The dark side of football

Differences in sports contracts come down to more than simple dollars and sense.

According to the lively roundtable discussion yesterday about football players’ rights and contracts within countries, cultural divides and legal methodology often come into play.

The discussion began with the dark side of recruiting in South American football, where children are signed to contracts before they’re teenagers. The informal recruiting process begins when uncles or friends of children call agents and teams and ask for tryouts.

Less respectable agents sign 10-year-old players by guaranteeing parents immediate money in return for a player’s rights through the age of 20 when they sign professional contracts. The impoverished parents don’t always understand what they’re getting their children into. “At the end of the day both parents sign the contract because the opportunity is too much for them to turn down,” sports agent Julio Quriga said.

Problems arise 10 years later when a player is negotiating his first lucrative professional contract with teams such as Boca Juniors (picture). “That is one of the biggest problems respectable agents run into,” Quriga said. “We will be at the bargaining table with the player and the owner, and a figure will walk in from a dark corner claiming he is the real agent.”

“In the US professional recruiting works on a more basic standard, with college and high-school drafting. Often if a player is under 18 years old, the player’s parents sign a contract for him, but rarely are his rights given away before the age of 16.”

Additional methods are taken to ensure players don’t back out of a contract with specific terms. “As soon as we draft players we sign them to a contract with a signing bonus,” William Shearer of Powell Goldstein said. “If they back out of the deal early we have the ability to claim that money back.”

Italian youth contracts are binding and negotiated directly through a club until the age of 19, according to Riccardo Cajola of Cajola & Associates Law Office. After that clubs have a three-year window to sign a player to a longer deal. “Contracts must be drafted on templates designed by the league,” he said. “There is no other way agents can negotiate.”

Cajola also explained the economic rights a player has. While in the US sponsorship rights are owned by the player, in Europe agents and marketing groups hold a certain percentage of the rights.

While clubs have little control over economic rights, European players often find themselves on the short-end of sponsorship deals because the investors are pulling in money for themselves.

“The discussion then swung to the challenges clubs face with revenue contracts. In Buenos Aires, representatives estimated that more than 80% of a team’s revenue comes from player sales and trades with European clubs. Ticket sales and television rights make up the rest. “Clubs simply cannot survive without transfers,” Quriga said. “The small clubs sell to the big clubs and the big clubs sell to Europe. That’s just how it works.”

“Not all the clubs are regulated by the Argentinian Football Association rules, which prohibit the increase of ticket prices and limit local television opportunities. While clubs are allowed to increase the price of select high-value tickets, a majority of the general admission seats are governed by the AFA. At times the US where teams generate revenue through media packages and sponsorships. “Media is easily the largest revenue maker for teams in baseball,” Shearer said. “The local television rights and advertising bring in around 70% of the income.”

He went on to say that teams can sign their own contract to broadcast within 100 miles of the team’s home stadium. National television rights, since the most recent collective bargaining agreement between teams, are split evenly between the 30 major league teams.

“The Los Angeles Angels of Anaheim, which Shearer represents, were able to lower general admission prices, renovate their stadium and charge less for merchandise because of the increased television revenues.”

AFRICAN REGIONAL FORUM

Africa will benefit from the credit crunch

Huge losses on western markets mean that foreign investors are looking elsewhere for new assets in which to invest their excess funds. And African countries could provide the secure returns that they are looking for.

While the rest of the world heads toward recession, the African economy is growing. Changes in national laws have opened up the market to foreign investors, and made Africa a more attractive investment prospect.

“I think there will be a growing trend for sovereign wealth funds (SWFs) to invest in Africa,” said Wim Dejonghe, of Allen & Overy in Belgium. “We have seen increased activity all across the continent, and there are new opportunities for high-return investments.” Speaking at yesterday’s Africa Forum session, Can Africa Compete? Dejonghe outlined the rapidly expanding role of SWFs in the global economy, and urged African businesses to be ready to take advantage of this available capital.

“The audience of lawyers, many from African countries, seemed keen to engage in the debate over which investment opportunities most appealed to SWFs. Raffi A Laval-Rabana, of Ra Laval-Rabana & Co in Nigeria, challenged the session’s optimistic outlook, and said that “unless there is investment into agricultural projects, the ordinary African will not benefit.” Dejonghe agreed that there was a “big debate over whether any benefits do go down to the general population,” and highlighted the problem in convincing SWFs to invest in smaller projects. Away from government initiatives such as infrastructure and tourism, lower-profile projects incur the same management costs but provide lower returns.

“Geography could also be a challenge. Much existing investment has focused on northern Africa, which is attractive for its proximity to the Middle East, and neglected sub-Saharan countries, where poverty is a bigger problem. It is here that lawyers and businesses must work together to devise… Continued on page 2.
INSOLVENCY AND RESTRUCTURING LAW

Possible bleak future for smaller hedge funds

Hedge funds in Asia face grim times as the global recession prepares to hit them hard. As more than 50 attendees at yesterday’s session on The Intersection of the Credit Markets and Insolvency heard, Asian funds suffer from the credit squeeze far more than their US or Cayman-domiciled counterparts.

“So smaller Asian-Pacific hedge funds will find it harder to survive. They’ve been affected far more than the American hedge funds by the fall in stocks,” said Rachel Shahid-Saless, a consultant at the World Bank in her personal capacity.

Asian funds have been hit hard because of their investment strategies. Shorting is illegal in China, for example, and is seen by many other countries as a risky enterprise. As a result, funds have concentrated on long positions and benefitted from the economic boom. Now that boom is over and stocks have plummeted across the world, these funds are in trouble.

As Shahid-Sales explained: “This has created a vicious circle. The fall in the stock markets led to a withdrawal of funds from Asia, which in turn caused a further drop in the value of stock.” Survivors will have to operate in a market in which investment banks have diminished in number and funding is harder to raise.

Asia is not however the only market to face contagion. In recent weeks, South America has had to acknowledge the spread of the US-originated recession. “Just a month ago, Brazilian president Lula de Silva was saying ‘what crisis? Go talk to Bush’ but now he has to admit that the recession in the US can affect all economies,” said Javier Armando Lorente, of Argentine firm Naveira Truffit Martinez Andre Lorente & Lopez.

A Brazilian peer agreed. “Globalisation works for good and bad,” said Otto Eduardo Fonseca de Albuquerque Lobo, of Motta Fernandes Rocha. “And last week the crisis finally parked in Brazil.”

With the crisis comes distressed companies unable to recapitalise or fund debt repayments. Several countries have recently updated their insolvency legislation to replace outdated laws, some of which – such as Brazil’s – dated back more than 60 years. The efficacy of these new laws, however, remains to be tested. Lawyers on the panel expressed concern that this could prompt rash and rushed alterations to the new legislation that would be regretted over time. “I’m not very keen on ad hoc measures or procedures,” said Lorente. “We have to use the laws we already have, and use them wisely.”

Another panelist, Nick Hood from Begbies Global Network, agreed. Members of the audience unfortunately missed out on some of his comments – due to time constraints the panel was forced to conclude – but in conversation with IBA Daily News after the session Hood said: “In virtually all emerging markets there are either ancient and inapropiate laws or newly-engineered legislation which can be expected to fail.

Many emerging economies do not have business rescue procedures in place to deal with distressed companies, so insolvency will be liquidated. And a few of these emerging markets have the professionals to deal with these situations. It is this, Hood said, that should be a major cause for embarrassment.

“One of us should be ashamed for allowing this situation to exist. We’ve had years of benign economic conditions to do something positive, and it’s too late now. Emerging market economies will deteriorate unnecessarily and lawyern from more developed countries will go back to the plentiful work in their comfort zones.”

Continued from page 1 solutions. Session chair Sam Okudzeto, of Sam Okudzeto & Associates in Ghana, said that lawyers in these countries “need to be proactive; not sit around and hope for projects to arrive on their doorstep.”

Speaking from the floor, Erik Richer La Flèche, of Stikeman Elliott in Montreal, Canada, told delegates that “if you want SWFs to choose African countries, it’s up to you to create the vehicles and business models that allow investment.” Others agreed that some restructuring of the African legal environment was necessary to make it more efficient at receiving investment.

La Flèche cited a study that had revealed that the best investment opportunities in Africa actually lay in small and medium-sized businesses, but said that SWFs and similar investors were unaware of this fact. He also said that the time for one-way solutions to poverty was over, and that “investors are not interested in charitable models; what they want is a good investment opportunity.”

Djougah said that the key to attracting investors was to offer diverse, wide-reaching projects which engage with the country’s economy, and that this was how benefits could filter down to the general population. “They won’t solve a road without any- thing else; but link it to an economical activity like tourism, and you might have a deal.”

Following huge losses on the American markets, Chinese state banks are also looking to Africa for safer investment. At a joint fund with African banks worth $6 billion has been developed to invest in various African economies.

Okudzeto called SWFs “a very exciting topic,” but warned assemblers that “it is important that we equip ourselves properly to make the most of this.” He described attracting SWF investment as a challenge, and said that lawyers must be ready to advise businesses on creating opportunities that appealed to investors.

SWFs have been limited in the past due to their lack of transparency and accountability. This has led to unease over national security. However, a new code of conduct devised in a joint initiative between SWFs and the International Monetary Fund (IMF) should increase transparency and reduce nervousness about foreign investment. The Santiago Principles, which were presented to the IMF yesterday, consist of 24 guidelines relating to governance, accountability and investment policies of SWFs worldwide.
VOXPOP: ATTRACTION OF THE CONFERENCE

QUESTION:

Why do you come to the IBA conference?

Anthony Mogboh
Mogboh & Co
Nigeria

It gives me the opportunity to meet other people, refresh with new ideas and keep up to date with legal issues around the world. It is well organised too. There is a lot less stress in registering, getting materials etc. The organisers do everything for people (short of being pampered!)

Luiz Rogério Sawaya Batista
Nunes Sawaya Usman & Thevenard
Brazil

The main reason I come is for networking – to meet people. This is the first conference I've attended outside of Brazil, so it's new to me. My firm decided to come at the last minute, so I've only just registered, but I'm looking forward to various committees including the tax committee. At the end of the day though, it is all about networking and meeting new contacts.

Mia Rinetti
Pavia e Ansaldo Law Firm
Italy

The IBA conferences are always very international and there are up-to-date speeches focused on the most important topics in the banking sector (in which I work). The seminars highlight the concerns of our clients, which is important as they are also our concerns. It is also a great opportunity to meet lawyers from other jurisdictions to share experience and create relationships for future cross-border transactions.

Mahesh S Acharya
Kaplan & Stratton Advocates
Kenya

Some of the seminars are very interesting and useful, but principally, coming here is about putting faces to the names of people from different jurisdictions that I have worked with in the past. The sheer volume of people that come here distinguishes it from other conferences. Because it is a general conference, you have a wider range of materials to gather from different practice areas. It is more rounded.

Tola Sanusi
Lagos State Ministry of Justice
Nigeria

I work for the Lagos state government and our job is to meet the needs of the public. Lagos state always sends a sizeable delegation so that all departments are represented. I'm in the civil litigation department, but we all use the conference to learn of the developments in our respective areas. It is also great to meet people and exchange ideas over a cup of tea! After five days, you feel refreshed and you have a new perspective on the law. We get to learn so much.

Dr Hossein Mohammad Nabi
Board member of the Iranian Central Bar Association
Iran

I'm a board member of the Iranian Central Bar Association and we always participate in the annual IBA conference. I think it is very good for all lawyers to discuss many ideas at the same forum. It is also good for people to learn about other jurisdictions, international law, the status of the rule of law and other cultures in general.

Sadiq Jafar
Hadef
United Arab Emirates

Being a leading UAE law firm, we are keen to support and attend the IBA. Every year we will send increasing numbers, in particular because the UAE is hosting the 2011 event in Dubai. This year’s conference has been of extra interest as a result of the unfolding financial crisis. It enables us to discuss its impact with our global friends and get a better perspective on events.

Diana Benjamin
Kingsley Napley
UK

The sessions are interesting and you always learn something from each one. It is also good to catch up with friends that I have made through the IBA from all over the world. In networking terms, you can meet more people in one day than you can from a whole month of lunching in London. I've almost run out of business cards already!
Yesterday’s session on international river basins was not as sexy as water and terrorism – the Monday talk by the Water Law Section that was covered by the Daily News under the headline Ex-Cop Cautions Lawyers. Mark Lane of Pinsent Masons was happy to admit that from the start. But he pointed out to the assembled audience that the environmental implications of water were probably much more important.

Indeed, Tom Pine of the University of Hertfordshire, the ex-cop referred to in Tuesday’s headline, said in that session that terrorism ranked fairly low on his list of priorities for water disasters. As he sat in the audience at yesterday’s discussion, Lane reminded listeners that climate change and the environment have much greater potential to fundamentally alter water supplies.

Rivers and river basins that are determined to be international are governed by international rather than local law. The principles of that international law were set up by German states in 1897, and have remained fundamental to cross-border disputes ever since.

The first speaker, Juan Francisco McKenna of Carey y Cía in Chile, described the impact of these principles as he took the audience on a flying tour across time and space. The principles that originated in Germany had a big impact on the Nile later and affect McKenna’s work in Chile today.

The Danube runs through eight countries, so issues over the rights to use, access and control the water supply are manifold. As with the Nile, it is the river’s length and the number of countries it runs through as a result that make it a precedent for water law.

The Nile runs through Egypt, Sudan and Ethiopia. But the nature of the river means that while 96% of the water originates in the hills of Ethiopia, 87% of it is used or consumed in Egypt. The remaining 13% is used in Sudan and almost none in Ethiopia. “Historically, the position of the Egyptian civilisation has meant that it had greater rights to use of the water through size of population and importance to the country, but that has obviously changed over time,” said McKenna.

Under international water law any riverside state has the right to use any water that flows across its territory in “a reasonable and equitable way”. While session chair Eric Garner of Best & Krieger said that the vagueness of this phrase is “an almost permanent employment contract for lawyers”, there are several principles that underlie the meaning of reasonable and equitable. These include the economic needs of the state, the size of the population (hence Egypt’s priority), prior and current use, potential for damage, avoidance of waste, and the geography, hydrology and climate of the basin.

Garner pointed out that it is fascinating to see how different countries around the world apply these principles and how they connect with local law. “For example, in the US we have the Colorado river, which we basically tell Mexico it can access when we feel like it,” he joked.

Mark Lane asked McKenna whether there was a case for updating these principles, given the acceleration of climate change and a different set of priorities around conservation as a result. “It’s a good question, but I think that in between these principles there is an idea of conservation already at work. For example, you have to take a rational approach to the use of water and its affect on supply downstream. You can’t just let the river bed dry up.”

Garner picked up Lane’s point about updating the principles though, saying: “Mark, I think I just heard you volunteer to work on updating those on behalf of this committee!”

The issues in Chile derive from the country’s long and narrow shape, which means that many rivers flow into and across its borders from Argentina to the east and Bolivia in the north. Historically, Chile has also had a problem because the rights to use water were controlled by a registered ownership system, which required no particular use. As a result, use was inefficient and there was not enough for industry and irrigation.

The solution has been to tax the owners of the rights to water if they do not make full use of their supply. That tax led to many people selling off their rights in the open market, creating a private system of water licences. Recently a licence for 190 cubic metres of water per second was sold for $45 million.

“This shows that there is the money in Chile to properly develop water supplies and even to bring in water from abroad,” said McKenna.
Buenos Aires offers a variety of dining options akin to European and North American culinary experiences, but at much affordable prices. Local food mainly consists of a mixture of Basque, Spanish and Italian. Beef is King for Porteños (residents of Buenos Aires), but they are also fond of any kind of traditionally barbequed red meat served at the classic steakhouse parrilladas. In recent years, there has been a food revolution with Mediterranean, central European and Middle Eastern influences creeping in. A large part of the local diet is centered on snacking at cafes and it is common for dinner to be served anytime between 10pm and midnight.

Most of the city’s dining hotspots are located in Puerto Madero and are classified by a fork sign with three tines, representing a fine dining option. Diners should make reservations in advance to avoid the long queues and opening hours should also be checked, as most restaurants close on Sunday or Monday nights. Tipping here usually starts at 10%, increasing with quality service.

Meat eaters should not miss out on the opportunity to dine at a parillada or grill room, where a large variety of barbecue-style meat dishes of different cuts can be sampled. For a taste of traditional home-cooked Argentinean cuisine, visit Cabanas Las Lilas. This eatery is considered the best parilla in town and is located in Puerto Madero. A common appetizer at any parillada is an assortment of entrails including morcilla (blood sausage), and chinchulines (tripes). The quality of Bife de chinto (sirloin) here is especially recommended as it is exclusively from the restaurant’s private ranch.

Another local favourite for authentic Argentinean cuisine is Cancun in Puerto Madero. Enjoy the panoramic view overlooking the Nichupté Lagoon amidst prime quality food. In order to digest the meat easily, Porteños usually accompany their parillada with a salad or grilled provolone. All the platters come with a few sauces of which the most traditional is a parsley and garlic sauce known as chimichurri. A must-try on the dessert menu is an Argentine version of flan: crème caramel garnished with whipped cream and dulce de leche.

The city’s most recommended eatery for Italian and international cuisine is Casa Cruz in Palermo. Fashionable in interior, with polished woods and red upholstery, this restaurant is commonly mistaken for a nightclub. Chef German Martitegui’s menu is exotic and appetising with dishes such as rabbit, grilled sea bass, truffle oil risotto and mint parma-ham rolls. The dining room is usually full of chef groupies and jet-setters. For a more casual atmosphere, diners can try Olsen, Chef Martitegui’s Scandinavian-inspired spot, which has a charming patio, a sculpture garden and a simpler menu.

Take a break from meat and try the best seafood in town around the docks of Puerto Madero. Visit high-end diner Katrine for delectable Scandinavian cuisine, featuring a renowned chef specialising in high-quality seafood and innovative desserts. Diners can go al fresco or take pleasure in the trendy Mediterranean décor indoors.

An enticing option after a long day is a tenedor libre or an all-you-can-eat restaurant for a really cheap meal. Gourmet Porteno is amongst the most distinctive because it offers a wide selection of foods from sushi to wood-fired pizza and other gourmet variations. One centrally located tenedor libre, just off Avenida Córdoba is La Gran Victoria. As some restaurants don’t serve till just before midnight, diners can satisfy their hunger pangs at a local cafe or confitería. Located in Avenida de Mayo, Café Tortoni is the oldest cafe in the country and is usually visited by intellectuals, politicians and artists, who come here to enjoy the historic ambience of legendary literati. Rather deceptive in its name, the cafe hosts a variety of shops including a bistro, an ice cream shop, a bakery and a wine bar. A unique feature of the cafe is the occasional tango and stage performances in the basement. Here you can try the medialunas (mini croissants) chocolate con Churros (hot cocoa and deep fried batter) or some of the world’s best ice creams.
Following several years of high commodity prices, Brazil has concentrated its financial strength to a point of regional dominance. In turn, the country has come to exemplify the growing prominence of legal work emanating from Latin America for international firms. As a result of this sustained growth, a number of such firms have looked to establish permanent offices in the country where, ironically enough, foreign firms are prohibited from practising domestic law. Fortunately for them, many of Brazil’s corporations are themselves looking abroad for opportunities.

While firms like Clifford Chance and White & Case have maintained offices in Brazil for more than a decade, there is a sense of urgency for others like Mayer Brown, Simpson Thacher & Bartlett and Skadden Arps Slate Meagher & Flom to make the move. This renewed interest from abroad has its roots in Brazil’s recent history, with the country legitimising its financial markets through maintained economic stability.

On the surface, operating an international firm in Brazil appears exasperating. The country, like Bric counterpart India, excludes foreign lawyers from practising here. This exclusive environment has staved off any saturation of the legal community by outside firms, though the event itself has long been anticipated. “The fact that it took so long for the foreign law firms [to enter Brazil] gave us the time to prepare ourselves,” says Alexandre Bertoldi, managing partner of the Brazilian firm Pinheiro Neto Advogados. “They are going to be competitors, but they are not going to be enemies. This is a very good move. We finally feel that Brazil is getting into the big leagues.”

The sophistication Bertoldi and others speak of is hardly a secret. Capital raised through IPOs in 2006 and 2007 have brought about a dichotomous effect, splitting the fortunes of the various Brazilian law firms. Of the companies that conducted smaller IPOs a year ago, some find themselves already in need of new capital sources. This has subsequently created a pool of acquisition targets for potential buyers fuelled by their own IPOs and Brazil’s recently revaluated sovereign debt.

In the last year Brazil’s trading platforms underwent significant consolidation. Following a surge of domestic IPOs, the Brazilian Mercantile & Futures Exchange (BM&F) merged with São Paulo’s stock exchange, the Bovespa, in May 2008. Not only becoming the largest exchange in the region, the aptly named Novo Mercado is now also the third-largest trading platform in the world.

Foreign interest in Brazilian brokerages by groups like Citibank and Lehman Brothers also helped accelerate the financial sector. Lehman Brothers announced the revival of its Brazilian subsidiary in 2007, while Citibank acquired independent brokerage Intra SA Corretora de Câmbio e Valores in 2008. While some of these banks, such as Lehman, have become casualties of the credit crunch, it is expected that whoever takes over their assets will still see Brazil as an opportunity.

Domestic Brazilian banks have expanded this year. Banco do Brasil serves a growing Brazilian middle class through increasing demand for car and home loans, while Banco Itaú grew through strategic acquisitions in the Caribbean. Similar to other domestic market sectors, much of the middle-market’s success can be traced to recent IPOs.

“These developments have dispelled the notion of Brazil as a one-way street for outside investors: power buyers have emerged from the country. Surging commodities prices...
strategic purchases in Europe and the United States. The company purchased a 50% stake in Italian beef producer Inalca for $342 million as well whole acquisitions of Smithfield Foods’ beef operations and National Beef Packing in the US for $860 million and $865 million, respectively. JBS now constitutes the largest beef processor in the US.

Project finance work in Brazil has also gained notoriety. Rising demand for commodities has pushed much of the country’s aging infrastructure to capacity, making toll roads, power plants, and port facilities a priority. “What we’re seeing is that Brazil has really emerged as a major trade centre,” said Allen Miller of Chadbourne & Parke. Miller co-heads the firm’s Latin America practice group. “The paradigm is getting more complex. There are more ways of finding good work from Brazil, it’s just matter of finding what matches a firm’s strengths and disciplines.”

Similarly, work in the energy sector has thrived. The newly-discovered Tupi oil field could potentially reap 5-8 billion barrels of crude for the already energy-independent state, spurring the construction of new drilling platforms and underwater drilling vessels for the state-owned oil company, Petrobrás. Brazil also continues to develop alternative energies to supplement its abundant natural resources. Wind farms, ethanol plants, and other renewables projects like the $11 billion hydroelectric dam on the Madeira River look to diversify the country’s energy-related infrastructure. “I think that power infrastructure has been mainly BNDES financed, but we anticipate that they’re simply not going to be able to finance all the needs down there,” said Miller. “There are a number of public-private partnerships developing both at the state government level and federally. There’s a subsidized alternative energy program. In the infrastructure-development area, things have moved more slowly than many would have liked, but the pipeline for projects is pretty big.”

Regardless of the Brazilian economy’s recent success, the firms moving here see long-term opportunities in the region. “I think it basically became more and more clear that the boom-and-bust cycles you saw in Latin America were going to level off,” said Jonathan Bissager, head of Chadbourne’s new São Paulo office. He describes the progression of establishing a Brazilian office as one of careful planning and analysis over the course of several years. “It was a combination of wanting to provide better client service and the overwhelming amount of travel we were having to do [to Brazil]. Over the last 2-3 years, I was literally [in São Paulo] every two and a half weeks. The clients really prefer to have you handy. And no matter how good a phone call or a video conference is ... personal contact is preferable.”

“It was a combination of factors. I think it’s the growing strength of the Brazilian economy and Brazilian market...” said Paul Schnell, manager of Skadden’s Latin America practice group. Schnell also notes the expansion grew equally out of new business in the region as well as servicing existing Brazilian clients, saying: “We have enough existing clients to justify opening the office here.”

The ultimate effect of the move by international firms, however, remains only speculation. From the Brazilian perspective, one immediate effect is the intensified competition for talent. “The main effect so far is that the foreign firms have created a turbulence in the market because they are trying to hire Brazilian lawyers,” said Pinheiro Neto’s Bertoldi. “The fact that right now the exchange rate is very favourable to the real in an almost unprecedented way ... it makes the salaries the domestic firms can offer to associates so different than what we could offer before.”

An increase of inter-Brazilian deals also looks to bolster work for the country’s domestic firms, potentially offsetting any business lost to new competitors.

Out of necessity to the market it serves, the legal community has become a global one. And like the Middle East and Asia before it, Latin America represents the new frontier for firms looking to leverage market volatility through strategic geographies. As always, sustainability is the essential element for an emerging market like Brazil and the law firms looking to operate within it. The Brazilian market’s reaction to recent economic success, newfound financial prominence, and a growing legal market has only reached a stage of infancy. And promising as the signs may be, it seems no clear bellwether can be deciphered from the country’s recent progress. Only more of same will make for a successful long-term relationship between foreign law firms and Brazil, and that, unfortunately, is still to be borne out of the years to come.
Could you tell us a little bit about acting as a sports arbitrator at the Olympics?

David W Rivkin: For the last 10 years, I’ve served as one of the panellists on the Court of Arbitration for Sport (Cas). This involves around 300 arbitrators from around the world and sends a dozen arbitrators to each Olympic Games. These arbitrators are needed to handle disputes at the games themselves which need immediate resolution. I’ve been fortunate enough to do that three times – at Salt Lake City for the Winter Olympics in 2002, Athens in 2004 and in Beijing this year.

Besides Olympics, I’ve also sat on some of the more high profile cases that Cas has had. I set on the panel that decided the Floyd Landis case. He was the cyclist that lost the Tour De France title two years ago for doping. And I also sat on the Oscar Pistorius case, the South African double amputee runner who wanted to run in the Olympics. We reversed a ban that had been based on an IAAF [International Association of Athletics Federations] rule that an athlete can’t use any device that gives him an advantage. They’d done a test that supposedly showed Pistorius had an advantage, but he actually only had an advantage over a portion of the race rather than an overall advantage. So we decided that there was no basis to ban him. Unfortunately he wasn’t able to meet the Olympic qualifying time in the small amount of time that he had left but he’s working towards making the London 2012 games.

In Beijing, Cas itself had about 10 cases, eight of which were heard while we were in Beijing. I chaired two cases, one of which involved a dispute between the Azerbaijani and Spanish field hockey teams and the International Field Hockey Federation. In the final qualifying game, Spain beat Azerbaijan but when there were the usual doping tests, these raised the question about whether two of the Spanish players had ecstasy in their system. The International Field Hockey Federation decided that they couldn’t be certain that the athletes had engaged in doping and therefore refused to disqualify them, so they went on to the Olympics. Azerbaijan brought three different cases before Cas to try and get an order that they should participate instead of Spain. I ruled that they had no authority to appeal the International Field Hockey Federation’s decisions because they weren’t doing it under applicable rules.

The other case involved the Swedish wrestler who threw down his Bronze medal and stormed away. An official’s decision went against him at the end of his semi-final that caused him to go from winning the second period, which would have required a third period to decide who the winner was, to losing the second period and therefore the match. After the second period, the officials issued him with a penalty that cost him points from something that had occurred 45 seconds before the end of the period. And the wrestler believed that they should have stopped the match and imposed the penalty then, because if he had known that instead of gaining a point, he’d actually lost a point, he’d have had 45 seconds to make that up. After he made this protest, the IOC withdrew his medal entirely.

In our case he didn’t try to get his medal back, but he did argue that the Wrestling Federation’s rules were in violation of the Olympic Charter because there was no appeal jury. We ruled that the Olympic Charter does require that in the future the Wrestling Federation have some kind of appeal jury. He also asked the Wrestling Federation to impose some penalties on the officials that were involved but the Wrestling Federation had totally ignored this. We didn’t say that penalties were appropriate but we did say that under the Wrestling Federation rules, the federation has to give a hearing to an athlete’s issue. I think the decision probably gave him a little bit of solace, improving the rules, even though it didn’t help him get his medal back.

The best purpose we serve is protecting the rights of the athletes. Federations make a lot of decisions, fortunately most of which are right; but if an athlete is excluded from a competition or something else occurs, we are a very useful forum for them. A large proportion of our cases at the Olympics involves eligibility for particular athletes, where the Federation has said that the athlete is not eligible under its rules. We’re able to look at the rules and the claim and make a determination, otherwise the athlete wouldn’t have any recourse and the Federation, whether it’s right or wrong, would have the final word.
Are you looking forward to the conference in Buenos Aires?

Yes, very much. Buenos Aires is a beautiful city. My first visit to Buenos Aires was about a decade ago. I had a great time and I think a lot of people attending, certainly those I've been speaking to, will be doing some tourism before and after in Argentina. I'm planning to travel for about a week afterwards in Argentina. The food and the wine are excellent. I'm not planning on eating any beef in the weeks leading up to it because during that week I'll be eating nothing but steak as Argentinean beef is terrific! Buenos Aires will also be a good city to host the IBA. It has a great number of terrific venues for events, and delegates will have a chance to enjoy Buenos Aires's wonderful culture during the week. The programmes that our committees in the Legal Practice Division have organised are really extraordinary so it will be a very full week of diverse programmes.

Which sessions are you most looking forward to?

The Legal Practice Division's showcase programme is presenting the final report of a taskforce that I established at the beginning of my two years. The taskforce deals with extra-territorial jurisdiction, which is a subject that is increasingly vexing the legal community and international companies. It is a subject where, given the broad expertise and membership of LPD members, we can play an important role. The taskforce was divided into six sub-committees that looked at the problems associated with extra-territorial application of the law in antitrust, insolvency, criminal law, civil litigation, bribery and corruption, and securities law. They've all put together a great report looking at the issues that arise when countries impose their law on foreign companies operating in their country, or when countries themselves try and operate abroad, and also proposes a number of solutions. The full text of the report is going to be provided in the welcome pack of every delegate in Buenos Aires.

Why did you decide to set up that taskforce?

Extra-territorial jurisdiction is something that I've seen handling international disputes. I see the kind of issues and problems that arise when countries exercise broad jurisdiction over litigation and the parties that can appear before it. I've also seen it in areas like antitrust and securities where conflicting regulation by countries causes real problems for multinationals. Much of my practice is representing multinationals so I see the kind of issues that they face all the time. I also see the problems that countries have.

The IBA, and the Legal Practice Division in particular, has a lot of members that have particular expertise in the areas where territorial overlaps occur, so we can bring this expertise to bear on identifying the problems and finding solutions. It's a unique role that the IBA can play because of the expertise and broad geographic make-up of its members.

What other sessions are you looking forward to?

My main field is arbitration and the arbitration committee has put together a very large slate of interesting programmes.
Ride the recession

Pippa Blakemore shares some advice on capitalising on the opportunities and overcoming the challenges of a financial crisis

The global slowdown gives your law firm the unique opportunity to increase business. The credit crunch gives you the rare opportunity to check, evaluate, streamline and repair the four key pillars of your business: (i) the robustness of your strategy in the face of current pressures; (ii) the effectiveness of the services that the firm provides to its clients, referrers and intermediaries; (iii) the robustness of your supporting systems; and (iv) the appropriateness of the structures that support the other three pillars.

While many of your competitors may be retreating into themselves, distracted by internal discussions on survival, this is the time for you to look outwards rather than inwards and actively seek ways to improve your services to your current clients and referrers, to develop your contacts and increase and maintain your profile. Thus, when the economic position improves, you are lean, fit, strong and finely tuned to take the greatest advantage of the global upturn.

How robust is your strategy?
Have the current pressures facing your firm blown your strategy to irrelevance? Is your strategy the cause of some of the problems you are facing? Or has it proved to be the stabile point of reference, keeping the firm moving steadily forward while maintaining fee income and profitability on these choppy economic seas? Analyse what your strategy should have incorporated and didn’t, what it did incorporate that proved unhelpful and what it included that is now proving valuable. Apply the results of this analysis to your revised strategy.

Ensure that your future strategy incorporates comprehensive risk management, anticipating as many threats as possible, with plans on preventing these, minimising their impact or overcoming the consequences. Incorporate comprehensive diversification so that the firm is not over-dependent on a particular region of the world, country, economy, sector or practice area.

Your strategy should also incorporate scope for taking advantage of the opportunities as well as the planned. All unexpected opportunities should be objectively evaluated against a pre-agreed set of criteria to ensure that they fit with the general direction of the firm but not so strictly that such judgement stifles entrepreneurship.

On the other hand, you may not have had a formally articulated strategy at all. Or, if you did, like 75% of strategies was not fully implemented. Now is a good time to evaluate whether you could have done better with or without one. Measure the profitability of each of your clients, sectors, industries and countries and the associated costs of maintenance and winning new business.

Do your clients see that you deliver?
Many of your competitors will be retracting and trying to cut corners on the services they give to their clients. This reduction in service comes at a time when your clients feel most vulnerable, when they need the greatest support from the firm without being able to give in return. If you demonstrate that you are on your clients’ side in the bad times, they will remember this with gratitude when the good times come, as they surely will. This applies to individuals who may have been made redundant. Keep in touch — they may become the entrepreneurial successors of the future.

Ensure that you have well-structured client teams, with a well-publicised client relationship partner, a deputy and a well-structured, supportive team. Make sure that everybody in the team understands their role, responsibilities and the expectations of the client.

Make as many opportunities as possible to review with your clients what they want from you, even more so than if things were going well. Clarify their expectations and whether these expectations have changed because of economic pressures on them. Accept their offers to meet and find out what is happening in their business, having carried out your own pre-meeting research beforehand. Ask for meaningful, systematic and structured feedback on your past performance. Demonstrate to the client that you genuinely want to hear his views. Act on what you have heard and, by changes in your behaviour, show that you have implemented the client’s requests, within reason. It is also important to go back to the client at an agreed time to check that his expectations are being met. The current decrease in work volume, and the increase of time that you may have as a consequence, is a unique opportunity to demonstrate to your clients how important they are to you and to strengthen the relationship at this time of mutual hardship.

Enhance the perception of your service by offering ways in which you can help. Research and keep yourself up to date with what is happening in the clients’ organisations, industries, jurisdictions and political and social spheres including, for example, the impact of the current economic maelstrom and its effect on exchange rates. Monitor tax changes, regime changes and any legislative procedures. Think of some innovative and imaginative ways in which you can make the client’s life easier and improve their profitability and performance. Even if these are inappropriate, they indicate your desire to help and that you are constantly thinking of your client.

Be enthusiastic about your firm and yourself. You need to be interested in your own firm; what it does, how, where and for whom. Clients are constantly surprised about what law firms do and will very often say to lawyers who mention something casually in a conversation, “I didn’t know you did that.” They are often surprised that you have not offered to help in this area before. Therefore, now is an opportunity to talk to the client about your successes. Clients want to be associated with a successful firm — be proud and enthusiastic about what you have achieved. Demonstrate that you are the right firm to be supporting your clients in times of difficulty and that you are fully poised for the next phase of the relationship.

Relish challenges on fees as an opportunity to demonstrate your value. General counsel will be under pressure to cut costs. Clients are increasingly asking for a reduction in fees and lower rates. Do not immediately say yes to these requests, because by doing so you will undermine the fee rates you have been charging and hence the client’s trust in you. A client’s priority is the value you give them in getting the job done so that they can achieve their commercial objectives. Put the demonstration of value in the language and terminology of each individual organisation so that in-house counsel can explain to the chairman, CEO or finance director in his words rather than using legalities.

If discussions become fee negotiations on rates, try to adhere to the basic negotiation principle, which is that you don’t give away one thing for nothing, such as an immediate discount on rates. Try to give away something that may be of less monetary value to you but that is greatly appreciated by the client. Constantly look for ways to work with your clients to help them reduce their costs and increase your value to them. Do not assume that clients recognise this.

Take nothing for granted. Reviewing your services in today’s climate gives you a unique opportunity to stand out from other law firms who are retreating into a defensive position. It gives you the opportunity to get to know your clients better and so strengthen the relationship in times of shared pressure. As your current clients are your greatest source of income and your greatest ambassadors, it is important that these clients continue to recognise that you believe in yourselves and in your future. They will be with you in future if you are with them now.

Check your systems
All of your systems should have four clear, well-publicised objectives. First, do your systems develop and strengthen relationships with current clients, intermediaries and referrers? Second, do they increase your firm’s effectiveness in developing new contacts, networking and raising the profile of the firm? Third, do they increase the win rate of pitching for new business? Fourth, do they secure the future of the firm? Take the opportunity to streamline your systems now. The following are the critical ones to check.

Technology
Are you maximising the opportunities offered by technology? Many firms have invested heavily in highly sophisticated technology but have not had the time to use it to the full. Frequently this technology is state of the art, but is only being used at a fraction of its capacity. Now is the time to work out how you can increase the return on your investment in technology.
On the other hand, technology is not an end in itself in systems such as client relationship management (CRM). There is often the feeling that once the system is bought and set up there is nothing more that needs to be done by people because the system will do it for them. So assess realistically how to make the most of your CRM systems, whatever their level of sophistication.

Service standards
Do you have tailor-made service standards and key performance indicators? Many key performance indicators have been reduced to the basics of how long it will take to answer a telephone, how long it will take to answer an email and how long it takes to deliver a piece of advice. Although these are irritants to clients when not met, now is the time to devise some more sophisticated service standards, tailor-made to each client and based on their own key performance indicators. These key performance indicators can be introduced into feedback discussions with clients, or discussions with potential clients, and will demonstrate to the client that you are keen be measured in the same way that they are measured by their clients or customers.

Targets
Do you have systematic identification of your targets? The firm’s criteria for new clients need to be widely publicised and understood to ensure that all efforts are targeted, focussed and effective. Events and seminars, for example, are not just ends in themselves but an important part of bringing in new clients, as well as strengthening relationships with existing clients. A productive event is one in which there is a pre-briefing on each guest, where each person achieves what they want from the event and there is personal and coordinated follow-up so that, for example, one potential client does not receive four follow-up communications.

Events
Do you have a system for delivering imaginative and cost-effective events? There is now a temptation, particularly if people are being made redundant within the firm, to cut down on seminars, events and socialising. Back the trend by investing thought, time and creative brainstorming to hold events that are not extravagant and glittery but small, targeted, personal and imaginative. Clients will feel more comfortable enjoying these, rather than the extravaganzas that they are well aware they will ultimately pay for.

Profile maintenance
Are you systematically maintaining your marketing and profile? Global corporations discovered in the last economic downturn that cutting back was deleterious when the economy started recovering. Law firms can learn from this. Externally, keep issuing confident and meaningful press releases with a good story, encourage lawyers to write articles to be published in the journals that your clients, contacts and referrers read, encourage them to write the book that they always wanted to write and look for different ways to increase profiles in a range of imaginative ways. Internally, keep up morale by systematic and sensitive communication throughout the firm. This means telling people the good news and sometimes ensuring, when things have gone wrong, that everybody knows so that they do not feel caught out when clients and contacts appear to know more about the firm than the employees. This may be difficult, but it will be remembered when times get better.

New business
Are you streamlining your systems to increase your win rate when pitching for new business? Many pitches are done under tight time constraints and are often delivered within minutes of the deadline. This may not impress the potential client, because it appears to demonstrate that your firm will only deliver advice at the last minute. Take this opportunity to review your pitch approach and methodology to create a useful pitch template, systems for standard but tailored CVs, updated deal lists, standard but tailored experience lists and consistent photographs between merged firms, alliance firms, best friends and any group of lawyers who are joining together to produce a unified pitch.

Cross-selling
Are you systematically cross-selling to secure the strength of the firm? While they are not so busy, encourage lawyers to get to know each other, whether they are in adjacent rooms or on the other side of the world. You refer work to those you know, like and trust. Now is a great time to develop and strengthen relationships internally. Encourage this at all levels of qualification as a long-term investment. Encourage the most junior lawyers to cross-sell and network with their colleagues on the same level.

Training and appraisals
Is everybody’s effort targeted through focussed appraisals and appropriate bonuses and rewards? You can focus efforts into the areas you want by having targets incorporated into appraisals. Lawyers should start their business development as soon as they join the firm. This means that when they become partners they are fully skilled and able to take the business forward immediately.

Are you training everybody in soft skills for little direct cost? Resources and skills are available from your clients, who will be pleased to talk to you about their business. Resources are available within the firm. For example, your lawyers could go on secondments to your clients or to your other offices in different jurisdictions. Senior lawyers from other jurisdictions and your office could speak to lawyers and pass on their experience. All of these ideas have few direct costs, except for those of travel.

Billing
Improve billing and payment procedures. Reduce the write-off on bills; increase the speed of payment and reward regular billing and speedy payment. Lawyers are fearful of chasing unpaid invoices, but this demonstrates commerciality to their clients. Work in progress needs to be closely monitored and write-off on bills needs to be reduced as far as possible. These new habits will be good preparation for the economic upturn.

Strengthen your structures
The external structures of law firms can range from merged firms, alliances, best friends, associations and random contacts. These structures are now being severely challenged to prove that they are, in practice, appropriate for the firms and the clients they serve. Analyse their strengths and durability through the remainder of the downturn and their potential for the future. Merged firms, alliances and best friends need to confirm their commitment to their particular structure and strengthen their foundations by improved mutual understanding and communication; they need to clarify their messages and champion their unique selling points in terms of benefits and added value to the client.

Internal structures can range from traditional practice area based on industry, sector or client-focused groups to a hybrid. It is often difficult for lawyers to think outside their practice area and towards a client-centred focus. Now is the time to change the culture to a client-focused one by changing the structures and ensuring that they work now, at a time of great stress.

By checking the four Ss (strategy, services, systems and structures) of your firm, you will increase the productivity of the extra time you have and increase your long-term investment of that time. When the economic situation begins to improve, you will have strengthened and developed the relationships you have with current clients. That is, you will have focussed your networking and increased your profile. This will make you stand out from your competitors, be respected by those in the market and ensure the future of your firm.

“Keep the firm moving steadily forward while maintaining fee income and profitability on these choppy economic seas”
(imagination + motivation)\(^n\) perspiration \(\frac{\text{regulation}}{}\) = innovation

**We are Morrison & Foerster** — a global law firm of exceptional credentials.

We have built our reputation on the artful balance of practical solutions and innovative ideas. We help clients achieve their goals in a rapidly changing world.

They value our dexterity and experience in crafting approaches that succeed.

Technology or energy. Financial transactions or litigation. Europe, Asia or the US. We see opportunity wherever it exists. This is what lets us go beyond the conventional.

For more information contact our Chair, Keith Wetmore, kwetmore@mofo.com or visit www.mofo.com.
African lawyers must do better

We as African lawyers and associations have not done enough to promote human rights, democracy and the rule of law in Africa.”

That was the damning message from Donald Deya (pictured) of the East Africa Law Society at the afternoon session of the African Forum: Promoting the Rule of Law in Africa, the Role of Regional Institutions.

Noting that a disappointing 46 delegates of the large African contingent at this year’s IBA conference was present to hear the panel, Deya said: “I request all of us to commit here and now to actively campaign for the ratification of the protocol establishing the African Court, to campaign for the ratification of Article 34, and to file cases on human rights and rule of law in our jurisdictions.”

The African Court of Human and Peoples’ Rights was established in January 2004 when it was ratified by 15 African countries. Although 24 of Africa’s 53 states have signed up, only two have ratified Article 34. This clause requires a national declaration that the supranational Court has the jurisdiction to rule on all matters taken to it.

This, according to Deya, is simply not good enough. Cynicism must be put aside and African legal professionals intervene to promote the African Court and thereby support the rule of law throughout the continent.

Lord Goldsmith QC, UK ex-attorney general and current practitioner at Debevoise & Plimpton, agreed. Echoing Deya’s call to arms, Goldsmith asked: “Are we as members of the IBA just passive bystanders watching what happens, or do we have the capacity to make change?”

Goldsmith went on to explain the importance of the rule of law (a set of predictable regulations that apply to everyone) in enshrining the dignity of people, and creating the conditions under which wealth can be created. For example, the UK House of Lords has just rejected the government’s attempts to enable police to hold suspected terrorists for 90 days. This, Goldsmith argued, was neither a timely nor proportionate measure; its rejection shows the rule of law in action.

The ex-attorney general further demonstrated the rule of law in action with an anecdote about an Afghan warlord who was tried for war crimes in a British court. The warlord, when arrested, was working at a kebab shop in Streatham, London.

“A British jury was told about torture on the road from Islamabad to Kabul and served the warlord with a 20-year sentence in a British prison. It’s important to send the message that no one has immunity from their crimes; they will not be able to hide from justice in their own country or in Streatham.”

In an African context, international intervention by NGOs or courts can prove controversial. But as Deya pointed out: “Go ask the women and children of Darfur whether the International Criminal Court should go to Bosnia for warlords first. They want justice as soon as possible and if the ICC can give it, then it should.”

International cooperation with African institutions is key, but so is work between associations within Africa. As another panelist Chief Fassy Yusuf, a Nigerian justice of the peace, summed up: “Transparency, accountability and good governance are essential to the rule of law. And for these, you need to network with other bodies that have a similar mission.”

When experience, resources and local contacts really count.

- a proven track-record in M&A transactions of all sizes since 1994 in Russia
- more than 40 lawyers in Moscow and St. Petersburg
- full service in transactions, including crucial deal structuring support
- full service in conflict management
- project management, legal support for investors, co-ordination of ancillary services

The biggest Nordic law firm in Russia and Ukraine.

Hannes Snellman
Transaction & conflict management
Helsinki • Moscow • St. Petersburg • Kiev • Beijing • Shanghai • www.hannes.snellman.com

Hannes Snellman Attorneys at Law Ltd

www.legalmediagroup.com

IBA Daily News - Wednesday, October 15 2008
**TODAY’S SCHEDULE**

**SESSION**

**Wednesday all day 1000 – 1800**

Information protection: access, protection and use in litigation/ADR privilege; privacy law; cross-border restrictions and damages for misuse

**LOCATION**

El Aguila (24th Floor)

**Wednesday AM 1000 – 1300**

Presentation on the IBA’s Legal Practice Division Task Force on Extraterritorial Jurisdiction

**LOCATION**

Auditorium (Ground Floor)

Anglo-Saxon clauses in civil law corporate sale and purchase agreements: do they work?

**LOCATION**

Liberdador C (1st Floor)

International dispute resolution and enforcement – a comparative analysis of WTO, BIT, ICC and domestic dispute resolution

**LOCATION**

Liberdador B (1st Floor)

Investor-state mediation: is mediation suitable in investor-state disputes?

**LOCATION**

Retiro C (1st Floor)

PPPs in Latin America: what is working and what is not

**LOCATION**

Martin Fierro I (2nd Floor)

Visit to the Costanera Power Plant

**LOCATION**

Golden Horn (1st Floor)

Insurance on asbestos liabilities

**LOCATION**

Ombú I (2nd Floor)

Discrimination, with particular reference to gender and age, in the legal profession – how this affects lawyers

**LOCATION**

Orquideá (2nd Floor)

Work permit and visa options in Latin America

**LOCATION**

La Pampa (1st Floor)

Acquisition of companies in the insolvency zone

**LOCATION**

Catalinas (1st Floor)

How to structure an international sales contract

**LOCATION**

San Telmo (Ground Floor)

Travel law hotspots around the world

**LOCATION**

Martin Fierro II (2nd Floor)

Slots as a commodity and how they are treated around the world

**LOCATION**

Río de la Plata (2nd Floor)

Liability of freight forwarders

**LOCATION**

Ombú I (2nd Floor)

Implementing the UN Declaration on the Rights of Indigenous Peoples

**LOCATION**

Tierris De Molina A, Meliá Buenos Aires Hotel

Real estate financing in Latin America

**LOCATION**

Tierris De Molina B, Meliá Buenos Aires Hotel

I know we’ll use a foreign trust – recognition and acceptance of foreign trusts

**LOCATION**

Liberdador A (1st Floor)

Preservation of tax attributes and basis stepup in M&A transactions

**LOCATION**

Atalaya (24th Floor)

What Latin American general counsels expect from European lawyers

**LOCATION**

Casos A, Meliá Buenos Aires Hotel

Greenwash or goldrush? What is the role of lawyers in achieving ‘success’ in environmental law matters?

**LOCATION**

Gómez Losada (2nd Floor)

Leadership and the law firm life cycle – the panel

**LOCATION**

Retiro B (1st Floor)

The Pro bono Declaration for the Americas: an initiative to commend and support throughout the Americas

**LOCATION**

Gómez Losada (2nd Floor)

**Wednesday AM 1000 – 1130**

Traditional versus modern ways of practising law

**LOCATION**

Tierris De Molina C, Meliá Buenos Aires Hotel

Working in partnership with government to promote the business of your bar association’s members

**LOCATION**

Tierris De Molina C, Meliá Buenos Aires Hotel

**Wednesday PM 1300 – 1400**

Insolvency, Restructuring and Creditors’ Rights Section (SIRC): Open business meeting

**LOCATION**

Catalinas (1st Floor)

**Wednesday lunch 1300**

Legal Practice Division lunch

**LOCATION**

Fiestas Room, The Marriott Plaza Hotel

**Wednesday PM 1500 – 1700**

Latino America Forum: Open business meeting

**LOCATION**

San Telmo (Ground Floor)

Cartels: latest developments in international cartel enforcement

**LOCATION**

Golden Horn (1st Floor)

Recent developments in M&A (to include use of derivatives in M&A and activities of sovereign funds)

**LOCATION**

Liberdador C (1st Floor)

Hot topics in arbitration

**LOCATION**

Liberdador B (1st Floor)

Collective redress and class action judgments – where, when, why and how global judgments have been enforced

**LOCATION**

Retiro C (1st Floor)

The role of the judge and of the advocate in promoting mediation

**LOCATION**

Liberdador A (1st Floor)

Electronic documentation in construction – project management and dispute resolution

**LOCATION**

Tierris De Molina A, Meliá Buenos Aires Hotel

Integration: what the governments say

**LOCATION**

Tierris De Molina C, Meliá Buenos Aires Hotel

Fronting insurance

**LOCATION**

Tierris De Molina B, Meliá Buenos Aires Hotel

Employment and discrimination law aspects of global recruitment, interviewing, evaluating and hiring employees and issues which must be considered when terminating employees or reducing the workforce due to declining business

**LOCATION**

La Pampa (1st Floor)

When is advertising truly green?

**LOCATION**

Casos A, Meliá Buenos Aires Hotel

Are passengers being treated as self-loading cargo by some airlines – what are passengers’ rights and issues?

**LOCATION**

Ombú I (2nd Floor)

Buenos Aires real estate tour

**LOCATION**

Ombú I (2nd Floor)

Issues arising from transfer pricing adjustments

**LOCATION**

Atalaya (24th Floor)

Acquiring regulated investments in Asia and the Pacific – overcoming the regulatory hurdles and controlling your JV partners

**LOCATION**

Catalinas (1st Floor)

Risking it all: how should a company respond to allegations that senior management have been involved in bribery and corruption?

**LOCATION**

Martín Fierro I (2nd Floor)

Acquiring regulated investments in Asia and the Pacific – overcoming the regulatory hurdles and controlling your JV partners

**LOCATION**

Poncho (2nd Floor)

Buenos Aires real estate tour

**LOCATION**

Ombú II (2nd Floor)

**Wednesday PM 1700 – 1800**

Plagiarism: a threat to global law firm integrity

**LOCATION**

San Telmo (Ground Floor)

**Wednesday PM evening**

Arbitration Committee reception and dinner

**LOCATION**

Tattersall

Consumer Litigation Committee dinner

**LOCATION**

La Cabana

Insolvency, Restructuring and Creditors’ Rights Section (SIRC) reception and dinner

**LOCATION**

Yacht Club, Puerto Madero

**Wednesday PM 2000**

Aviation Law Committee dinner

**LOCATION**

Sottovoce

Intellectual Property and Entertainment Law Committee dinner

**LOCATION**

Casa Cruz

Trade and Customs Law Committee dinner

**LOCATION**

La Brigada

**Wednesday PM 2100**

International Construction Projects Committee dinner

**LOCATION**

Cabaña Las Alíbas

International Sales, Franchising and Product Law Section dinner

**LOCATION**

Río Alba
A different take on bank failures

History repeated itself on Tuesday afternoon as delegates from Chile and Argentina compared notes with those from Chile on the restructuring methods that solved their various banking crises, in the nineties and now.

Roberto Silva of Marval O’Farrell & Mairal in Argentina and Cristobal Eyzaguirre of Claro & Cia in Chile told the packed room, which had attendees standing along the back wall, about successful government intervention in financial systems. “I’m not saying this will work for every nation but it did work for us,” Silva said.

Argentina’s method included reorganising assets into good and bad loans, then forming a so-called white knight to take on all of the good assets, placing them in an untouchable trust that the white knight could not access. After that the government allowed bad creditors unassociated with the white knight to fail, with a lot of shareholders receiving little value on stocks. “There is not enough gold to pay everyone,” Silva said. “You have to make a tough decision about who to pay. Will it be creditors, share holders or depositors? In the end we chose to save depositors.”

In Chile, Eyzaguirre said that more than 20% of the Chilean financial system was subjected to trial such a service, but an injunction was successfully obtained by competitors. Argentina, like many countries in the world, has a regulatory system that is holding back mobile television. This is because there is no certainty over whether it should be regulated as telecommunications or as broadcast.

“At this early stage of development, there is uncertainty, not only over commerciality, but also over regulation,” said Santiago Pardo Fajardo of Claro at an often lively discussion on mobile television yesterday. "The reality is that the regulatory regime is not ready to deal with current technologies." Earlier in the session, Clara Luz Alvarez of Buffete Quijano described a similar situation in Mexico. If mobile television is classed as telecommunication, then operating companies can have up to 49% foreign ownership. But if it is deemed to be broadcast, there can be no foreign ownership at all and there are also strict rules on diversity and public interest.

Fajardo revealed that the world cup injunction in Argentina still stands today. “There must be a new multimedia approach to regulation that deals with infrastructure and content at the same time,” he said. “It needs to overcome the dichotomy of broadcast versus telecommunications and create legal certainty that may lead to investment.”

The first part of the session focused on the restructuring of last year’s ABN Amro sale, which was probably the last large bank-market bank deal. The controversy on the deal was the board members’ lack of shareholder consideration, as the deal may have had positive implications on the market but it undermined the value of shares.

Richard Hall of Cravath Swaine & Moore laid out a brilliant presentation on the inner workings of the deal, while discussing the pros and cons of the board’s actions.

The Chilean and Argentine representatives also described the results of the bank’s sale in their countries. In Chile ABN Amro branches were forced to become subsidiaries and transfer all liabilities and assets over to a local office.

TV in your pocket

The reality is that the regulatory regime is not ready to deal with current technologies.”

Two years ago, Argentines packed into bars all over the country to watch the national team compete in the 2006 football world cup. Many of them would have had a poor view of the screen. How much easier would it have been for them to watch Esteban Cambiaso finish off arguably the finest team goal of the year on their mobile phones?

One telecommunications operator wanted to trial such a service, but an injunction was successfully obtained by competitors. Argentina, like many countries in the world, has a regulatory system that is holding back mobile television. This is because there is no certainty over whether it should be regulated as telecommunications or as broadcast.

“At this early stage of development, there is uncertainty, not only over commerciality, but also over regulation,” said Santiago Pardo Fajardo of Claro at an often lively discussion on mobile television yesterday. "The reality is that the regulatory regime is not ready to deal with current technologies.”

Earlier in the session, Clara Luz Alvarez of Buffete Quijano described a similar situation in Mexico. If mobile television is classed as a telecommunication, then operating companies can have up to 49% foreign ownership. But if it is deemed to be broadcast, there can be no foreign ownership at all and there are also strict rules on diversity and public interest.

Fajardo revealed that the world cup injunction in Argentina still stands today. “There must be a new multimedia approach to regulation that deals with infrastructure and content at the same time,” he said. “It needs to overcome the dichotomy of broadcast versus telecommunications and create legal certainty that may lead to investment.”

It also needs to be flexible, technology neutral and provider neutral. Finally, it needs to remove obstacles to innovation.”

But a comment revealed that this still may not be enough. Samuli Simojoki of Borenius & Kemppinen said: “In Finland, the network is there and the regulation has been amended. But the business model to make an operation successful is too difficult.”

Indeed, if Argentina wants a successful model, it may want to look closer to home. In Brazil, network channels are broadcast to mobile devices for free and the content is identical. This inhibits the sort of interactive viewing that many hope mobile television would create.
worldwide network local expertise

20,000 lawyers
160 firms
100 countries
560 offices

When you face legal issues halfway around the world, who is there to trust for knowledge and on-the-ground experience?

Lex Mundi, the world’s leading association of independent law firms, has gathered 160 premier firms in more than 100 countries. With a Lex Mundi member firm on your side, you can be confident that you will receive the best possible legal expertise with superior service and local market knowledge, anywhere, anytime. Through their knowledge of their local markets, Lex Mundi member firm lawyers can unite you with a deep understanding of their jurisdiction’s social and political systems and can expertly steer you through the local legal terrain.

Choose the Mark of Excellence. Choose a Lex Mundi Member Firm.

LEX MUNDI
THE WORLD’S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS