Ex-Prime Minister Lee Kuan Yew opened the IBA conference last night with a controversial speech in which he criticized human rights organizations such as Amnesty International.

Responding to a question from the audience about whether Singapore’s successes were a result of being less democratic, Lee, who led Singapore for more than 30 years, fiercely defended his approach to governance.

“I don’t measure myself by the yardsticks of Amnesty International, Freedomhouse or Reporters Without Borders; I measure myself by the governance of the people,” said Lee.

The interrogator, a London-trained lawyer working in Athens, had begun his question by saying that Lee’s unusual title, Minister Mentor, had prompted him to do some research. He discovered that such a role, where the ex-Prime Minister continues to play a large part in politics despite him leaving office, is unique in the world.

Implying that Singapore was therefore not quite as democratic as other nations around the world, he asked Lee whether this fact was one of the reasons behind Singapore’s success.

While agreeing to this proposition, Lee denied that Singapore was a land of censorship and criticized international institutions for comparing press freedoms in Singapore to those in Zimbabwe.

Singapore famously banned Salman Rushdie’s *The Satanic Verses* in 1989. But this, Lee explained to a packed conference hall, was not a draconian measure but an attempt to prevent certain subjects becoming a bone of contention in such a religiously diverse society.

Lee spoke at length about the origins of an independent Singapore and the challenges of ruling such an ethnically-varied society. For him, the united country of today is a result of encouraging English as the language of education and forcing minorities to live with other races and cultures to mingle.

This has protected Singapore from the fundamentalism that has plagued other countries. “Because they are living together, they’ve gradually accepted that they are one community. If we had not done that [relocated people], we’d have a really big terrorism problem,” said Lee.

When the British pulled out of Singapore, the Chinese, Malay and Indian locals had little in common. They were living, as Lee put it, as “different kinds of fish in an aquarium with different salinity, occasionally meeting at the borders.”

But after the racial integration brought about by Lee’s housing policy, people accepted the “strange smells in the kitchen and the strange habits” of their new neighbours and formed a more cohesive society.

Establishing this stable system to provide people

Continued on page 2
Continued from page 1

with the means to live a full life has been more important to Lee than judgments from the international community. Or from institutional league tables.

Another question from the floor concerned the prevalence of league tables in the legal profession and Lee’s perception of Singapore’s rank on rule of law. In a gesture that prompted laughter from the audience, Lee produced a pre-prepared pack of statistics from institutions such as the World Bank to show Singapore is considered a leader on the rule of law by many such bodies.

Lee’s speech touched on some of the reasons why Singapore is among the least corrupt countries in the world, with Transparency International ranking it in the top five. The government takes a strict line with corrupt officials – one cabinet minister committed suicide after being investigated on this charge.

The session concluded with Lee arguing that governments have to be prepared “to take unusual steps and procedures” for the good of the people.

RULE OF LAW LECTURE

Tales from the front line

The first LexisNexis Rule of Law lecture was held on Saturday, October 13 at the Marina Mandarin Singapore, its aim to bring awareness of the principle of the rule of law to a larger audience.

The featured guest speaker was Somaly Mam, the founder and President of Agir Pour les Femmes en Situation Précaire (AFESP), or Acting for Women in Distressing Situations. Mam argued that there needed to be an increase in the fight to bring an end to human trafficking.

Ms Mam, who is Cambodian, knows what it means to live in a world where the absence of the rule of law allows children to be sold into slavery. Her personal story is one of great suffering, and of great courage.

It is estimated that one million people, mostly women and children, are trafficked around the world each year, lured into involuntary servitude and sexual slavery. AFESP has saved thousands of young women from the clutches of prostitution and eased the suffering of those who have fallen to HIV and Aids. Despite threats to her life, Ms Mam perseveres in her fight against human trafficking, and continues to rescue, rehabilitate and reintegrate back into society, the girls forced into prostitution.

At the lecture Andy Prozes, CEO of LexisNexis Group, said: “The gross and unjust economic exploitation of vulnerable persons is an insult to our common desire to live under the rule of law.”
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Down, but not out

Buyers need to consider financial covenants again. But they still control the market. By Daniel Andrews

Banks and private equity funds are locked in negotiation over a $300 billion backlog of acquisition loans. The problem is one of frustrated expectations: banks did not expect to be holding the paper that they have committed to fund.

The backlog is tipped to put the squeeze on lending and buyout volumes. Private equity specialists, however, cannot agree on whether the excess of committed finance will mean an end to covenant-lite lending and a return to more traditional structures.

“Buyout firms are finding it much harder to raise debt for new deals,” says Phillip Mills at Davis Polk. “When liquidity conditions improve, it is likely that both the pricing and leverage levels will be worse for buyout firms relative to the extraordinary terms seen over the last few years.” So once the indigestion passes, credit markets will re-price and settle down on this continuity view. Pricing will change but structures will stay the same.

When funds do start lining up targets again, they will expect their lawyers to prepare finance with all the features of the pre-summer market (more covenant-lite loans and payment-in-kind/toggle notes). The difference will be the size of the loans (which will shrink) not the structural composition of acquisition financing.

The explanation offered for this outlook is two-fold, or two-limbed. First, private equity is sophisticated, with intelligent people who know what they are doing. Lawyers point to the positioning by buyout firms led by Clayton Dubilier & Rice in the sale of Home Depot’s $10 billion construction-supply business. Clayton, advised by Debevoise & Plimpton, would reportedly not accept a renegotiated deal structure that included tougher financial covenants. In the end, the size of the banks’ commitment and the price for Home Depot were reduced, but the terms included a $1 billion covenant-lite loan and a $1.3 billion payment-in-kind note.

As an aide to the Home Depot financing, lawyers that warn of the risks of stapled financing say the deal demonstrates its pitfalls. In staple finance the seller’s financial adviser offers financing to potential buyers. It provides easy access for the buyer to a lending bank (the terms are literally stapled to acquisition agreements), but lawyers question whether the practice is necessary or advisable.

The seller’s financial adviser on the Home Depot sale had an immediate and serious conflict once negotiations turned contentious, and had to withdraw. The market can expect to see a decline in staple financing as a result, with one private equity adviser even arguing that it will die out completely on the big deals.

Loan removals

The second aspect of the case for structural continuity is that banks lack the incentive to enforce a change in terms; arranging banks will, post liquidity shock, still have a constituency of willing hedge funds to pass the debt onto.

Arranging banks will still be in the moving business. They will carry on committing to finance in the expectation of passing it on to third-party buyers (unlike the traditional model of lending to hold).

There will be no return to the excess of the first half of 2007, but there will also be no return to the traditional bank market. This is assured by what one specialist calls “the tremendous convergence between bond and loan markets.” As they pass the debt onto hedge funds and other buyers, banks no longer need the restrictive provisions they demanded in the past.

Return of the Mac

Material adverse change (Mac) clauses have weakened in loan agreements. Two types of Mac, business and market Macs, were standard in loan agreements until two years ago, when the top-tier borrowers, the big private equity houses, managed to see off the market Mac.

The business Mac clause parallels a merger agreement, and gives banks the right to walk away based on change in the target business. The provision is still commonly found in agreements, if in a diluted state. But banks would like the market Mac back.

“When liquidity conditions improve, both the pricing and leverage levels will be worse for buyout firms relative to the extraordinary terms seen over the last few years”

Philip Mills, Davis Polk & Wardwell
This kind of thing [subprime fallout] would have triggered the old market Mac clauses,” says partner Gregory Woods at Debevoise in New York. “This would have saved several banks in the ‘moving business’.”

The market Mac is triggered by a change in condition of the financing market. The clauses have fallen out of fashion – dropping out of all types of deals in the last year and half. (Top-level borrowers’ technology has moved downmarket; KKR’s terms are, or were, being extended to lower-tier sponsors and corporate borrowers.) Banks need these clauses back if they are to be able to drop commitments when things in the market head south.

Shadowing the departure of the Mac, the other big 2006 structural development was the growth of the no-financing-out merger agreement. These deals, where the buyer gives up the right to break, have proliferated, and buyers face hundreds of millions in fees where they fail to secure finance. Buyers, having agreed the clause, then turned to lenders and demanded they tighten lending commitments.

Intense competition
Intense competition for sponsor mandates has led to financing commitments that offer no due diligence out, no structure out, no market out and borrower’s counsel simply drafting commitment letters for the banks to sign, says one buyout lawyer in London.

But there is a debate as to whether banks are sticking to commitments for reputational reasons or because of strict legal obligations. In truth both concerns are driving negotiations on the financing for the big buyouts – First Data, TXU, Clear Channel, Bell Canada.

US funding letters have traditionally been thinner than their equivalents in the UK (where an entire facility can be worked out in the commitment). Those US commitments have now been firmed up – into “iron-clad commitments with no market flex language and a covenant-lite package” as one buyout partner in New York puts it.

**Easy enforcement**
Firmer commitments provide clarity on liability. “There is no general issue about enforcement,” says Woods. “Borrowers have required that banks restrict the number and scope of banks’ conditions for lending. People are focused on the conditions under each agreement.”

So far negotiations have proceeded on the outstanding buyouts with at least the veneer of amicability, but buyout lawyers say there are other, perhaps lower-profile, deals that could be more problematic. “There are lots of deals hanging around the shop,” says one leveraged finance partner in New York. “Some of them look like potential train wrecks.”

**Structural flux**
The opposite view is that acquisition finance has experienced a sea change. Under this non-continuity view, covenant-lite lending and Pik (Payment-In-Kind) notes are a thing of the past. Rather than banks handing out commitments absent financial maintenance covenants and market Mac clauses, the market will revert to pre-2007 conditions and banking lawyers can expect a return of tougher financial covenants.

Adherents to the sea-change view argue the moving business model has hit a road block in the liquidity crisis brought on by the US mortgage market but extending to all US debt securities, including collateralized debt and loan obligations, and syndicated loans of the type committed to private equity houses.

On this view, financing sources are now looking at a market where the moving-business model does not work. Banks will have to bring existing deals they cannot syndicate onto their balance sheet and future deals will be structured on that expectation.

Leverage specialists say their bank clients think that six-times earnings deals are still possible. So what lies in store for acquisition finance is more a case of turning the clock back than a disaster, a return to conditions immediately before this year’s boom and the deal structures and technology that came with it. (Data show the volume of cov-lites in the first half of 2007 was huge. There were none to speak of in 2005.)

“Bankers are saying that well-structured deals will still get done,” says Woods. “By well structured, we are talking low leverage, no payment-in-kind or toggle notes and reasonably strong covenants – including financial covenants. In other words, we are going back to ‘normal’.”

Continued on page 6
Poker faces

So what will the fallout of the floating deals be? Sarkis Jebejian, partner at Cravath Swaine & Moore, says: “This is a three-sided game between banks, financial sponsors and companies or sellers. Each is looking at terms agreed under what were unusually favourable financing and economic conditions and realizing, sometimes for the first time, what they’ve signed up for. And they are all looking to aggressively assert their rights.”

Despite reverse break fees (granted in favour of the seller where the buyer fails to close) and the backlog of deals, sponsors could still be holding all the cards. Buyout lawyers say the break fees are not a sufficient disincentive for the funds, who remain in a strong negotiating position relative to banks and sellers.

The market will continue to be borrower-led. But buyers must be more flexible, especially on financial covenants (time periods, forward looking). And equity-cure rights also need to be looked at. (Where the sponsor has the ability, but not the obligation, to cure what would otherwise be a breach.)

The nuanced view is that there will be no wholesale change in deal structures and that the market has experienced a funding rather than a credit crisis. (It could become a credit crisis, says one buyout partner who points to the example of UK mortgage bank Northern Rock—a good business, but one whose model relied on regular access to funding.)

Strategic acquisitions

One of the big beneficiaries from this crisis could be corporate buyers. Leveraged buyouts have helped to lift shares, assuaging corporate who can draw on cash reserves and their stock to make acquisitions, at a time when equity looks attractive relative to debt. (Though specialists say debt is still relatively attractive contrasted with historical levels.)

“Cross-border strategic buyers have a big opportunity now given the weak dollar and the reduced competition from leveraged buyout buyers,” says Phillip Mills, M&A partner at Davis Polk & Wardwell.

It would seem logical to predict more US-bound M&A as UK, Asian and European corporates take advantage of a weak dollar. But don’t count on it. US assets have looked attractive for a while yet there has been relatively little inbound activity, suggesting a reticence among international buyers.

That could be down to a number of factors. First, in anything but the short term corporate buyers could find themselves waylaid by the problems now affecting arranging banks and private equity firms. Companies must refinance, and when they do the cost is likely to be higher than previously estimated.

Second, the big private equity firms still have a lot of money to spend. And, lastly, foreign acquisition rules make it difficult to acquire US assets and nearly impossible for buyers from certain parts of the world to get their hands on anything vaguely strategic (now defined in broader terms following revamped Committee on Foreign Investment and National Security Act regimes).

Converging disputes

The correlation between loans and asset-backed securities is much higher than people ever realized. So a liquidity crisis over one structured product can dissuade people from buying anything—even high-quality debt. The whole market seizes up, confidence disappears and can create a full credit crisis.

While acquisition finance partners are split on the overall affect on deal structures, the majority view is that while deal sizes will get smaller, the market will remain borrower-led. As IFLR magazine predicted before the crisis broke (Through a glass darkly, June 2007) the suggested demise of covenant-lite lending looks premature.

And the potential for litigation is huge. Torturous intercreditor disputes will mark the current liquidity freeze out from others. Widely dispersed debt is now held by diverse creditors under more complex structures.

This is great news for insolvency partners – creditors will need advice on these multi-tiered structures, which are going to be contentious in a way they haven’t been before thanks to the extensive cast of participants in the many levels of financing. While it is unlikely that this level of work will make up for the lack of acquisition activity, it will be a welcome cushion for the firms.
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The new EU

The merger of law firms across central America seems to be just one more step towards a regional alliance like the European Union, says Richard Pinto.

Back in the nineties, F Armando Arias and the other partners at Arias & Muñoz made a strategic decision that is paying dividends today. Listening to its clients, the firm decided to expand beyond its El Salvador base. This seemed like an expensive move, considering the political and economic climate at the time. Today however, the firm has offices in all five jurisdictions that make up central America and enjoys a big influence in a market that has generated many new investors lately. Like a surfer paddling out beyond the breakers, the firm has been waiting to catch the wave that is the region’s economic growth.

Arias & Muñoz is not alone. Hard on its heels is Consortium, a formal alliance made up of a leading firm in each jurisdiction. The firms retain their local identity but work as one brand across the region. The young firm of Garcia & Bodan is the latest entity with regional designs. Founded just seven years ago, it already has offices in Nicaragua, El Salvador and Honduras; managing partner Terencio Garcia has made it clear that regional expansion is on the cards. Aguilar Castillo Loves a fourth regional entity, the product of mergers between a couple of established traditional firms in Costa Rica and El Salvador, and expanded to the other three central American markets. A fifth is Latin Alliance, which alone of the other regional firms has an office in the US. All five are among the best financial law firms in the region.

If the idea of central America still conjures up images of donkeys, bananas and rebels with guns, it’s time to update your perspective. Today, the region is a dynamic marketplace, with real estate development, ever-increasing foreign investments and a true economic bloc that is greater than its individual parts. Since the nineties, the five countries have achieved political and economic stability of varying degrees, but positive degrees for all, and have been moving with increasing rapidity towards Cafta (the Central America Free Trade Agreement).

It is this international trade agreement among the five central American countries and the United States (technically including the Dominican Republic) that has been the lynchpin in the region’s economic success. This was the precedent decision taken by Arias & Muñoz in the last decade; as Arias says: “We anticipated this 10 years ago, and we wanted to be prepared for something like Cafta.”

Cafta was signed into law in the US in August 2005, setting in motion the ratification of the agreement by El Salvador (March 2006), followed by Honduras and Nicaragua (April 2006) and Guatemala (May 2006). The lone holdout is Costa Rica, which is expected to approve ratification after the October 7 2007 referendum. This would then complete the opening of a market with more than 35 million buyers and a combined GDP of some $60 billion; while still not particularly large, it does make for a more viable marketplace than dealing with each country separately.

Arias noted that dealing with a single entity was more attractive to the firm’s clients: “We have a lot of international clients who started asking why such a small economic region forced them to use five different law firms, repeating the same issues five times, and getting five different results. That is three times that size.”

The move towards regionalizing at the behest of clients is definitely a theme repeated by partners at the firms interviewed. Rolando Laclé, partner at Consortium (Laclé & Gutierrez in Costa Rica) echoed Mr Arias’ comments: “Our clients asked us to go regional. Once in a while there were requests for referrals but some clients wanted more than that from us. Because of our relationships with them, we decided to examine our options.”

Cafta was the impetus, and the multinational force to come into the area. Wal-Mart is as an excellent example of why clients are insisting their firms have a regional presence. José David Zuñiga Vega, associate general counsel for Wal-Mart central America, says: “From a logistics point of view, it’s a headache to approach five countries, region-wide, it makes more sense. It’s a bargain, just one deal to cover the whole area.” Even Guatemala, largest of the five countries, has a population of only 13 million; certainly some economies of scale come into play when reaching a consumer audience that is three times that size.

Still, despite the accessibility of the markets, regulatory hurdles are enormous. There are five jurisdictions, and although in principle we share the same systems, the details in each market are very different.”

Permits must be obtained for products. Real estate development, ever-increasing foreign investments and a true economic bloc that is greater than its individual parts. Since the nineties, the five countries have achieved political and economic stability of varying degrees, but positive degrees for all, and have been moving with increasing rapidity towards Cafta (the Central America Free Trade Agreement).

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Environmental issues are becoming increasingly sensitive. Terencio Garcia at Garcia & Bodan notes: “As every day passes, environmental concerns play a bigger role. Spillovers, construction, reforestation, what kinds of trees you are cutting and then planting – these are big issues that are being enforced by local authorities.”

Other hurdles that block access are more mundane but no less significant. Garcia mentions that customs practices are not yet standardized: “The papers required should be the same at each market. But that model is not the same in each country. Perhaps the most important consideration. All five countries have strong consumer rights legislations that have to be taken into account.

Clearly this is where legal counsel is crucial, and if a client can use the same firm across the entire region, all the better in the eyes of some. Wal-Mart’s Vega says: “You need the support of outside counsel, but there aren’t many options. If you are a law firm big enough to start thinking about growth and providing value-added service to your client, you must think of regionalization.”

Two different approaches

So what kind of models are available for a firm thinking of expanding across the region? The two basic templates are the organic model followed by Arias & Muñoz, and the umbrella version preferred by Consortium.

The former is based on centralized control, with clearly established headquarters that guide the strategic decisions across the region. The offices in each market are either newly-established by the firm or are local firms acquired and then subsumed into the parent. This is the more complicated model because everything must be integrated into one firm; acquired firms must give up their names to the parent. It takes more time to establish because everything must be standardized. Billing, corporate practices, client deliverables – all must become indistinguishable to the client. Because law is market-specific, the local representative handles matters in his market, while following the firm’s guidelines.

Garcia & Bodan and Aguilar Castillo Love are two firms that fall under this model. Its proponents feel that having one name gives clients a reasonable expectation of what level of service they will receive, regardless of what market they are in. Perhaps most importantly, there is no question as to who owns the client. The latter model is the faster one. Laclé & Gutiérrez says: “Creating an organization is difficult, but it’s easier to join an existing infrastructure.”

This model maintains the identity of the individual firms in each market, while trumpeting the brand they all represent. There is standardization in certain areas like billing and client deliverables, but each firm is able to make its own strategic decisions as befits its local market. Legal markets are unique in each jurisdiction, so the partner firm handles each market. This means that clients are handed off to the local firm, a potential loss for the original firm. Still, Laclé maintains that this is not a really a problem. “You are kept informed because you have generated the interest of the client.”

As Rolando Laclé says: “Creating an organization is difficult, but it’s easier to join an existing infrastructure.”

What happens to the leading firms that have decided regionalization is not for them? At the moment, nothing. Roberto Leiva, partner at Facio & Cañas says: “We have thought this through and decided not to expand. We have a network of firms that we use across the region. For our interests and our clients’ interest, it is better for them to use firms in the top tier in each jurisdiction. We find that this meets our clients’ needs more than adequately.” Standing fast in one market hasn’t hurt Leiva’s firm – Facio & Cañas is one of Costa Rica’s longest and most respected outfits, consistently receiving top-tier rankings. But even Leiva concedes that the weight of arguments may change in the future.

The benefits of a regionalized firm are large, primarily because it conserves a client across several jurisdictions. The client need know only one name, and can count on receiving a consistent standard of service, no matter what the market. Clients are easier to retain if they only have to stop at one shop, and this service will attract others with similar needs.

There should be plenty of them – direct foreign investment has been on the increase. The UN reported that foreign direct investment in central America increased from an annual average of nearly $800 million in 1996 to more than $5 billion in 2006. As if that weren’t enough, local companies are also expanding beyond their domestic borders. Leiva says: “I see Costa Rican companies looking at central America as a natural market into which they can develop. This is partly due to proximity, which creates a logistical advantage, and also because of culture. We are seeing some companies – not a lot – from Nicaragua or Guatemala with interest in Costa Rica. They all see central America as natural territory.”

Granted, not all markets are equal. While El Salvador, Costa Rica and Guatemala have successfully developed their economies, Honduras and Nicaragua are still lagging. The latter also has a political problem, with new president Daniel Ortega reviving concerns of his militant past. Nicaragua has also found a friend in the government of Hugo Chavez, whose nationalization policies have frightened off foreign investors in Venezuela. Yet few think that any of these concerns are significant, and most think that improvements in the region have minimized any chance of a return to the extreme politics of the eighties.

There are still enormous social problems in the region, such as poverty, unemployment, health care and education. A legitimate concern is that wealth brought about by increased foreign investment will remain in privileged hands. Corruption is always a problem, especially in markets where institutions like the office of the president or the courts are not bigger than the person (or people) holding the office.

But these are also problems of the past, some believe. To a man, all the partners interviewed believe that central America will unify politically as well as economically, to create a union based on the model of the European Union. There are economic, social and cultural problems to overcome but most of the partners believe that the region is already on a long way down this path. Costa is only the next link in a chain that was started decades ago. In the meantime, Arias and his partners have already justified their gamble.

“We have a lot of international clients who started asking why such a small economic region forced them to use five different law firms”

F Armando Arias, Arias & Muñoz
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<td>0930</td>
<td>What is a referral bar and how does it work?</td>
<td>Room 206</td>
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<td>0930</td>
<td>Glass ceilings and compensation discrimination facing women lawyers</td>
<td>Room 307</td>
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<tr>
<td>0930</td>
<td>Young lawyers’ introductory meeting</td>
<td>Room 320</td>
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<tr>
<td>1230</td>
<td>Capital Markets Forum lunch</td>
<td>Long Bar Steakhouse, Raffles Hotel</td>
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<tr>
<td>1230</td>
<td>Cultural Issues Programme lunch for guests</td>
<td>Pacific 1 Ballroom, Pan Pacific Hotel</td>
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<tr>
<td>1230</td>
<td>European Forum lunch</td>
<td>Pearl River Restaurant</td>
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<tr>
<td>1230</td>
<td>North American Forum lunch</td>
<td>Ballroom 2</td>
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<tr>
<td>1230</td>
<td>Senior Lawyers’ lunch</td>
<td>Ballroom 1</td>
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<tr>
<td>1230</td>
<td>Women Lawyers’ lunch</td>
<td>Ballroom 3</td>
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<tr>
<td>1245</td>
<td>Antitrust Committee lunch</td>
<td>China Club</td>
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<td>1400</td>
<td>Tour of the Law Society of Singapore, local law firms and court visit</td>
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<tr>
<td>1430</td>
<td>Turn contacts into clients and referrers – five steps for successful rainmaking</td>
<td>Room 306</td>
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<tr>
<td>1430</td>
<td>Cultural Issues Programme for guests – The unique culture of Singapore: a view from the stage</td>
<td>Suntec Theatre</td>
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<td>1430</td>
<td>International cartels and strategic tenency</td>
<td>Room 208</td>
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<td>1430</td>
<td>Burdens, duties and obligations of shareholders in public and private companies</td>
<td>Room 301</td>
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<tr>
<td>1430</td>
<td>The art of advocacy in arbitration</td>
<td>Room 201</td>
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<td>1430</td>
<td>What the East can teach the West in the context of the laws of negligence and damages</td>
<td>Room 308</td>
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<td>1430</td>
<td>Development and financing of infrastructure for mining projects</td>
<td>Room 205</td>
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<td>1430</td>
<td>Private ownership of water</td>
<td>Room 313</td>
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<td>1430</td>
<td>Resolving international insurance and reinsurance disputes</td>
<td>Room 307</td>
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<td>1430</td>
<td>Investment funds in Asia: issues for fund managers, sponsors and investors</td>
<td>Room 325</td>
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<td>1430</td>
<td>Consolidation of securities exchanges: moving towards a truly global securities market?</td>
<td>Room 306</td>
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<td>1430</td>
<td>Google issues – is content liability sexy again?</td>
<td>Room 203</td>
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<td>1430</td>
<td>The globalisation of bio and pharma research and development</td>
<td>Room 303</td>
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<td>1430</td>
<td>Trends in public procurement 2007</td>
<td>Room 309</td>
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<td>Global impact of real estate private equity</td>
<td>Room 310</td>
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<td>1430</td>
<td>Negotiating the trade-off – handling conflicting tax interests of parties to common business transactions</td>
<td>Room 309</td>
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<td>1430</td>
<td>How to preserve privilege and confidentiality</td>
<td>Room 302</td>
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<td>1430</td>
<td>Transnational legal practice – global qualifications v mutual recognition</td>
<td>Room 304</td>
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<td>1430</td>
<td>Where to draw the line? Ethical issues that law firms may ignore at their peril</td>
<td>Room 304</td>
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<td>1430</td>
<td>Who is doing the best international pro bono work? What models are being developed? How can they be adapted?</td>
<td>Room 311</td>
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<tr>
<td>1730</td>
<td>Negligence and Damages: Open committee business meeting</td>
<td>Room 308</td>
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<tr>
<td>1900</td>
<td>Hosted Singapore Law Society reception</td>
<td>The Legends, Fort Canning Hill</td>
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Only half of lawyers believe that attorney-client privilege should be extended to in-house counsel, according to a poll of IBA members. The question was put to members in an online survey conducted by the IBA Daily News ahead of this year’s conference. (The question was asked considering in-house counsel with the same legal qualifications as independent lawyers.)

The result means that there has been an 18% swing against the call for an extension of privilege since the same question was asked before last year’s conference in Chicago. One respondent from the Netherlands said that “in-house counsel is, as per definition, not independent. An extension of privilege to them could easily result in misuse.”

Another respondent from Nicaragua agrees: “The dependence of [in-house counsel] on their employer makes it more difficult for them to assert independence and look after the ethical values of the decisions made by the client (their employer),” he said. Although there is still strong opinion for no difference in the treatment of privilege where an attorney is giving legal advice, the contrast of this year’s results compared to those of last year is worth noting.

The reason for the swing of opinion may that there has been more coverage of the issue over the last 12 months that has led people into making up their minds. For example, only last month chemicals company Akzo Nobel lost its test case at the European Court of First Instance, with the court ruling that legal privilege would not be extended to in-house counsel in Europe. Now only external lawyers can rely on confidentiality in their communications with clients in regard to European Commission probes.

Reporting the story as it broke, the IFLR had exclusive comment from Beat Hess, legal director at Shell. “The Commission sees in-house counsel as depending on our employers because of the wages and benefits that are paid to us,” he said. “But external lawyers get remuneration from their clients too.”
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