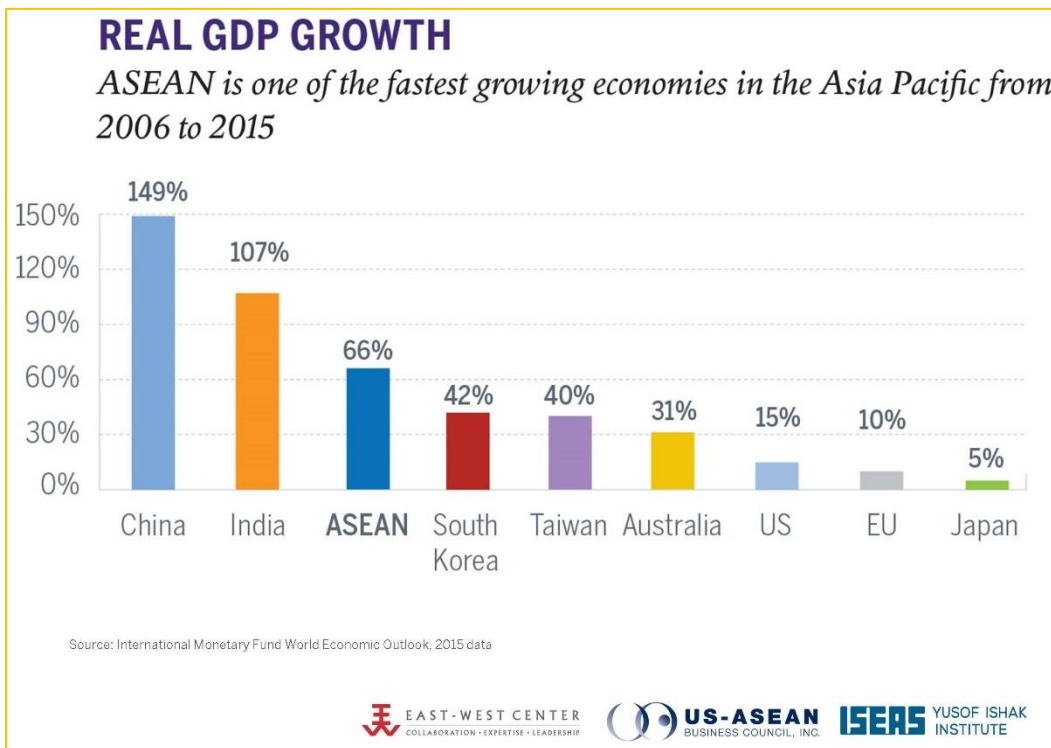
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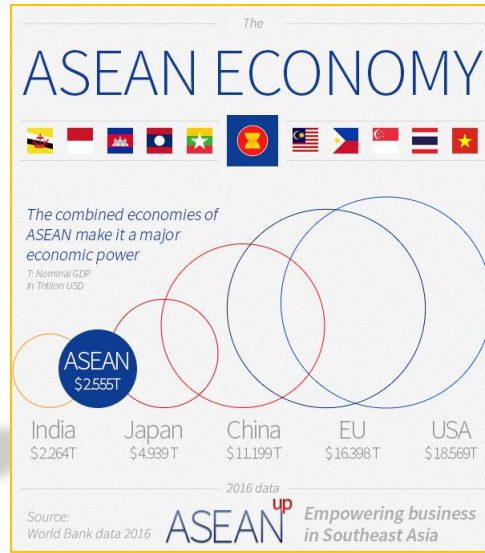
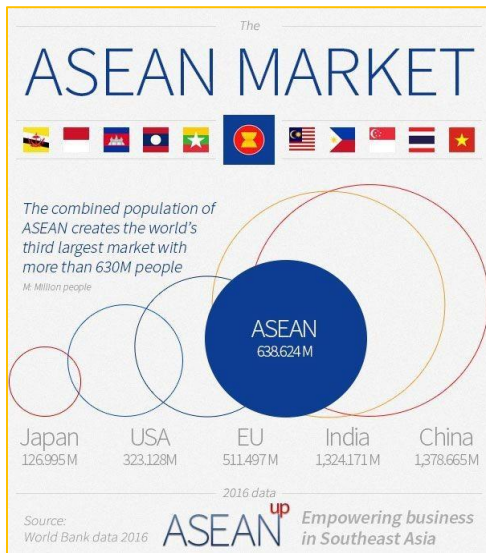
International Subcontracting for lawyers

Hanim Hamzah, Singapore, spoke to her slides. She said that she did not see the relevance of her allotted topic to the conference, and so would speak instead on ‘An ASEAN Perspective – The ZICO Law Journey’, speaking about how her law firm had adapted and grown in the ASEAN market.

The firm was originally based only in Malaysia (founded in 1987), but now has offices in all ASEAN countries.

- Following clients to new markets in ASEAN
- New strategy for new jurisdictions with new business cultures and nuances
- Develop relationship with local business leaders, industry experts and senior practitioners
- A vision of creating a network of independent, homegrown ASEAN firms with the freedom to work with everyone.





Challenges along the way

EXTERNAL

- Imbalance of ASEAN countries in terms of population, economic maturity, political stability
 - Impact on law firm performance, fees charged, talent management and achieving consistent quality of work for the whole ZICO Law network regardless of the client and/or the handling office.
- Increased Competitiveness
 - Competition and industry is becoming more aware of the disruption cycle and is adjusting rapidly.
- Client Demands
 - Not enough to simply handle legal matters. Clients now look for someone who can affect their bottom line.

INTERNAL

- Increased collaboration within ZICO Law and to ZICO's non-legal services through cross-selling, referral network and concerted marketing
- Becoming more efficient with technology to assist with management and policy between offices as well as to provide best service possible to clients
- Maximising the functions of support services such as IT, Business Development, Communications, Knowledge Management, Human Resources, Finance & Accounting for all 10 countries
- Increasing ZICO & ZICO Law Profile outside of ASEAN

Diversification into MDP structure

Offering non-legal business services as a one-stop solution for clients, promoting cross-selling as a single-brand throughout all ASEAN markets

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Raising Capital in International Markets – How the Local Legal Advisor Became Global

Mok Rady, Deputy Director of Market Development department, Securities and Exchange Commission of Cambodia, and **Juan Javier Negri**, a member of the BIC ITILS committee from Argentina, gave a combined presentation.

In Cambodia, the Securities industry is regulated by the Securities and Exchange Commission of Cambodia (SECC) which was established in 2008 under the Law on the Issuance and Trading of Non-Government Securities.

- Listed companies: 5
- Securities Firms: 12
- Audit Firms: 8
- Law firms: 13
- Valuation Com: 4
- Cash Settlement Agents: 3
- Transfer, Registra, payment agent: 3
- Bondholder repret. 1
- CCP: 4
- Derivative brokerage: 16

Mr Rady gave a list of accredited law firms in the securities sector.

Mr Negri started by explaining that global and local capital markets exist as part of the financial system, and are concerned with raising long-term capital through shares, bonds, and other long-term investments.

Types of capital markets:

Primary market/New issue market – where securities are first issued and the issuer receives funds – IPO, bond issuance

Secondary market/After issue market – where previously issued securities trade between investors

What is a security?

A financial instrument representing a claim and that can be traded e.g. shares/stock, debt securities like bonds

There are two main securities in the global capital markets:

Equity (shares)	Debt (e.g bond)
Capital gains	Credit
Voting rights and pre-emptive rights	Coupon payment at agreed rates
Dividends (share in profitability)	Can convert to equity (special rights)
Board control	Usually no voting rights
Residual value in liquidation	Rank higher than shares

Why use capital markets?

- alternative source of financing apart from bank-based lending
- better pricing, longer maturities and wider investor base
- funding for riskier investments not supported by banks
- exit route for investors such as venture capital and private equity funds
- price discovery through listing and trading of such securities
- allows for efficient allocation of capital across industries, and by extension, society as a whole.
- wealth generation for savers and investors – attractive investment opportunities with better returns than banks can offer
- investors can manage risks by investing in a diversified portfolio

Domestic or foreign capital

- there can be challenges in raising funds domestically
- the capital requirements may be too big for a domestic market
- there might be no local appetite to invest in equity seeking capital

Why might you need foreign capital?

- larger pool of capital and lower costs due to the potential segmentation and saturation of domestic markets
- diversification of country risks and associated economic risks
- potential to hedge foreign exchange risk
- increased global recognition
- tax reduction or avoidance and lower interest rates

Where to raise capital?

- market considerations
- industry knowledge and best practice
- laws applicable and level of regulation
- financing structuring requirements e.g. accessing Sharia financing
- market liquidity for firm securities
- pricing standards (international or domestic)

Types of financing

Equity financing

- cross/dual listing
- issuing securities through a subsidiary in the foreign market
- global depository receipts
- Euro-equity market

Debt financing

- foreign bank loans
- foreign bonds
- euromarket bonds

Foreign bonds or euro bonds

Foreign bonds:

- issued by an overseas entity into a domestic market and denominated in the domestic currency

Eurobonds:

- issued in a currency different from that of the financial centre from which they are issued
- often do not provide any underlying collateral or security to the bond holders
- almost always rated by a credit rating agency

Advantages of euro bonds over domestic bonds

- choice of innovative products to meet the issuer's needs more precisely
- ability to tap potential lenders internationally rather than domestically
- anonymity for investors as issues are made in bearer form
- gross interest payments to investors
- lower funding costs due to competitive nature and greater liquidity of the market
- ability to make bond issues at short notice
- less regulation and disclosure

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Arbitration of international commercial disputes

Thierry Ngoga, member of the BIC ITILS committee from Rwanda, spoke to his slides.

He asked first:

- 1) whether it is appropriate to impose restrictions on the choice of counsel (legal representation) in international arbitration, and the implication of doing so for positioning as a “ Safe Arbitration Seat” .
- 2) using available statistical data in SE Asia regarding international arbitration, what lawyers and policy makers should be doing to get the “cake shared properly” as a way to face globalisation.

Limitations on the parties' choice of legal representatives would contradict the basic concept of arbitration as a flexible and self-tailored dispute resolution system. Freedom of legal representation is recognised in most national arbitration laws, and by most institutional arbitration rules. Especially in South-Eastern Asia, the arbitration rules of many centres provide for such a freedom, for instance:

- Article 22 of China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules 2014 : *“A party may be represented by its authorized Chinese and/or foreign representative(s) in handling matters relating to the arbitration. In such a case, a Power of Attorney shall be forwarded to the Arbitration Court by the party or its authorized representative(s)”*
- Article 5 of the Chinese European Arbitration Centre (CEAC) arbitration rules 2012: *“Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance(...)”*
- South Korea: Article 7 of Korean Commercial Arbitration Board rules 2016: *“A party may be represented by any person of its choice in proceedings under the Rules, subject to such proof of authority as the Arbitral Tribunal may require”*
- Singapore: Article 23 of SIAC rules 2016
- Australia: Article 8 of ACICA arbitration Rules 2016
- Thailand: Article 53 of the Thailand Arbitration Center rules 2015
- Pakistan: Article 19 of Center for International Investment and Commercial Arbitration (arbitration rules 2016)

Despite what has been said, laws in a few jurisdictions require that counsel in locally-seated arbitration must be locally-qualified to represent in arbitration:

- That is true in Turkey, Thailand and was formerly true in Japan and a few other jurisdictions (Gary Born, 2014)
- Difficulties also in India. There, the law appears to allow foreign lawyers to appear in arbitration but this has been challenged before the Supreme Court in *Bar Council of India v. A.K. Balaji - SLP (Civil) No. 17150-54/2012*. The position of the SC of March 18, 2018 appears to be that foreign

lawyers are not allowed to appear in arbitration.

(<http://www.advocatekhoj.com/library/judgments/announcement.php?WID=9848>)

- In Nigeria: the Nigeria Legal Practitioners Act defines a legal Practitioner only as a lawyer registered to practise law in Nigeria (is that a good way to share the cake?)

Other examples:

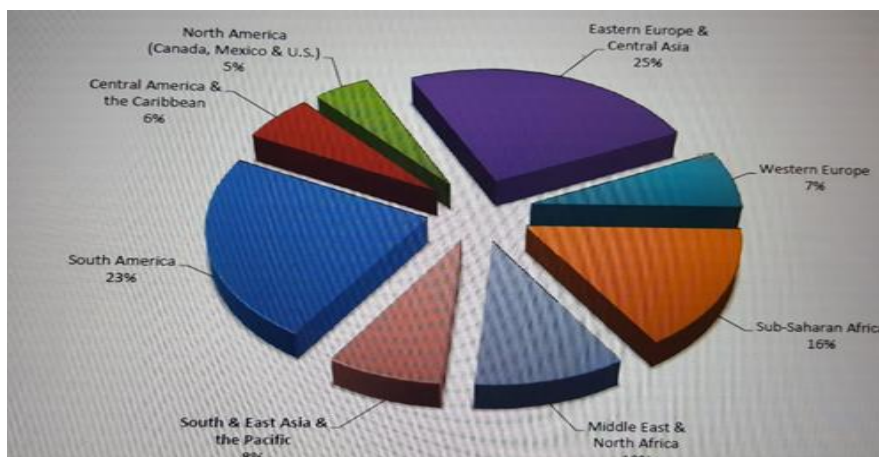
- Philippines: Article 13 of the Philippine Dispute Resolution Center rules of 2015 : “*the parties may be represented by persons of their choice, irrespective of, in particular, nationality or professional qualification*”
- Mauritius: In the Mauritius Arbitration Act (section 31) “*Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the arbitral proceedings by a law practitioner or other person chosen by him, who need not to be qualified to practice law in Mauritius or in any other jurisdiction.*”
- Tested Best Practice without Precision: case of Rwanda with 25 KIAC international arbitration cases out 97 total cases (parties have been represented by foreign counsel but preferred to work with local counsel since the seat of arbitration and applicable law to the contract were mainly Rwandan in the 97 cases)

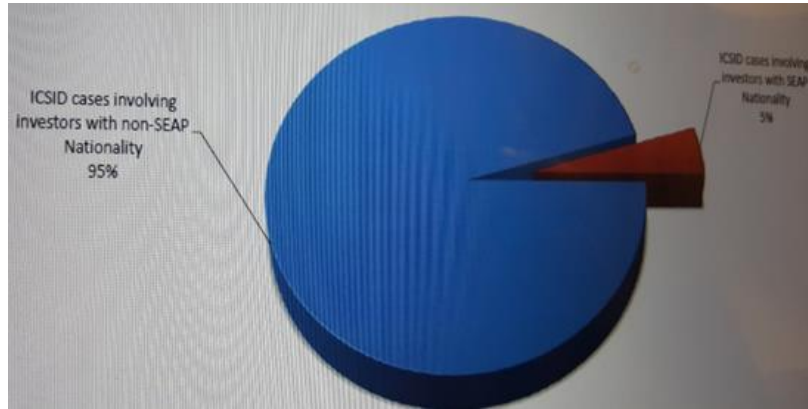
Conclusions:

- Including also non-local counsel is important for defining a “safe arbitration seat”
- Focus more on your seat in the contract (applicable law) to improve the share in the “cake”

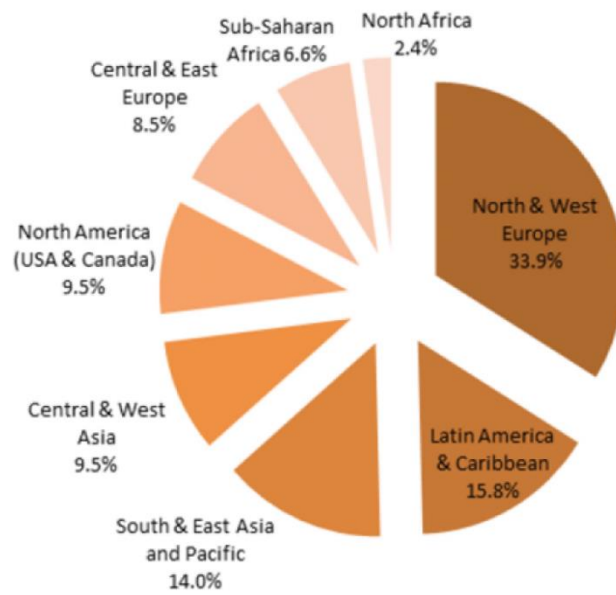
ICSID Statistics 2010-2018 revealed that SE Asian and Pacific registered 8% of the total arbitration cases, with Western Europe at 7% and North America at 5%.

Arbitrators and Conciliators appointed: SE Asian and Pacific 179 , Western Europe 850 and North America 393.





In 2017, of the 810 cases registered by the ICC, 14,0% involved SE Asia and Pacific, while North & West Europe were at 33.9%. The nationality of arbitrators appointed from SE Asia and Pacific was 123, while North & West Europe stood at 679.



Origin of arbitrators appointed in ICC cases in 2017:

Region	Year	Men	Women
North America	2016	193 86%	32 14%
	2017	114 82%	25 18%
Latin America & Caribbean	2016	145 88%	19 12%
	2017	165 82%	36 18%
Central & West Asia	2016	46 84%	9 16%
	2017	43 68%	20 32%
South & East Asia and Pacific	2016	109 89%	14 11%
	2017	123 87%	18 13%
North & West Europe	2016	617 86%	103 14%
	2017	679 85%	119 15%
Central & East Europe	2016	64 70%	27 30%
	2017	61 69%	27 31%

In 87% of the disputes referred to ICC Arbitration in 2017, parties included a choice-of-law clause in their contracts. The laws of England and USA states remained the most frequent choices, followed by French and Swiss law.

Consideration: the choice of law (*lex arbitri*) determines the appointment and the counsel to involve (Dispute resolution clause)

Some barriers to arbitrate in developing countries cited in literature (action needed):

- Interference of Courts
- Corruption
- Limited pool of trained professionals (issue of capacity building)
- Poor legal/regulatory frameworks
- Lack of data on enforcement in many developing countries?
- What else? Political instability, visa issues? Airlines?

There are always excuses for not arbitrating in developing countries.

We need to admit some of the weaknesses and work hard to improve them, but players need to fight the negative perceptions.

Sample data for arbitrating commercial disputes in Sub-Saharan Africa in 2011 shows that the time to enforce an arbitration award in Africa varies from a year in Ethiopia (375), Tanzania (425), and Ghana (436). The same survey indicated that the times for some Asian countries: Sri Lanka (720), Pakistan (806), Philippines (948).

The average dispute resolution time of ICSID case since 1 July 2003 is 3.2 years or 1,171 days (GAR Journal vol. 4, Issue No 5).

Herbert Smith Freehills conducted a survey on the enforcement of arbitration awards in the ASEAN region (2018):

- Singapore (enforce in 6 months)
- among the ASEAN countries, 91.02% of the participants consider the Singapore courts to be highly or very effective in enforcing international arbitral awards. This is followed by Malaysia where close to 69% of the participants consider the courts to be effective generally in enforcing international arbitral awards
- The courts' approach to enforcement of arbitral awards in the other South East Asian countries is still not as developed as in Singapore, but they have steadily improved over the years, especially in Thailand, and Philippines where courts have been increasingly effective in recognising arbitral awards

Recent Experience of Rwanda (as safe seat):

- Kigali International Arbitration Centre (KIAC) registered 96 cases in 5 years (25 international cases) 3-6 months (enforcement of award varies between 3 to 6 months)
- None of the 48 KIAC awards has yet been set aside by the Rwandan court
- Chief Justice rules of 2012 give priority of arbitration case over other matters, which does not follow the normal rule
- The new civil code procedure of April 2018 and the provision on court intervention
- Art: 21: Grounds for refusal of registration of a claim by the court Registrar
- Files a claim without demonstrating that he/she has used amicable settlement or arbitration specified in the contract

Some developing countries (in South Eastern Asia, for example) have better rankings than developed countries in the indexes and surveys below:

- WB Doing Business report which ranked 186 economies of the world
- Global Competitive Index,
- Global States of Mind Surveys
- Business baseline profitability index

What lawyers and their jurisdictions can do to appear on the map of international arbitration and so share the cake:

- Driving/Positioning your respective countries as an arbitration safe seat (legal representation, 1958 New York Convention, model law, supportive courts, clear enforcement regime, visa policy, safety etc..).
- Testing arbitral institutions in South Eastern Asia (some of them have been tested)
- Start with contract negotiation & drafting (seat-applicable law, avoid pathological clauses), for the purpose of sharing the cake when disputes arise
- Learn more than one international languages (for young people)
- Be aware that: arbitration is not only a legal concept or a form of justice but an industry which includes many attractive factors such as tourism, hotels facilities, zero tolerance to corruption, entry facilities (visa), safety, internet facility, transport etc....
- Example: PRADA Report in France (2011)
- Case of Egypt
- Rwanda: 2012 Ministerial Instruction on Contract Drafting, negotiation of dispute resolution clause, with model arbitration clause compulsory for government contracts

Conclusion:

- The economic expansion of the ASEAN countries in which, according to the OECD, ASEAN's real GDP is growing at 5.1% - there is a need to think and rethink arbitration dispute resolution mechanisms, especially for a future equitable share of the cake in a globalised world
- The lessons from some developing countries including SE Asia which tested their arbitrators and arbitral centres are encouraging. Change is possible, it is happening, and the mission of the legal practitioners gathered here is to contribute to make it happen more quickly than in the past, for the cake to be shared properly

ANNEX I: PROGRAMME OF THE CONFERENCE

GENERAL INFORMATION



IBA

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of more than 55,000 individual lawyers and more than 190 bar associations and law societies, spanning all continents. For more information, see <http://www.ibanet.org/>

LawAsia

LAWASIA is a regional association of lawyers, judges, jurists and legal organisations, which advocates for the interests and concerns of the Asia Pacific legal profession. For over fifty years, LAWASIA has operated as a platform to promote the cross-jurisdictional exchange of legal knowledge; as a voice of the legal profession; and as a conduit for encouraging adherence to mutually-held principles of the rule of law, professional integrity and the protection of human rights. <https://www.lawasia.asn.au/>

BAKC

Bar Association of the Kingdom of Cambodia (BAKC) was established in 1975. The legal profession in Cambodia was abolished by the Khmer Rouge regime in 1975 and it was not until 1995 that the National Assembly re-established the legal profession by enacting the Law on the Status of Lawyers to create the Bar Association of Kingdom of Cambodia. BAKC is a membership organization. All people who wish to practice law must be members of BAKC.

ELF

The European Lawyers Foundation (ELF) is an organisation that undertakes projects that relate to the exercise of the profession of lawyers, the development of the law and practice pertaining to the rule of law and administration of justice and substantive developments in the law itself, both at a European and international level. For more information, see <http://elf-fae.eu/>

**GLOBALISING YOUR PRACTICE -
OPPORTUNITIES AND CHALLENGES**

1 NOVEMBER 2018

**VENUE: SIEM REAP – HOTEL SOFITEL ANGKOR
PHOKEETHRA GOLF & SPA RESORT**

CAMBODIA

PROGRAMME

		12.15	Trends in law firm management Stephen Revell, Hong Kong
8.30	Registration	12.50	Discussion
9.00	Welcome	13:00	Lunch
	<ul style="list-style-type: none"> President of the Bar Association of the Kingdom of Cambodia, Suon Visal Incoming President of the International Bar Association (IBA), Horacio Bernardes Neto 	14.00	International sub-contracting for lawyers Hanım Hamzah, Singapore
09:30	Keynote Speaker: Christopher Leong, President of LawAsia	14.45	Discussion
10:00	Instruments on international trade in legal services and their applicability in Asia Péter Köves, Incoming Chair of the IBA Bar Issues Commission	15.00	Raising capital in international markets – a discussion of markets and bonds, focusing on the role of the local legal advisor to an issuer wishing to tap international capital markets
10.45	Discussion		<ul style="list-style-type: none"> International Speaker: Juan Javier Negri, Argentina Regional Speaker: Mok Rady, Deputy Director of Market Development department Securities and Exchange Commission of Cambodia
11.00	Coffee break	15.45	Discussion
11.15	Creation of joint ventures: Different forms of international alliances and their benefits International speaker: Jonathan Goldsmith, Belgium Regional Speaker: Michael S. Carl, Indonesia	16.00	Arbitration of international commercial disputes Thierry Ngoga, Rwanda
12.00	Discussion	16.45	Discussion
		17.00	Closing Remarks and Conclusions