Climbing the leadership ladder

Becoming a leader in the legal profession requires being both competitive and friendly, advised speakers in yesterday's session on leadership in the profession. Lawyers who set goals and understand the business aspects of their firm tend to succeed regardless of gender.

Women still lag behind their male counterparts in terms of lateral hires, pay, and representation on boards and committees. Addressing internal and unconscious bias can help mitigate these gaps, as can addressing the business goals of a firm and how they are best achieved.

There is a special place in hell for women who don’t help other women

Staying competitive yet friendly with colleagues is key to both getting ahead and building a network. Women particularly should remember not to take competition personally;

• Firms should focus on good business strategies which require good talent management and a focus on promoting diversity;

• Women need to help other women. Promotions within the legal profession are no longer a zero sum game.

Key takeaways

• Being competitive yet friendly with colleagues is key to both getting ahead and building a network. Women particularly should remember not to take competition personally;

• Senior partners in term of lateral hires, pay, and representation on boards and committees.

• Women need to help other women. Promotions within the legal profession are no longer a zero sum game.

There is a special place in hell for women who don’t help other women.

Leveraging social contacts is another important way to promote oneself and find new opportunities. It is often something with which women struggle. Instead, their relationships are typically divided between work relationships and friendships.

This is particularly notable in the competitive law firm environment, where acts of professional ambition can sometimes be construed as personal attacks.

“Men figured out how to be competitive and friends,” she said. “They help each other and they compete with each other. We need to be better at that.”

Learning to adopt this approach as an adult may not be easy but it is necessary to push ahead to positions of authority.

Panelist Lise Lotte Hjerrild of Horton in Denmark said women were not brought up to be competitive and friends. “That’s simply something we have to learn,” she said. “You have to realise you’re in a competition and you have to realise that even though you may be friends with a colleague, it’s not personal if you’re tackled.”

This balance between friendship and competitiveness leads women to avoid

Continued on page 11
Resolving disputes

Although similar in many ways, Hong Kong courts differ from their English counterparts in several key respects. These differences can play a crucial role in determining the division of assets during a divorce.

One of Wednesday’s panels convened a group of senior lawyers to give a cross-border view of the legal pitfalls that may affect property rights as people move between, or have property in, different jurisdictions.

Speakers gave advice on a complex scenario involving the breakdown of a marriage between a couple from different countries, who both moved between jurisdictions, and owned assets around the world.

“If I was a wealthy person with a rocky marriage, Hong Kong is one of the last places I would want to go to,” said Marcus Dearle, of Withers in Hong Kong. “It is one of the most generous jurisdictions in the world.”

This generosity is the result of a recent case that brought in the 50/50 division of assets as set out in the English case of White.

Dearle noted that although the wife may not spend much time in Hong Kong, the court in Hong Kong would nevertheless take jurisdiction in three key areas. Residence is one of these areas. The second is domicile. Importantly, domicile is meant in the English sense: domicile of origin.

“You could be domiciled in Hong Kong but not set foot in Hong Kong for many years,” noted Dearle.

He added that one difference between England and Hong Kong is that the latter has an extra ground: substantial connection. This can be a very useful way of getting the Hong Kong courts to take jurisdiction, noted Dearle.

“Making sure you get your forum shopping right is very important.” Another factor to bear in mind is that Hong Kong will only apply Hong Kong law. This becomes key when trusts are involved.

“The English court will consider that it can vary the terms of foreign trusts and can make orders against a foreign property,” said Dearle. “So a property outside Hong Kong is fair game for the Hong Kong court.”

The pitfalls of mobile divorce

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Protecting your online photo rights

The rise of the internet has given technology corporations – particularly those running large social media networks – enormous power over photography and photographers. And they’re making life more difficult for rightsholders.

Wednesday morning’s session stressed that protecting photos as intellectual property drastically changed as the digital age brought art to the masses.

Ania Skurczynska, EMEAGeneral counsel for Corbis Images noted that the two rules of digital distribution of the internet: “content is king” and “content is free.”

But the abundance of content means that it must be free, and that websites with more content draw more revenue.

Metadata stripping

Digital photographs are typically identified with metadata written into a digital photo file which includes information about who owns the image, and data that makes the photo searchable on the internet.

But the value of an image depends very much on the metadata embedded in it, but many social media networks strip metadata out of uploaded photographs. According to a test conducted in March 2013 by the International Press Telecommunications Council, social media networks Facebook, Twitter and Flickr are among the worst offenders when it comes to stripping off metadata.

These companies argue that they are serving the customer experience because those files clog up image downloads. But stripping off metadata means that images are much more difficult to identify. It’s unclear whether this will change in practice, and questions remain regarding whether images need to be paid for, how rightsholders should be remunerated, and how images could be policed.

“The questions are not only in law and changes to law but also finding technology that will help us protect the images better,” Skurczynska said.

Orphan works

Stripping of metadata creates the possibility of orphan works, which is defined as subject matter which is protected by copyright or related rights and for which no right holder can be identified or located.

These images cannot be incorporated into contemporary works – or even restored – as there is concern that the copyright holder may emerge and sue for infringement.

Anywhere from 10% to 90% of works in certain collections may be orphans, although an audience member from Boston’s Museum of Fine Arts noted that orphan works only comprise one to two percent of its collection.

But as these works disintegrate – an issue with video art and works on film – clearer policies are needed. Curatorial staff are having to make judgment calls because they are lacking further guidance, noted Rina Elster Pantalony, a professor at New York University’s Tisch School of the Arts.

The EU’s orphan works directive requires institutions that wish to use an orphan work to first perform a diligent search in good faith and from appropriate sources, and send records of those searches to the institutions’ national governments so they can be made available on a publicly searchable website. The Canadian Copyright Act 1985 also deals with orphan works with the Copyright Board of Canada as the central regulator.

The UK recently passed a law with provisions related to orphan works in its Enterprise and Regulatory Reform Act 2013. The US Copyright Office also issued a notice of inquiry on October 12, 2012, asking for comments regarding the current state of play for orphan works. Comments were due in March of this year but it is unclear when conclusions will be released as the Copyright Office is closed due to the US government shutdown.

What this means for social media users

But the stripping of metadata by social media sites does not mean that photographs uploaded on their platforms are orphan works, or that they can be used without compensation.

Earlier this year Agence France Presse (AFP) v Morel (2013) became one of the first cases to test how copyright law would apply to images that were made public on social media. Ultimately, District Judge Alison Nathan ruled that AFP and the Washington Post had infringed the right holder’s copyrights.

Towards the end of the panel, an attendee asked the panel whether they think it’s possible to have a class-action suit against social networks for denying individuals of their rights by stripping metadata from their art works without being properly informed.

Victoroff noted that when suing for infringement on the internet, he looks for removal of metadata and other similar information for enhanced damages. Further, he said, in July of this year Facebook, Instagram and Flickr are now able to sub-license user photos without compensation – it’s been added in their terms of use.

“This is systemised pillaging,” responded a delegate from the floor.

Barbara Hoffman of the Hofman Law Firm believed that someone could potentially mount a class action suit, noting the verdict of AFP v Morel. In addition to Twitter’s terms and conditions, she said the Digital Millennium Copyright Act requires knowledge of metadata removal, and that a body of law was developing around what constitutes knowledge. However with respect to the copyright regime of strict liability, it can be argued that automated systems are quite something different.

But there could be a case for the removal of metadata, which would be a good tool for negotiating settlements.

Questions remain regarding how rightsholders should be remunerated

Wed, 10 Oct 2013 10:00:53 -0400

Tonight’s ‘Law Rocks!’ concert

Boston will tonight play host to the IBA’s latest ‘Law Rocks!’ concert, which gives the global legal community the opportunity to showcase their musical talents.

Now in its fifth year, ‘Law Rocks!’ is a series of live ‘battle of the bands’ style rock concerts in which bands comprised of lawyers and barristers battle it out on stage for charity.

The Boston concert comes after the success of shows in London, Los Angeles, Chicago and San Francisco, and promises to be a highlight of this year’s IBA Annual Conference social schedule.

The net proceeds from tonight’s event will be split equal-
Celebrating the rule of law

Nearly 800 years after the Magna Carta was drafted its legacy for holding all equal under the law including kings, remains. The Bill of Rights, the bedrock of the US constitution, springs from that idea. Across the world populists' movements have the values of the Magna Carta at their heart. Equally the world has seen elected officials using their victories in the polls as license to behave and push through policies they see fit without regard for the other aspects of a functioning democracy.

Today in the US Supreme Court Associate Justice Stephen Breyer gives his keynote speech on Magna Carta and Rule of Law; he will address not only what the Magna Carta's legacy has been but how it might persist in the future.

Justice Breyer has made no secret of his respect for the Magna Carta and its legacy. He has referenced it in arguments at the court and held up its values over a lifetime in the legal profession.

In the near millennium since a group of English barons rose up in protest to royal exploitations of power, the world has changed dramatically. According to the Economist Intelligence Unit in 2012 there were 79 democracies globally, but they characterise only 25 as fully functioning. It is still, however, a marked increase from their non-existence in 1215, when the Magna Carta was written.

Holding everyone equally to account under the law still remains no easy feat. In many corners of the world, inequality and authoritarianism have a strong legacy of their own. Even in full democracies issues of transparency, new technology and the effect of globalisation have led to disparities under the law.

In his judicial point of view Justice Breyer takes a practical approach, supporting the modern day interpretation of values instilled in democratic societies from documents like the Magna Carta.

A Judges point of view
Since his nomination to the Court in 1994 by President Clinton, Breyer has pursued the idea that interpretations of the law cannot be based on simply restating the constitution.

In his 2010 book, Making Our Democracy Work: A Judge's View, the California native wrote: "The Court should consider the Constitution as containing unwaivering values that must be applied flexibly to ever changing circumstances."

In an interview about that book on FoxNews Sunday he told Chris Wallace: "The difficult job in open cases where there is no clear answer is to take those values in [the Constitution], which all Americans hold, which do not change and to apply them to a world that is ever changing."

In a September 2010 interview with NPR’s Terry Gross he said that much in the Constitution is written in a very general way. "Words like ‘freedom of speech’ do not define themselves," he said. "Nor does the word ‘liberty.’ And what they intended with these very basic values, in a document, [was that they] would last for hundreds of years. So they had values that changed but little, while the application of those values changes as circumstances change."

The law as unbiased, neutral and equal
The Magna Carta for its part has held these core values for nearly eight centuries, influencing the drafting of many modern constitutions and protections of civil liberties. Though only two of the initial provisions remain, the Great Charter still holds resonance across the English speaking world.

During oral arguments in the 2004 Hamdi vs. Rumsfeld case, in which the court ruled that the government did have a right to hold enemy combatants, but that detained US citizens have the right to due process before an impartial authority, Justice Breyer made direct reference to it.

"The words in the Constitution are due process of law," he said. "And also the words in the Magna Carta were according to law. And whatever form of words in any of those documents there are, it seemed to refer to one basic idea that's minimum. That a person who contests something of importance is entitled to a neutral decision maker and an opportunity to present proofs and arguments."

The clause, “No free man shall be taken or imprisoned...except by lawful judgment of his peers or by the law of the land,” clearly had influence on the drafters of the US constitution and on Justice Breyer’s argument.

Justice Breyer has been outspoken in defense of this principle. He addressed the issues at the 1998 American Bar Association Symposium in Philadelphia. A year later, speaking with fellow Supreme Court Justice, and supporter of judicial neutrality, Anthony Kennedy, he explained why he held the view and its impact.

"Judges are appointed often through the political process. At least there’s a political input, but when you put on the robe, at that point the politics is over,” he said on PBS’s Frontline. "And, at that point, a judge must think through each case with the total neutrality that you mentioned... All anyone has to ask himself is, suppose I were on trial? Suppose somebody accused me. Would I want to be judged by whether or not I was popular? Wouldn’t I want to be judged on what was true as opposed to what might be popular? Think of Socrates: 500 Athenians voted to condemn him. We have a different system. And our system is based upon what you described as neutrality and independence."

Understanding the values ingrained in democracies by Magna Carta cannot only help improve the creation of modern democracies, but the functioning of existing ones. As Justice Breyer explained on C-Span’s Q&A programme: "The document I work with everyday the constitution, it doesn’t tell us how to run the country. It tells us we’ll have a process called the democratic process, that will help us run the country but it won’t work if the average citizen doesn’t know how it works."
Rising to the top

The face of top talent in the emerging economies is set to be female.

According to Ernst and Young, 65 percent of companies worldwide have problems sourcing critical-skill talent. As the problem is particularly acute in emerging markets, it is anticipated that companies in such markets will become increasingly accepting of a more diverse array of employees than historically considered in the hiring process.

Women in developing economies are especially expected to benefit from this, as an increasingly well-educated source of talent. A study by Sylvia Ann Hewlett and Ripa Rashid, co-authors of Winning the War for Talent in the Emerging Economies, found 55 percent of college degrees in emerging markets go to women.

What’s more, the level of ambition and aspiration among the female population in developing economies is growing exponentially. In the United Arab Emirates (UAE), 92 percent of women surveyed considered themselves to be very ambitious. In the US, the figure was just 36 percent.

Combining a career with family life can also be easier for women in emerging markets, given the more ready availability of hands-on help from extended family, relatively inexpensive domestic help and an increasingly wide range of day-care options.

Challenges

Even so, women in emerging markets continue to face a number of hurdles.

According to the Organisation for Economic Co-operation and Development (OECD), the underlying forces of inequality in emerging markets differ to those in OECD countries and include widespread regional divides (for example, urban-rural gaps), gaps in access to education, and barriers to employment and career progression.

Cultural barriers also play a part. In some jurisdictions, there are widely held cross-cultural beliefs that the role of women is to provide reproductive services and not to play a part in the formal economy.

Caring for the elderly also places a huge burden on women in emerging markets. In contrast to Western countries, subcontracting out care or placing parents in assisted living is cloaked in stigma.

Gender biases are a further important factor. Pressure to over-perform stems from preconceptions about women’s commitment or competence. Moreover, conventional methods of impressing in the workplace, such as through working longer hours or volunteering for business trips, are not always possible for female members of the workforce.

Employers in the emerging markets can attract and retain top female talent by creating and promoting programs that directly answer their needs. Governments, universities and also law firms play an important role here by helping women gain access to education, to universities and to opportunities as trainees.

Network. The scheme aims to create an active and supportive network among their female managers in China.

While at Citigroup, a Latin American Banker Mobility Program creates short-term global cross-country assignments for women within the organisation that display high potential. The program enables women to gain the kind of international experience that would better enable them to move up the career ladder.

If such schemes are successful, and indeed if they prompt copycat programmes in other organisations, the benefits could be vast. After all, women can offer opportunities to emerging markets too. When educated women earn and control income a number of good results follow. Investing in women spreads economic opportunities, heightens productivity and can help a company to increase its sales.

It also has more far-reaching implications, as women are more likely to invest their income in their families and the wider community.
Evolutions about the scope of Internet surveillance under the US's National Security Agency's (NSA) PRISM programme sparked international concerns about government access to information transmitted over the internet and use of that information.

Internet regulation is an important issue for governments, corporates and users looking to shape the evolution of this relatively new technology.

But getting it wrong may have severe economic implications. For example, Forrester Research estimates that PRISM’s impact may cause the US cloud computing industry to lose as much as $180 billion by 2016 – a 25% hit to overall information technology (IT) service provider revenue.

Today’s session will consider the challenges of internet regulation, how regulation may change the internet commercial model and what new technology means for regulation.

National or international?

During the 2012 World Conference of International Telecommunications (WCIT) in Dubai, market participants saw a battle between developed nations and the so-called emerging economies on the general regulation of the internet, says panel co-chair Fabrizio Cugia di Sant’Orsola.

Getting it wrong may have severe economic implications

Debates focused on the review of International Telecommunication Union (ITU) general policies as well as governments’ control over their national interest and scrutiny of content transmitted by operators over the internet.

However there is no consensus on whether internet regulation should evolve towards national internet control or an international model. It is also unclear whether internet companies, or so-called ‘over the tops’, will be able to participate in these discussions.

But these non-traditional players, which include content producers, are increasingly affected by internet controls. To that end, both content and transmission providers should be regulated.

“It is clear to all that the traditional dichotomy of transmission and content providers is outdated,” Sant’Orsola adds.

“But what is still unclear is which general internet regulation should apply, and to which extent regulation of specific issues, such as data protection, should be pushed one way or another.”

Data protection

The balance between content providers and transmitters is more important as user-friendly applications develop. Panel co-chair Daniela De Pasquale says that there are issues of consent but also issues of awareness of what people can access through applications.

“When users give consent, they may not realise that they’re actually allowing access to a lot of personal data and materials,” she adds.

Users have focused on data privacy concerns since the discovery of PRISM. But De Pasquale notes that when the committees started considering this topic and melding the information technology perspective with that of communications and network operations, those issues hadn’t even started.

A fact that hasn’t received much attention is the fact that cloud services, social networks, application providers and the ‘over the top’ companies have such enormous access to data, she adds. She predicts that the next battle will focus on issues that arise from where data should be kept and how it is stored, with a view of supervising both access and control.

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**Thursday, 10th October 2013**

**A conversation with... Professor John Ruggie**

**PLACE/TIME**
Thursday 10th October, 1.15pm-2pm, Room 201, Second level

**Key takeways**
- Regulating African traditional and indigenous medicine has the potential to raise healthcare standards throughout the region.
- In today’s session, IBA Healthcare and Life Sciences Law Committee co-chair Werkmans Attorneys’ Neil Kirby will argue that the focus should be on the creation of an appropriate system that is able to account for the unique features of traditional medicine.
- The session will also outline how the regulation of African traditional and indigenous medicine could bring with it a myriad of business opportunities.
- Regulatory bodies, lawyers could play a key role in introducing measures to ensure companies obtain the right to use resources and redistribute profits back into local communities.

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**Why just business is good business**

**SESSION NAME**
Off to the witch doctor! Regulating African traditional and indigenous medicine

**PLACE/TIME**
Thursday 10th October, 9.30am-12.30pm Room 207, Second level

**Professor John Ruggie is a political scientist, policy-maker and author of the UN Guiding Principles on Business and Human Rights.**

**In today’s session he will reveal how he resolved the UN stalem ate over the responsibilities of businesses in relation to human rights.**

**He will also discuss the consequential role of lawyers in the drafting process and why he believes companies should care about human rights.**

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**Af rica’s future**

Is it difficult to imagine how African traditional and indigenous medicine can be regulated. But behind its mystique lies a plethora of opportunities, which regulation could help bring to the fore.

Traditional medicine has been used in Africa for over ten thousand years, for a range of preventative, curative as well as rehabilitative purposes. Its practitioners have acquired their knowledge and skills through observation, spiritual revelation, personal experience, training and direct information from their predecessors.

Western companies have also developed powerful medicines from Africa’s natural resources, for example Madagascan periwinkle has been used to treat leukemia and African plum tree can help in the treatment of benign prostatic hypertrophy.

Regulating African traditional and indigenous medicine has the potential to raise healthcare standards throughout the region. In this morning’s session on regulating African medicine, the session co-chair and the IBA’s Healthcare and Life Sciences Law Committee co-chair Werkmans Attorneys’ Neil Kirby will argue that the focus should be on the creation of an appropriate system that is able to account for the unique features of traditional medicine.

“This is a must-attend session through which significant global policies shall no doubt evolve to advance and provide much-needed directions and guidelines on this all-important theme,” Oluyede adds.

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**SESSION NAME**
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- He will also discuss the consequential role of lawyers in the drafting process and why he believes companies should care about human rights.
Recent developments in Greece and Argentina, as well as downgrades in the sovereign credit ratings of countries such as Italy and France, are creating new realities in the world of sovereign debt.

A panel today will address the lessons to be learned from holdout litigation strategies, attachment actions, and the use of injunctions. It will also discuss the greater systemic risks that sovereign debt restructurings in the Eurozone involve, and the response of the International Monetary Fund and the market to these developments.

Central to the problems experienced by bondholders on both sides of the Atlantic is that countries cannot be forced to repay their debts; they can default on their obligations with almost total impunity.

A key lesson from the European experience has been the importance of collective action clauses (CACs) as a way to neutralise the bargaining power of potential holdouts. “Sovereigns don’t have bankruptcy proceedings, so if a country needs to restructure its debt, everyone must agree to the restructuring plan,” says Argentina-based Cecilia Mairal, a panellist and partner at Marval, O’Farrell & Mairal. “Without a CAC, holdout creditors have enormous power.”

Don’t cry for me Argentina

Those creditors that don’t exchange their old bonds for new bonds still have a right to collect the full amount, a notion that has prompted protracted litigation between Argentina and its holdout bondholders. In 2001, in the face of a widening budget deficit and a persistently shrinking economy, Argentina defaulted on its debt obligations. In 2005, South America’s second-biggest economy offered to exchange the defaulted bonds for new ones, subjecting creditors to a 67 percent haircut on their original bonds. While the majority accepted the deal, the hold-outs went to court.

The latest twist in the saga for holders of Argentina’s repudiated bonds was a recent US district court decision following a challenge of Argentina’s debt restructuring in New York.

In the controversial ruling, Judge Thomas Griesa interpreted the pari passu clause of Argentina’s contracts with the bondholders as meaning that, whenever Argentina pays the restructured bondholders, it must pay the holdouts at the same time and in the same proportion.

Judge Griesa also issued an injunction preventing any intermediary institutions from assisting Argentina in violating that clause. The judge clarified that the injunction is intended to apply to the banks, which would prevent any US institution from acting as an intermediary if Argentina attempted to pay its restructured bondholders without also paying the holdouts.

“Debate has been raging also around whether Judge Griesa’s interpretation threatens New York’s status as a powerful financial centre for international debt,” says Mairal. “Some argue that sovereigns will choose another governing law or jurisdiction for their bonds as a result of this decision.”

But many believe that in handing down a pro-creditor decision, Judge Griesa is upholding one of the guiding principles of New York law. “On this reading, what is important is what the sovereign agreed to do in the contract,” says Mairal. “Many believe it will actually strengthen the standing of the New York court system.”

The information contained in this was correct at the time of writing. However, since sovereign debt restructuring is a fast-developing subject, delegates should attend today’s panel for the latest insights.

Sovereign debt: a brave new world

**KALO & ASSOCIATES** established in 1994, is a leading commercial law practice in Albania and Kosova, which advises many Fortune 500 companies in the areas of:

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**SESSION NAME**
The brave new world of sovereign debt

**TIME/PLACE**
Thursday 10th October, 2.30pm-5.30pm.
Room 207, Second level

**Key takeaways**
- Recent developments in Greece and Argentina, as well as downgrades in the sovereign credit ratings of countries such as Italy and France, are creating new realities in the world of sovereign debt.
- Today’s panel will address the lessons to be learned from holdout litigation strategies, attachment actions, and the use of injunctions, as well as the systemic risks that sovereign debt restructurings in the Eurozone involve.
Guess who is the loyal fan of Boston Legal?

(Boston Legal is a well known TV programme about a law firm in Boston)

OUR IBA TEAM FROM THE TOP: SADIQ JAFAR, MANAGING PARTNER DUBAI, RICHARD BRIGGS, EXECUTIVE PARTNER DUBAI, ALAN RODGERS, PARTNER, MICHAEL LUNJEVICH, PARTNER, SAMEER HUDA, PARTNER, ERIK MUTHOW, PARTNER

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FOREIGN DIRECT INVESTMENT (FDI) INTO LATIN AMERICA HIT A RECORD HIGH OF $174,546 BILLION LAST YEAR. BUT THE CASE OF DOING BUSINESS IN SOME SECTORS IS BEING MARRED BY DISCRETIONARY AUTHORITY AND REGULATORY FRAMEWORKS THAT ARE SUITABLE TO LOCAL MARKET REALITIES.

THE TREND OF LATIN AMERICAN PUBLIC POLICIES INSPIRED BY MORE DEVELOPED COUNTRIES IS PROMISING IN THAT IT DEMONSTRATES AN ASPIRATIONAL OUTLOOK AND APPROACH TO REGULATION. BUT IT’S A TRICKY DEVELOPMENT FOR COMPANIES WHICH ARE OPERATIONAL-INTENSIVE, HAVE A LARGE NUMBER OF EMPLOYEES AND LOCATIONS, AND HAVE FREQUENT INTERACTIONS WITH THE LEGAL SYSTEM – RETAIL BEING A GOOD EXAMPLE.

A RELATED, AND PERHAPS BIGGER, PROBLEM CONCERNS PROCEDURAL ISSUES SURROUNDING THE PASSAGE AND ENFORCEMENT OF LAWS AND REGULATIONS.

TO MY MIND THE MOST PERSUASIVE PROBLEM THAT WE SEE TODAY IN LATIN AMERICA IS THE DISCRETIONARY USE OF AUTHORITY, ” SAID PANELIST AND WALMART VP AND GENERAL COUNSEL FOR LATIN AMERICA, GONZALO SMITH.

THE DIGITALISATION OF SOCIETY AND CONSTANT INFORMATION FLOW HAS HELPED SHAPE LOCAL EXPECTATIONS AND ENCOURAGED THE ADOPTION OF FIRST WORLD STANDARDS IN DEVELOPING COUNTRIES. THIS, HOWEVER, HAS NOT HELPED FOSTER LOCAL BUSINESS.

THE GAP BETWEEN THESE REGULATORY REQUIREMENTS AND MARKET REALITY CAN, SMITH SUGGESTED, LEAD TO THE SELECTIVE EXECUTION OF LAWS.

“WE SEE THAT MOVING FORWARD AND WE HAVE THE FEELING THAT IT IS ONLY INCREASING IN TIME, PRECISELY BECAUSE WHAT IS EXPECTED OF THE AUTHORITIES IS THAT THEY WILL ACT IN A FIRST WORLD MANNER,” SAID SMITH.

WHAT LAWYERS CAN DO

SMITH URGED LAWYERS TO PLACE GREATER EMPHASIS ON THE UNDERLYING LEGAL ISSUES THAT ARISE ONCE OPERATIONS ARE SET UP, RATHER THAN JUST GETTING A FOOTHOLD IN THE COUNTRY.

“IF I WANT TO KNOW WHAT WE AS LAWYERS CAN DO TO DRIVE THINGS IN WAYS TO HELP BUSINESSES, AND DON’T MEAN JUST FDI BUT ALSO MAKING IT EASIER FOR BUSINESSES TO BE RUN,” SAID SMITH.

THE TYPICAL SET OF LEGAL DOCUMENTS THAT LAW FIRMS PROVIDE TO CLIENTS EMBARKING ON A FOREIGN INVESTMENT FOR EXAMPLE, Focuses ON ENTERING THE COUNTRY, SETTING UP THE BUSINESS, WHAT GUARANTEES YOU NEED, REPATRIATING PROFITS, AND SO ON.

“BUT THEY DON’T NECESSARILY TELL YOU WHAT YOUR LIFE WILL BE LIKE ONCE YOU ARE RUNNING A BUSINESS,” SAID SMITH. “EXPLORING THOSE ISSUES IS SOMETHING I THINK WE AS LAWYERS CAN DO A BETTER JOB AT.”

“I WOULD FEEL MORE INFORMED AS A CLIENT IF I KNEW OF THOSE MORE DETAILED AND Refined ASPECTS,” HE SAID, ADDING THAT THIS MAY BE BECAUSE RETAIL IS SUCH A HIGHLY OPERATIONAL BUSINESS.

SMITH ALSO SUGGESTED THAT WHEN ADVISING ON THE DAY-TO-DAY RUNNING OF A BUSINESS, RATHER THAN THE ACTUAL INVESTMENT, THE PARAMETERS OF PRIMARY ANALYSIS SHOULD BE EXPANDED FROM RULE OF LAW AND STRENGTH OF THE COUNTRY’S INSTITUTIONS, TO ALSO INCLUDE THE COMPLEXITY OF THE LEGAL SYSTEM AND SOPHISTICATION OF THE LEGAL SYSTEM. THESE, HE NOTED, ARE TWO SEPARATE ISSUES, AS VERY COMPLEX SYSTEMS CAN BE UNSOPHISTICATED, AND VICE VERSA.

“WE ARE TRAINED TO THINK OF RULE OF LAW AND STRENGTH OF INSTITUTIONS, BUT WHEN YOU THINK OF IT FROM THE BUSINESS PERSPECTIVE, THE OTHER TWO FACTORS PLAY AN EQUALLY IF NOT MORE IMPORTANT ROLE,” HE SAID.

A COUNTRY MAY HAVE FIRM RULE OF LAW AND STRONG INSTITUTIONS, BUT IF THE SYSTEM IS TOO COMPLEX OR UNSOPHISTICATED, IT WILL BE DIFFICULT TO OPERATE THERE. BY WAY OF EXAMPLE, SMITH ALLUDED TO – BUT DID NOT NAME – ONE VERY LARGE LATIN AMERICAN MARKET WITH QUASI-SOVRANITY OF LAW AND FAIRLY STRONG INSTITUTIONS, BUT AN ENORMOUSLY COMPLEX AND UNSOPHISTICATED LEGAL SYSTEM.

GROWING PREVALENCE OF LOCAL LAW

SMITH’S WAS JUST ONE OF THE INSIGHTFUL MESSAGES FROM THE MULTIFACETED DISCUSSION WHICH ALSO LOOKED AT THE REGION’S GROWING DEAL ACTIVITY AND PREVALENCE OF LOCAL GOVERNING LAW.

ELLIER IN THE SESSION, PANELIST JORGE ALERS, GENERAL COUNSEL OF THE INTER-AMERICAN DEVELOPMENT BANK (IDB) EXPLAINED A SERIES OF DEVELOPMENTS WHICH HAVE LED TO IDB BECOMING MUCH MORE COMFORTABLE WITH THE USE OF LOCAL LAW IN THEIR TRANSACTIONS.

FIFTEEN YEARS AGO, IDB’S DEALS WERE DOCUMENTED IN A WAY THAT WAS CONSISTENT WITH OTHER INTERNATIONAL BANKS. THAT MEANT NEW YORK LAW (EXCEPT FOR SECURITY DOCUMENTS) AND THE USE OF NEW YORK COURTS, AND THE DELEGATION OF SUPERVISION TO INTERNATIONAL EXTERNAL COUNSEL.

BUT LOCAL LAWYERS AND LOCAL LAW HAS BECOME MORE PREVALENT SINCE THE IDB EXPANDED PRODUCT LINES AND BEGUN TO STANDARDISE MARKET-SPECIFIC INSTRUMENTS. DEEPER LOCAL LENDING MARKETS, GROWING RELIABILITY OF LOCAL COURT SYSTEMS AND INCREASED ACCEPTANCE OF ARBITRATION HAVE ALL CONTRIBUTED TO THIS.

SMITH DESCRIBED A NUMBER OF LAWS ACROSS DIFFERENT LATIN AMERICAN COUNTRIES WHICH APPEAR TO BE ILLOGICAL THROUGHOUT OR OTHERWISE INAPPROPRIATE TO LOCAL CONDITIONS. THIS INCLUDED ARGENTINA’S DE FACTO RESTRICTIONS ON INTERNATIONAL TRADE, AND THE METEORIC RISE OF SUB-SAHARAN AFRICA.

THE CHALLENGE NOW IS FOR LAWYERS TO RESPONSE TO THESE PRESSURES, BUT IF WE’RE ONLY SEEING AS RESPONDING TO THESE PRESSURES, WHAT WILL REMAIN OF WHAT’S IMPORTANT TO BE A PROFESSIONAL?” HE ASKED.

“THINGS LIKE INDEPENDENCE, CRAFT, PUBLIC SERVICE, COMMITMENT TO THE RULE OF LAW, HAVE BEEN CRITICAL FOR US TO ATTRACT ALL OF YOU TO THIS PROFESSION AND TO RETAIN OUR STANDARDS,” SAID WILKINS, ADDRESSING THE CROWDED HARVARD LECTURE THEATRE. “THE LOSS OF THESE THREATENS THE BEST OF WHAT WE HAVE.”

IN SEARCHING FOR A WAY TO RESPOND TO THESE PRESSURES, WILKINS CALLED FOR A NEW PARTNERSHIP, MEETING THIS CHALLENGE, HE SAID, REQUIRES COLLABORATION INCLUDING ALL STAKEHOLDERS, FROM ACADEMICS PRODUCING RESEARCH ON PROFESSIONAL PRACTICE, TO PROFESSIONAL ASSOCIATIONS, AND POLICYMAKERS.


WEDNESDAY HIGHLIGHT

SESSION NAME

All the same, but not the same: investing in Latin America

KEY TAKEAWAYS

• FDI INTO THE REGION IS AT A RECORD HIGH, BUT EASE OF DOING BUSINESS IS A PRESSING CONCERN, PARTICULARLY FOR HIGHLY OPERATIONAL SECTORS;

• THE USE OF DISCRETIONARY AUTHORITY, REGARDING PASSAGE AND ENFORCEMENT OF LAWS, AND PUBLIC POLICY INSPIRED BY MORE DEVELOPED MARKETS ARE KEY PROBLEMS;

• GENERAL COUNSEL SAID EXTERNAL LAWYERS ADVISING ON INVESTMENTS COULD HELP BUSINESSES BY PLACING A GREATER EMPHASIS ON THE COMPLEXITY AND SOPHISTICATION OF LOCAL LEGAL SYSTEMS, AND ONGOING OPERATIONAL CONSIDERATIONS.

“IT’S NOT ALL BAD NEWS FOR LAWYERS BECAUSE CLIENTS REALISE THAT PRICE CAN ONLY BE SQUEEZED SO MUCH WITHOUT AFFECTING QUALITY. HOWEVER, THEY ALSO WANT TO THINK ABOUT WHAT QUALITY IS, AND HOW IT IS MEASURED.”

“CLIENTS ARE SAYING WE’RE GOING TO DECIDE WHERE IS THE BOUNDARY BETWEEN WHAT IT IS THAT THE CRAFT PROFESSION DOES AND WHAT IS EXACTLY WHAT THE LAWYER IS SUPPOSED TO DO.”

SEEKING A SOLUTION TO THESE EMERGING CHALLENGES, A LEADING HARVARD LAW PROFESSOR YESTERDAY CALLED FOR A NEW PARTNERSHIP, WHICH WOULD INCLUDE ALL STAKEHOLDERS.

WEDNESDAY HIGHLIGHT

SESSION NAME

BIC SHOWCASE: Preparing for the future – changes in structures, technology and regulation

KEY TAKEAWAYS

• LAWYERS’ TRADITIONAL CONTROL OF INFORMATION AND KNOWLEDGE IS DISAPPEARING, DRIVEN BY THE DEMOCRATICISATION EFFECT OF ADVANCES IN TECHNOLOGY;

• ALTHOUGH CLIENTS REALISE THAT PRICE CAN ONLY BE SQUEEZED SO MUCH WITHOUT AFFECTING QUALITY, THEY WANT TO THINK ABOUT WHAT QUALITY MEANS,” SAID WILKINS.

• “IT’S NOT ALL BAD NEWS FOR LAWYERS BECAUSE CLIENTS REALISE THAT PRICE CAN ONLY BE SQUEEZED SO MUCH WITHOUT AFFECTING QUALITY. HOWEVER, THEY ALSO WANT TO THINK ABOUT WHAT QUALITY IS, AND HOW IT IS MEASURED.”

• “CLIENTS ARE SAYING WE’RE GOING TO DECIDE WHERE IS THE BOUNDARY BETWEEN WHAT IT IS THAT THE CRAFT PROFESSION DOES AND WHAT IS EXACTLY WHAT THE LAWYER IS SUPPOSED TO DO.”

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LOCAL LAWYERS AND LOCAL LAW HAS BECOME MORE PREVALENT

SMITH DESCRIBED A NUMBER OF LAWS ACROSS DIFFERENT LATIN AMERICAN COUNTRIES WHICH APPEAR TO BE ILLOGICAL THROUGHOUT OR OTHERWISE INAPPROPRIATE TO LOCAL CONDITIONS. THIS INCLUDED ARGENTINA’S DE FACTO RESTRICTIONS ON INTERNATIONAL TRADE AND THE METEORIC RISE OF SUB-SAHARAN AFRICA. INDEED, IN 2010 THE INTERNATIONAL MONETARY FUND PROJECTED THAT THE REGION WOULD ACCOUNT FOR 12% OF GLOBAL DOMESTIC PRODUCT BY 2050.
Fighting tax evasion

It's hard to open a newspaper these days without reading something about tax evasion.

With that in mind, the IBA business crime committee and the taxation section have combined this year to examine the underlying elements of tax fraud.

It follows the action taken this year by US authorities in a bid to ensure Swiss banks pay hefty fines for sheltering US tax fugitives. The move was prompted by a 2009 $780 million prosecution agreement with Switzerland’s UBS after the bank admitted to aiding and abetting US tax dodgers.

In today’s session, panelists will explain the US perspective on the UBS investigation and prosecution.

Speakers from Switzerland, Singapore, Hong Kong, Argentina, Mexico, US and the UK will also outline the alternative approaches made in various jurisdictions to cure the widespread issue of tax fraud.

Panelists will explain the US perspective

Chevez Ruiz Zamarripa y Cia’s Alejandro Torres told the IBA Daily News. “The discussion will be aimed at identifying these issues on an international level and will invite audience participation from other jurisdictions wherever possible.”

Law firm leadership

Continued from page 1 investing into relationship capital. Alternatively, men, who are typically better positioned to help each other move up, are often at ease leveraging these relationships for personal benefit.

Overcoming the discomfort of both stepping over colleagues and being stepped over can make the difference in moving up the leadership ladder.

Teamwork

Further, teamwork and support are just as important as personal ambition. “There is a special place in hell for women who don’t help other women,” said Hjerried.

In fact, studies have shown that sponsorship – more than mentorship – can ensure success, as it requires individuals to put their own reputation on the line to help others. Audience members and panelists expressed concern over the rivalry between women. Lingering expectations about a single seat at a boardroom or committee table being reserved for women has forced some to see other women’s success as coming at the expense of their personal failure.

While many boardrooms, partner committees, partner roles are no longer zero sum games women still find it hard to empower each other. This does seem to be changing, however, as more women take on top positions they are bringing greater diversity into the workplace. That diversity in turn helps to prevent marginalisation of certain groups.

A study conducted by the New York Bar Association found that firms that had three or more women on the management committee had more females promoted to partner. Female clients who hold powerful roles either as CEO or general counsel also tended to have a positive impact on the number of women who move to leading positions with in a firm.
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