Bring governments to account

Governments are ignoring risks and covering up environmental problems to ensure economic growth, a panel of specialists concluded yesterday. Australia was one case study discussed during a session on the integration of precautionary principle and environmental law.

“I don’t think the government really wants precautionary principle to work in a way that lays waste to projects,” said Shaun Gath of Blake Dawson Waldron in Canberra. Precautionary principle is the idea that if harm could arise from an action, and there is no scientific consensus, those proposing the action must prove it is not damaging.

Too much is at stake to halt many projects that may cause environmental damage, so better science is sought to remove the doubt. “Keep asking until you get the answer you want... If you have to kill risk with science, you can,” Gath said.

Cynical electioneering also has a role to play. As Gath commented, to amusement from the audience, the Australian government’s decision to approve three controversial projects worth more than $333 billion ($30 billion) in the past two weeks may have something to do with November’s election.

Precautionary principle is observed even less by developing economies such as China. A culture of secrecy exists where, despite central government initiatives to prevent damaging projects, local enforcement is ineffective and inefficient. “The instinct in this secretive society is to cover up problems,” said Peter Thorp of Allen & Overy’s Beijing office.

Sepa, China’s State Environmental Protection Agency, has been raised to a ministerial level, which may improve enforcement. But as Thorp pointed out, much of China’s industry is state-owned, so “most environmental violations involve the government.”

The severity of environmental problems in China is causing unrest. Of all the petitions heard by the Chinese government, 70% are brought by farmers whose crops have been poisoned. There is little recourse for those who suffer as a result of pollution and environmental campaigns risk jail.

A World Bank report earlier this year found that 750,000 people a year die from pollution-related illnesses in China. But the Chinese government persuaded the World Bank to remove this statistic from its report and to expunge one third of its findings.

China does, however, seem to recognize that it must become more environmentally aware. Although economic growth is still prioritized, steps against companies who flout pollution laws are being introduced. Banks, for example, are banned from lending to companies with a poor environmental record.

The one-sided Olympic contract

The one-sided Olympic contract

“J is for You!” is a phrase we’ll be hearing a lot of next year, according to Timothy Powers, partner at Haynes & Boone and the chair of a session yesterday on the Olympic Games. In Chinese the phrase translates roughly as “come on, step on it!” and is the traditional encouragement to a sports team — it will be echoing around stadia in China when Beijing hosts the Games in 2008. Lawyers at the session learnt about the legal pitfalls of signing the Olympic contract, ensuring the host city doesn’t go bankrupt and keeping the eternal flame lit.

The agonising process of bidding to host the Olympic Games ended with an announcement from the International Olympic Committee (in the case of Beijing, it took place in Moscow). Once the announcement is made, the winning team has 10 minutes to sign a 90-page contract detailing all the responsibilities of the city. As Powers said, it is something that would be “against the advice you’d get from any lawyer — mere minutes to sign such a contract?” While the contract is seen in advance by the bidders, no negotiation is possible and the terms are, as one panelist politely put it “rather one-sided”.

That contract has changed considerably since the problem with the Montreal Olympics in 1976 (the city was pushed to the verge of bankruptcy and some of the games almost didn’t take place). Now the terms spell out, very specifically, the organizational and financial responsibilities of the host, hence the length of the contract.

The key to the success of an Olympics is to be less like Montreal, more like Barcelona. The Spanish Games in 1992 created an economic boom in the region that hasn’t ended 15 years later. In the years following the Games unemploy- ment fell from 22% to 9% and the regional housing market grew exponentially. By contrast, some such as Montreal and Sydney in 2000 found a big economic cost to hosting the Games. The hall in Australia used for gymnastics and basketball has since fallen into receivership.

Such a big project finance exercise and legal commitment obviously creates many problems for the lawyers involved. Rodolfo Florez of Morrison & Foerster, outside counsel to the Beijing Olympic Committee, also brought up the subject of the Olympic torch. He described the elaborate procession of the flame, from being lit in Athens by sunlight refracted from a mirror, to being flown in a special box (designed to help keep the flame alight) to Beijing. Once in the host city, the torch begins a tour of the world, taking in Dar Es Salaam in Tanzania, Islamabad in Pakistan and much of the ancient silk route through central Asia. In a gesture typical of the biggest Olympics on record, the torch will also be carried to the top of Mount Everest in a three-month-long climb.

“The liability issues must be huge,” said one member of the audience. “What happens if the light goes out?” Powers replied: “It may just be the lawyer in me, but I reckon it probably goes out a bunch of times, and no one says a word.”
How big is your card table?

“Y”ou’re two years too early,” joked Yap Wai Ming of local firm Stamford Law Corporation at yesterday morning’s session on hotel and casino development. “Come back in 2009, you won’t recognize the skyline.” Yap was referring to the quick construction of two new casinos in the host city – Marina Bay Sands on the marina bay front and Resorts World on Sentosa island.

A brief history of gambling ensued and the audience enjoyed Yap’s rapid description of how such a strict society came to allow casinos. Only a few years ago, Cambodian company Nagacorp was denied a listing on the Singapore Stock Exchange and had to resort to carrying out its operation on a barge that would “mysteriously float away if there were any problems with the authorities.” Today, Singapore has two big Las Vegas operations cheekily testing the government’s definition of a gaming area by taking out a tape measure to the card tables.

Power of government

However, it is more than likely that the Singapore government will prevail if any substantial argument follows. For one, the government has imposed many regulations and conditions on the casinos in return for a guarantee of 10 years of exclusivity for the two resorts – the government will not review any plans for new casinos until 2019. When that time comes, potential bidders can look forward to a 75-page application form that has already been dubbed “too onerous”.

One particularly defensive measure saw the government building a condition into the development agreement that means any foreseeable issues leading to new owners require its consent. In other words, the government even has some say over the actions of the financiers in the event of prolonged defaulted payments.

The new regulator

Singapore has not incorporated its Casino Control Authority yet, but is expected to do so by the end of this year or early 2008. It is not yet known how strict this body will be, but considering the amount of public debate before the casinos were proposed, particularly from religious bodies, it is safe to suggest it will not be a soft touch. Yap was keen to point out that even if the resorts are restricted, you will still be able to use the cruise ships that operate in international waters in the region. “The bunk beds are very small because you don’t sleep in them,” he said. “It’s gamble, gamble, gamble.”

Yap was followed by Robin Bynoe of Charles Russell in London, who talked through issues relating to the promotion of remote and non-remote gambling from foreign jurisdictions into the UK. The audience was particularly interested in white-listing – the process by which gambling companies are allowed to promote in the UK under the new Gambling Act despite being outside the European Economic Area. A Department for Culture Media and Sport guidance note highlights that the jurisdiction that is applying must have similar regulatory aims as the UK and a system in place to implement the regulation.

“An optimist would clearly see the benefits of having a similar level of control as the UK,” said Bynoe. “A cynic would say that it’s just an open invite to set up a few working groups to get around the system.”

“The bunk beds are very small because you don’t sleep in them. It’s gamble, gamble, gamble”
Corporations are falling short in staff training on business intelligence, according to Ho Wah Lee of KPMG, Singapore. Though companies might have sophisticated plans to combat technological piracy, they often fall down on training and staff background checks.

In safeguarding information, basic awareness training for employees is often lacking, said Lee, speaking at a session on industrial espionage organized by the Criminal Law Section yesterday.

Lee noted that figures obtained through his work show that 73% of businesses will suffer loss through espionage within two years, if they do not have an effective counter-espionage plan.

The vital component of that plan is staff awareness, said Lee, who thought that the biggest challenge facing business in this area lies within. “The actions of outside agents, fraudsters and governments are, broadly, outside an organization’s control. You must look at your own employees, which is difficult.” Difficult because it raises the privacy issues that lie at the heart of this contentious area of practice.

There is an inherent tension to legislating in an area that pits two opposing, but legitimate, rights against each other: on the one side, competition and the need to facilitate active entrepreneurialism; on the other, concern to protect private property in the form of proprietary business intelligence.

The difficulty companies have in restraining unauthorized use of information by authorized agents reveals the deeper conflict between competing values.

“There is conduct that is clearly illicit and then there is legitimate business intelligence gathering. There is a spectrum of legality here that includes a wide grey area of unethical and potentially illegal conduct,” said Lee.

Lee provided delegates, busy nursing hangovers from Sunday night’s revelry at Raffles Hotel, with working definitions of espionage and business intelligence, before handing over to the legal contingent on the panel.

As well as creating a headache for companies internally, in terms of what background checks to make and how to restrain data use by authorized employees, espionage can also place counsel in a precarious ethical position.

“There are three questions I ask myself at the beginning of every enquiry,” said Martin Kenney of Martin Kenney & Co Solicitors, speaking from the perspective of counsel acting for creditors attempting to recover assets in fraud cases. “One, is the activity involved in the investigation lawful in the jurisdiction in question? Two, will the activity produce evidence capable of being admitted in proceedings? And three, is it ethically acceptable for lawyers to participate in, or be party to, the activity?” In asking these questions of clients’ proposed conduct, Kenney often turns up a “no.” “Some investigations are simply too aggressive for a lawyer to answer yes to these questions.”

This dynamic tension exists because companies are battling the same competing imperatives as lawmakers. Though clients are anxious to uncover acts of espionage, they will also be concerned to preserve their reputation. And the bigger the client, the bigger the gamble. Kenney took delegates through Hewlett-Packard’s actions in seeking to uncover the source of information leaked to The Wall Street Journal. Congress reacted to the company’s actions, and subsequent press furore, with a bill outlawing pretexting – the act of contacting third parties and requesting sensitive, often personal, information on the pretext of being from a legitimate source.

The actions of Congress may prove superfluous here. The first thing forensic investigators do is ring someone up and ask them to volunteer information. And ask without any sort of pretext. “It is surprising how many people will simply hand over information,” said Lee. “There is a saying that the only way a secret can be kept between two guys is for one of them to be dead.” (Lee of course urged delegates not to construe this wisdom too literally in any of their dealings.)

Representatives from 16 developing nations gathered yesterday (left, with IBA President Fernando Pombo) to follow on from their breakout session on access to justice in emerging nations. It was organized by the Japan Federation of Bar Associations, Japan International Cooperation Agency, and the Law Society of Singapore.

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An international convention is needed to regulate the increasing use of intrusive technology, such as Google Earth, said Christopher Rees, co-chair of the Second Dates: Up to Speed Table Talk session yesterday morning.

Rees, who was chairing the panel Google Earth and Intrusive Technologies: How Far Should They Reach? said that a convention was needed to regulate on governmental, environmental, terrorism and child abduction concerns raised by such technologies.

He added that a global problem like this needed a lowest common denominator approach, similar to human rights conventions. “We need to set this up now, while we have international comity,” he said. “People may feel more comfortable knowing a truly international body, higher than their national government, is dealing with this.”

Street level
Concerns have been growing over the use of Google Earth, a website that allows users to view satellite images of any location in the world, with the ability to zoom all the way to street level. As the resolution and quality of pictures has improved, the website has shifted from a diverting amusement to a potential threat to national security as well as personal privacy.

In a lively session that discussed where the limits on freedom of information lay, participants debated how laws could and should govern this. Delegates argued over whether the liability should lie with Google Earth for displaying the information, or on users for how they treat the information.

Moral grey areas
There were plenty of examples of when the moral grey areas of the website’s function were exposed. One example was a swimming pool salesman who used the website to discover the houses with pools, sell to their neighbours and copy pool designs. Rather morbidly, a man in the US used the website to map celebrities’ graves, and publish them online. Google Earth’s official line is that it will remove any person or their property, should they request it.

Other privacy concerns were raised too. At what point does a person’s image become public property? Delegates agreed that the line between using the website to abuse personal privacy and commercial gain was also blurred, muddying the parameters for any legislation. Mick Jagger’s privacy, for instance, is commercially lucrative.

Speed dating
The session was just one of eight in a peculiar but successful speed dating format that was introduced in last year’s Chicago conference. Each of the eight topics, which included Real IP in a Virtual World and Arbitration in Global Technology Transactions was chaired by two permanent members. Participants switched between tables over the three-hour session, allowing for brief, lively debate, as well as rather intensive networking.

The debate surrounding Google Earth and other surveillance technology will be given more detailed attention during this morning’s session Bikinis and Burkas, Satellites and Snoopers – What Limits Should the Law Impose on Surveillance Technology?
CONUNDRUM

2

A Matter of Neuroscience

Can the right brain improve upon what the left brain has been trained to do?

At Morrison & Foerster, we think so. We think of ourselves as whole lawyers. We also think that’s why clients seek us out for assistance in accomplishing their capital-raising goals. We are focused on seeing opportunities where others see only problems. Solving complex problems requires an ability to see things differently. At the risk of sounding like geeks, we admit it—we think puzzles are fun. We like the challenge—whether it’s working through a brain teaser, or analyzing a new financial product. Both require concentration, expertise, context and imagination. Or, in other words, both lobes of the brain. Morrison & Foerster—a global law firm of exceptional credentials in many areas and, now, one of the world’s leading capital markets firms.
SINGAPORE NIGHT SAFARI

It’s a jungle out there

Shamin Hassomal invites you to take a truly remarkable journey to the world’s first night safari

Set in 40 hectares of jungle, adjoining the Singapore Zoo, the night safari reveals how the tropics come alive after dark. It houses over 900 animals of 135 species and there are routes to suit any visitor, from relaxing scenic rides to wild adventure. The animals are all in their natural habitat: artificial moonlight reveals the predators and shy forest dwellers from the safety of a visitor’s tram or Limobuggy.

The tram tours both the east and west loops of the jungle, weaving through selected habitats from the Malayan foothills and the south-east Asian rainforest to the Indian subcontinent. It is, essentially, Asia, Africa and South America in 45 minutes. First, the Himalayan foothills of Northern India come into view, combining the mystic appeal of the east with a stunningly varied avifauna. With each change in elevation the range of different species becomes increasingly evident. Amidst the cliffs and meadows of the foothills look out for the blue coat of the bharal, the shoulder and neck manes of the tahr, and the unique spiral horns of the world’s largest goat, the markhor.

Next the tram weaves through the mangroves and low-lying fields of the Nepalese River Valley. The highlight here is the sambar, one of the largest Asian deer. The creatures range freely and have been known to sneak up so close to the tram that guests are able to touch them. Also, look out for the armoured-plated one-horned Rhinoceros and golden jackal.

Spot the tiger

On to equatorial Africa, where the world’s tallest land animals inhabit the grassland. Watch out for the cape giraffe’s tongue, which can grow as long as 53cm. In the Indo-Malayan regions, visitors should look out for one of the most breathtaking sights at the safari, the Malayan tiger – its stark black stripes against golden fur allow the tiger to be spotted from a long distance.

Next is the darkness of the Asian Riverine Forest. Here, Malayan tapirs stroll slowly across the tram’s path, while guides look out for bull Asian elephant Chauong. He is the largest and heaviest animal in Singapore Zoo, as well as being one of the few cross-racers on display anywhere in the world.

The tram comes to a finish with the South American Pampas and Burmese Hillside regions. The stars here include the water hog, giant anteater and the Burmese deer. For braver crowds, the safari has various walking trails, which bring adventurers into close quarters with the jungle creatures. If you take this option, watch out for fishing cats lunging for their prey, or a hungry leopard rustling among the forest trees. The tram ride and walking trails do not overlap so, in order to get the complete safari experience, visit both these attractions.

Another option is the new show, Creatures of the Night, where different species entertain the guests with a variety of tricks and audience interaction. Or, as the tamest route of all, visitors can opt for mystifying their senses on the scented trail, a fragrant walk that connects the drop off point and the main entrance to the safari. The fragrances from 4000 plants have been carefully selected to enrich the visitors’ mood, and the use of mist enhances the ambience, making one feel like one is really about to enter a jungle.

It’s the Thumbluakar!

As if the animals weren’t enough, the park is scattered with Bornean tribal performers. The Thumbluakar tribe may surprise you with a ritual dance, blowpipe demonstration or fire-eating display when you least expect it.

The park can be enjoyed in a large group of friends as well as on your own. If enjoying the sounds of the jungle and relaxing is what you’re here for, the park is staffed with members at strategic points along the route to offer guidance and assistance if you wish to wander the jungle alone.

And sustenance is at hand with the Cocktail Safari Express, which offers traditional wild passion cocktails and continental snacks. For romantics, the night safari’s Gourmet Safari Express allows small parties to feast on delicious food and enjoy a free flow of wine and wildlife, all below blended candlelight and moonlight.

For a more cultural experience, head towards the Ulu Ulu restaurant. Tucked away in a cozy enclave, Ulu Ulu offers a dining experience reminiscent of the Kampong villages of Malaysia. There is a buffet and an a la carte menu, with the former comprising five food stations showcasing a variety of delights, from provincial delicacies to sizzling wok specials and seafood surprises.

Diners can eat al fresco or inside the Ulu Ulu caves, where private dining rooms are available. The Chief’s Room accommodates a party of 16 whilst the Ulu Court has capacity for 100.

How to get there

Having opened in 1994, the Singapore Night Safari boasts multiple awards and celebrity appearances; most recently it was voted best leisure attraction for 2006.

The Singapore Night Safari is separate from the Singapore Zoo and opens only at night, a couple of hours after the zoo closes. The courtyard plaza at the safari entrance offers an array of reasonably priced food stalls if you arrive late at the park.

Getting to the safari as early as possible will mean that you get the most out of the park, getting to see the animals when they are most alert and giving you time to enjoy all the attractions as well as grabbing a bite to eat. The Singapore Night Safari can be found at 80 Mandai Lake Road, where parking is available. If you want to make a reservation for any of the attractions, such as Ulu Ulu or a private Limobuggy, or just book tickets in advance, visit http://www.nightsafari.com.sg.
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The IBA's Human Rights Institute has long been a powerful lobbying force. Here Matthew Bridle profiles the organization and its many roles.

Established in 1995 under the Honorary Presidency of Nelson Mandela, the Human Rights Institute (IBAHRI) is recognized as a leading voice in the promotion of the rule of law worldwide. It works across the IBA, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

Functionally, the HRI undertakes fact-finding missions leading to long-term technical assistance programmes; develops capacity-building programmes to assist bar associations and law societies; sends trial observers to monitor the extent to which trials adhere to regional and international fair trial standards; organizes human rights training for lawyers and judges; liaises with international and regional human rights organizations; and produces newsletters and other publications.

The organization’s members range across the legal, social and political spectrum; many of the most active participants do not practise human rights law in their daily lives but, through membership of the IBAHRI, demonstrate a commitment to supporting human rights and the freedom of the profession.

To celebrate its tenth anniversary, the Human Rights Institute of the International Bar Association has published a book entitled Our Freedoms: A Decade’s Reflection on the Advancement of Human Rights. The book explores landmarks and themes in international human rights law, drawing together issues from across the legal, social and political spectrum. Chapters touch on such diverse areas as terrorism, corporate responsibility, women’s rights, victims’ compensation, freedom of expression, conflict resolution, the independence of judges and attorneys, and the articulation of human rights relating to sexuality. The book highlights the presence and breadth of the human rights agenda on the world stage, as well as illustrating the ways in which the issues discussed affect different aspects of day-to-day life.

This year’s annual summit in Singapore will be of particular importance for the HRI. Alongside other objectives, this year’s conference aims to examine the relationship between the rule of law and economic development, specifically through foreign investment as well as key developments in the global struggle against corruption. Some of the major events of the HRI at the Singapore Summit are described in more detail below:

“Many of the most active participants do not practise human rights law in their daily lives but, through membership of the IBAHRI, demonstrate a commitment to supporting human rights”
Recent Human Rights Institute actions

Sudan against the ICC

Among recent actions by the International Bar Association’s Human Rights Institute (IBAHRI), on October 8 it released statement saying that it condemned the action of the Government of Sudan in releasing Janjaweed Militia leader Ali Mohamed Ali Abdul-Rahman, also known as Ali Kushayb. According to the IBAHRI, this decision, coupled with the appointment of Ahmad Muhammad Harun, former Minister of State for the Interior of the Government of Sudan, to the position of Minister of State for Humanitarian Affairs provides additional evidence of the continuing violation by the Sudanese Government of a peremptory resolution of the Security Council and its disregard for the International Criminal Court (ICC).

Ali Kushayb and Ahmad Harun are two suspects against whom the ICC issued arrest warrants on April 27 2007 for alleged war crimes and crimes against humanity including several heinous atrocities committed against humanity. The Sudanese Government was believed to have been holding Kushayb in custody since November 2006 for what they described as “suspicion of violating Sudanese laws” and investigation for criminal acts in Darfur. However, according to a statement issued by Mr Lam Akol, the Sudanese Foreign Minister, Ali Kushayb was released on Monday, October 1 due to “lack of evidence” against him.

The IBAHRI called on Sudan to enforce the arrest warrants issued by the ICC and play its part in bringing an end to impunity for these serious crimes under international law. The IBA further urged the international community to bring pressure to bear on the Government of Sudan to surrender Ali Kushayb and Ahmad Harun to the jurisdiction of the ICC as continued failure to do so undermines the credibility of the Court and respect for international criminal justice.

Justice Richard Goldstone, co-chair of the IBAHRI and former prosecutor at the International Criminal Tribunal for the Former Yugoslavia, said: “Unless the political will can be mustered, the Court is being hobbled, weakened and its credibility is being undercut.”

Mark Ellis, IBA executive director commented: “The International Criminal Court is the first permanent institution of international criminal justice dedicated to ending impunity for war crimes and crimes against humanity. To undermine the ICC is to deal a fatal blow to accountability for the most heinous atrocities committed against humanity.”

BurmeSE violence condemned

Earlier, on September 28, the IBAHRI said it deplored the use of violence to suppress freedom of expression in Myanmar (Burma), and called upon the international community to act swiftly to prevent further violations of human rights.

“Police violence against monks and other peaceful demonstrators is totally unacceptable and contrary to freedom of expression,” said ambassador Emilio J Cárdenas, co-chair of IBAHRI.

“Not only is this a breach of fundamental human rights, it is also an abrogation of the rule of law,” justice Richard Goldstone, IBAHRI co-chair added.

The violence against demonstrators has reportedly resulted in several deaths and injuries, with some of the more severe injuries requiring intensive care hospitalization. IBAHRI said it will continue to monitor the situation.

Uganda undermines judiciary

On September 18, the IBAHRI released a report entitled Judicial Independence Undermined: A Report on Uganda, in which it said that in political cases the government has pressurized judges, defied orders of the court and repeatedly criticised judicial decisions. The report follows the findings of a visit by a high-level delegation, under the auspices of IBAHRI, which uncovered evidence of tampering with judicial independence by Uganda’s government, headed by President Yoweri Museveni.

The high-level delegation visited Uganda between May 20 and 25 to investigate the implications for judicial independence and the rule of law arising from reports that in March 2007, armed government forces invaded the Kampala High Court to intimidate the judiciary.

In the report, the most serious cited examples of judicial intimidation related to the trial of Dr Kizza Besigye and Dr Besigye, a presidential candidate in 2001 and 2006, was arrested along with 22 suspected rebels and charged with treason and rape. On two occasions in November 2005 and March 2007, when High Court judges had granted bail, armed forces prevented their release. On the second occasion, forces stormed the court and held the accused captive before later re-arresting them on fresh charges.

Jo Salsbury, IBAHRI programme lawyer said: “Uganda’s 1995 Constitution is unambiguously in guaranteeing the independence of the judiciary from external interference and states no person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions.”

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How to stand out from the crowd

Seven principles to make your law firm stand out in a crowded international market place, by Pippa Blakemore

A
n increasing number of law firms are competing for the same work across continents and within countries far away from their headquarters. To succeed internationally you need to stand out and clearly differentiate yourself from your competitors.

Seven principles should help you to create and maintain a high profile among the target clients in the jurisdictions of your choice.

These seven principles are based on the belief that the focus of your approach and strategy should be on your clients and not yourselves. Change “I” and “we” to “you” in every sentence and thought. There is no quick fix to standing out. But this approach will differentiate you from everybody else whose approach is “we want to be...” rather than “our clients want us to be...”

Principle one: Understand your target countries, jurisdictions, contacts and their business

As you know, this is a fundamental principle of all business development. This can be difficult enough in your home market and is a great deal more complex internationally. You need a deep knowledge and understanding of the political, commercial and economic environments in which the businesses you are targeting operate. You need to research, learn and absorb this information so that it becomes as familiar as your own culture.

It is important to decide how to source this research. If it is from within the country in its own language and is translated, this will enable you to get a real feel for how that country sees itself from within. If you rely on external analysis, then you need to take into account that the research will be filtered through the cultural identity of the researchers.

While some may say that the language of international business is English, speaking local languages will greatly help you to understand the nuances and facilitate the building of relationships.

It is essential to understand local culture, traditions and good manners. For example in England, it is often considered rude to leave food on your plate at the end of a meal. In China, if you eat all the food on your plate, it means that you are still hungry.

This has resulted in discomfort on both sides, Chinese hosts desperately bringing more and more food and the foreign guests continuing to eat more and more to please their hosts.

Time is relative in different countries. Being a minute late in some parts of Africa and, in other parts of Scandinavia may be considered rude. Arriving two or three hours late is the norm in some parts of Africa and then returned to their country of birth to run their organization. Both cultures need to be recognized within in one person and relationships developed accordingly.

You need to appreciate the different (not better or worse) ways of doing business (without criticism or jokes) and that will enable you to stand out. You also need to be aware that countries within continents differ hugely, so avoid making statements such as “We are expanding into China, or developing in India” which may indicate an lack of understanding of the continent.

Principle two: Be clear on the benefits of your approach and structure to all involved

The benefits of your international approach, whether it be merger, close association, alliance, best friends relations or setting up a new office need to be known and be able to be articulated by everybody concerned: clients, partners, lawyers, recruiters and every member of the firm.

The clients want to know how it will work in practice. Why is the structure you have chosen the best one from their perspective? A blitz and win attempt at standing out with your particular approach will not convince clients or contacts. For example, a large opening launch party of a new office with correspondingly heavy media coverage will not win business and establish a firm in a local market. That would be like holding a house-warming party where members of your family ask as many of the new neighbours as possible to marry them.

This strategy of spending huge amounts of money initial-
ly, followed by spasmodic and inconsistent bursts of enthusi-
asm, will gradually decline into demoralization abroad and cynicism at home with a corresponding undermining of pro-
file in the new market.

The long-term strategy for communication needs to be clear between each international office, partner, associated firm and the home base. Publicise successes from home on an international level, and from the international to the local, so that the whole firm and those with whom it has relations can share in successes and be proud of them. Long-term support will ensure those in foreign offices are not perceived as hav-
ing a glamorous lifestyle and so alienated from the home base.

The home base plays an important part in standing apart from the competition as well. Business is international.

Checks are carried out by clients and contacts all over the world and not just in the new market. Clients want to know that the long-term commitment is there throughout the firm. Every lawyer in the firm needs to be able to summarise the benefits of the international approach in 13 seconds.

“All relationships will need constant long-term mainte-
nance for you to retain the strength and presence in the international market. If those implementing the original plan have to leave to move on to new projects then responsibility has to be handed over to equally dedicated people who will maintain the relationships.

Long term and even short-term neglect will lead to disaf-
fection, dissatisfaction and desertion. The latter can undo years of careful profile nurturing.

To stand out from the competition over the long-term, whatever the time you think you will require to create and maintain the new international presence – double it.

Whatever financial investment and resources you think you need – double them. Whatever energy you think you need – quadruple it.

Principle three: Passion, commitment and consistency throughout the firm

Clients and contacts do not want to feel that they are part of a your marketing plan to build your fee-income and increase your profit per equity partner, or boost the fortunes of a firm which is ailing in its home market and wants easy wins abroad. They do not want to feel that every visit is a sales visit. They want to know when you are coming to visit them next. They want to feel that you are genuinely interested in their country, them as individuals, their objectives and helping to provide solutions to their problems. This was clearly demonstrated when two of the largest international law firms were competing for the same client in India. The client told the one that did not win, “your competitors were here for days at a time, made several long trips and spent their time sitting in our offices, talking to our people trying to get under our skin and really understand us. You made one or two marketing trips. That was why the other firm won. They stood out as really wanting to understand us and our business.”

Commitment to clients and their objectives is demonstrated through a passion for work of the highest quality delivered consistently from good friends, office to office and from practice area to practice area. This is challenging enough to one firm in one office. Robust systems must be established at the start of relationships and maintained with all the passion and commitment required.

Principle four: Be where your target clients, intermediaries, referrers and contacts are

To stand above the competition you must leave your comfort zone where fellow lawyers are and join those professional organizations and bodies where your potential clients and contacts are.
It is tempting to join organizations in which there are many other lawyers. You talk the same language, have the same problems and challenges. It is comforting to know that there are others with the same difficulties. However, this indulgence must be your reward for attending your clients’ business forums.

This focused and targeted approach will involve becoming a member of international organizations of your targeted industries, sectors and companies and where the decision makers in these organizations are likely to be. It involves developing a profile among these bodies. It includes targeting the appropriate media that your clients, contacts and intermediaries will read/watch from their perspective and in their language. Publicise your presence at every opportunity.

For example at parties, actively make the decision not to talk to friends and acquaintances in the legal profession but push yourself to discuss the objectives and challenges of the businesses in which your clients and potential clients are. This necessitates setting targets for developing contacts with a systematic approach to building and maintaining relationships.

**Principle five: Clear and appropriate branding in the right place**

Ensure that your brand, logo, strapline and colours are appropriate for each different country in which you wish to raise your profile and enhance your name.

Make sure it has impact and is memorable – for the right reasons. Think about having the logo and the words translated into the writing of the country of which you are marketing. Does the country read from left to right, or from right to left, or is their writing in columns? Position the logo and the strapline so that they make an impact accordingly.

Your messages need to be simple, substantial and relevant to those you want to attract and impress. A good check is not “what do we want to tell them?” But rather, “what do they want or need to hear about us and how do they want to hear it?” Your research will tell you where you need to focus to make an impact in that country, locality and culture. It will also help you to avoid offending by accident.

Your messages need to be the benefits of what you offer: how you will help. Use words that are meaningful to that culture. Check all translations with a native speaker of the country. If the firm claims to be fluent in the local language then the translations need to be perfect.

Your brand cannot be isolated from your lawyers. Your brand is your lawyers. So create systems of rewards, recognition and investment in staff development so that you can build up the loyalty of staff who might be poached by competitors. Ensure that each lawyer reflects your brand and is an ambassador for your firm so that it consistently stands out from the competition by its confidence in projecting its own image.

**Principle six: Use the right people**

The right people understand the importance of building relationships and trust in the long-term, which could be five to 10 years. They will be dynamic, enthusiastic risk-takers, who are persistent but sensitive: flexible but structured and who are hungry but not desperate for new business at the international level.

They will need to appreciate that if a high profile is difficult to develop at home, it is many times more challenging on an international level. Cross-firm and cross-jurisdictional teams need clear leadership, management and a strong team culture with superb communication skills.

The right people will recognize that word of mouth is the most powerful and trusted form of referral, and that they may need to be away from home and travelling to build this personal reputation. So the right people will require supportive families. However, its one-to-one personal nature is becoming increasingly powerful with the internet, when a reputation can be made or broken at the touch of a button, with millions on the receiving end of the first-hand reference.

**Principle seven: Regularly measure results and take immediate remedial action**

Immediate remedial action when things do not go according to plan will separate you from the competition. This is not “wait and see and I am sure it will get better”. It is a proactive demonstration of how you deliver your legal services.

Your strategy needs to include measurable and achievable targets of profile creation and brand maintenance, with a comprehensive and detailed plan to achieve them. There are two types of targets: the first type is activities, for example, conferences, seminars, events and meetings. The second type is results, for example number and type of clients won and fee-income quality and volume of work.

Legal, tax and regulatory frameworks within a country need to be carefully considered before embarking abroad to ensure that you are prepared for the long-term and you stand out for the right reasons.

You need a transparent, consistent and appealing pricing policy, that recognizes the potential for conflict between local market rates and international rates. To stand out from the competition you will have worked out how much work there will be for you to do, how big the deals are and for how long the work will last to make the pricing appropriate for the work, and use this work to build your profile and long-term credibility.

You need to identify objective measures of success, monitoring expenditure against results and taking remedial action speedily, and not assuming that it will get better, or re-organizing or abandoning this jurisdiction, rather than analysing the causes and solving them.

These seven principles provide a framework for you to stand out and distinguish yourself from your competitors and ensure your long-term success on the international stage.
Countries in south-east Asia are trying to shake off memories of 1997 with a raft of new legislation. But corruption and politics are harder to change, says Emily Pioli

Governments in south-east Asia have had a hard time winning back the foreign direct investment (FDI) that flowed so easily before 1997. A slow recovery from the economic crisis of that year turned investors towards the growth and limitless potential of China and India.

But in the last 18 months Vietnam, Thailand, the Philippines, Indonesia and Malaysia have fought back by adapting old laws and creating new ones to win back investors’ attention. It has worked, to a certain extent. But legislation alone, no matter how well intentioned and skillfully drafted, cannot compensate for poor infrastructure, political instability, corruption and bureaucracy.

Vietnam

Of the countries in the region, Vietnam has been attracting a lot of publicity, and is often referred to as the most promising alternative to China as a target for foreign investment. FDI in 2006 reached $10.2 billion and the figure for 2007 is expected to exceed $15 billion. “It’s not all China, but the numbers have been pretty good over the last few years and the country continues to attract more investment,” says Tony Foster, partner at Freshfields Bruckhaus Deringer in Ho Chi Minh City. Accession to the WTO in January 2007 entailed an overhaul of foreign investment legislation. The new Investment Law, which came into effect in October 2006, covers both domestic and foreign investment and provides more flexibility to foreign investors with a broader range of methods of investment.

Developments in Vietnam’s privatization process (the privatization of state-owned enterprises (SOEs)) are also certain to boost interest in this emerging economy. In September 2007 HSBC acquired a 10% stake in Bao Viet, a Vietnamese insurance company – the first time foreign strategic investors have been involved in an equitization. According to Nicolas Audier, managing partner at Gide L’ecole’s Hanoi office, another 1000 Vietnamese companies are to be equitized over the next five years. “It’s a way of taking shares in the Vietnamese market quickly, which is very important to foreign investors,” says Audier, pointing to the planned equitization of Mothioline, the country’s second largest mobile company, which has attracted the interest of foreign players such as Orascom, Vodafone and France Telecom.

With reference to security laws, banking and finance regulation, and the judicial system, Audier says “enough is never enough”. The weaknesses in those areas, plus poor infrastructure, threatens further development. Foster points out that corruption and bureaucracy are also big problems, and “go hand in hand with each other”. But the sentiment remains positive: “The country has gone from nothing in 1997, when the open-door policy first came in, to having civil and commercial laws covering investment,” says Audier.

“What has been achieved over the past 20 years is amazing.” With Vietnam now making a well-supported bid for a non-permanent seat on the UN Security Council, it has its sights set on a more active role on the global stage.

Also on Vietnam’s side is “a certain political stability and framework that is communist in name but not much else,” says Foster. “The situation that will throw in is some crisis that will affect the whole region and not just Vietnam”. This widely-held perception of Vietnam as politically stable puts it ahead of other countries in the region in the race for FDI, in particular Thailand and the Philippines. Observers in the region repeatedly point to the Thai military coup of September 2006 as having scared off investors. Peter Burke, partner at Johnson Stokes & Master’s Bangkok office says: “There is a wait-and-see attitude on Thailand, though on the whole the government has been trying to attract the right types of investment.”

Thailand

The Thai government is being strategic in its efforts to attract FDI by marketing the country as the “Detroit of Asia” to encourage investment in the automotive industry, but also by thinking what it can gain in technology transfer. As Burke says: “The driver before was always ‘how much are you exporting’ and balancing payments; now we are seeing a shift towards the quality of the investment and of the technology.”

Foreigners looking to invest in Thailand must submit an application to the government’s Board of Investment (BOI), which can relax certain restrictions on foreign businesses in Thailand such as the amount of shares a foreigner may own, or the ability to own the land on which a business is located. The BOI can also grant tax and non-tax benefits, including an income-tax holiday up to the value of the original investment or a waiver on the duty of importing goods and materials into the country. Burke says: “Our office has been busier than ever before with BOI applications, due to the legal certainty that the Board provides; they have the power to say that a 100% foreign-owned company can carry out a restricted activity”. The BOI claims that the value of applications for foreign investment rose by 25.19% from January to June 2007 when compared to 2006.

In a recent study by the World Bank entitled Ease of Doing Business (see box opposite), Thailand was ranked third, behind only Singapore and Hong Kong. Fourth from the bottom of the table (out of 23 countries) is the Philippines, a country also widely perceived as politically unstable, often rocked by scandals that dent investor confidence. The country has not seen any recent legislative changes and Jonathan Serrano of Puno & Puno Law Offices says: “Right now, we are still where we were three or four years ago regarding the registration of foreign investments and red tape”. However, Hermínio Ozaeta, partner at Ronaldo Mabanta Buenaventura Sayoc & De Los Angeles says the firm doesn’t really receive complaints about legislation, or lack of it, from clients, and that implementation and transparency are more of a concern, particularly compared with neighbouring countries.

The Philippines

Most countries in the region can boast a large and dedicated workforce, but the Philippines distinguishes itself here by having a workforce that is largely college-educated with one of the highest literacy rates in the region. It is for these reasons that the country is now second only to India as the destination for business processing outsourcing (BPO) operations, primarily call centres, a sector that the government is promoting heavily. The lack of infrastructure (a complaint not specific to the Philippines) is not a problem as the company brings its own technology, requiring only access to bandwidth.

The Philippine government is also actively promoting the mining industry. At the end of 2006 a Supreme Court decision upholding the Mining Act opened up the sector even further. The decision permits foreigners to invest a minimum of $50 million in the mining sector under a foreign technical assistance agreement, demonstrating the government’s general policy of attracting foreign investment. One in-house counsel for a multinational company that has had manufacturing locations in the country for over 20 years said: “If you take a look in general at the country, it is, and always has been, government policy to attract foreign investment and certain policies, notably the special economic zones were attractive to us.”

Indonesia

Indonesia has seen the greatest number of legislative changes in the last 18 months. The country is recognized as rich in natural resources, with the mining, oil and gas sectors particularly attractive to foreign investors from Australia, China and Malaysia. In April 2007 the government enacted the eagerly awaited Investment Law and hailed it as a huge step forward for the country, one that would boost investment in the country that was hardest hit by the Asian financial crisis of 1997. Combining foreign and domestic investment, the new law provides equal treatment for all investors in Indonesia regardless of their nationality and allows foreigners benefits such as the right to repatriate all capital, profits and interests from their investment.

The law has been described by some observers in the country as “treading water”. “It’s not the great surge forward we were hoping for, but there are still good things in it,” says Thedooru Bakker, foreign counsel at Ali Budjardjo Ningsihro Reksodiputro. The law appeared after six years of deliberation, and 40 years after the previous investment law, so some see its very existence as a step forward. Ernst Telurutu, partner at Ali Budjardjo, points out: “The new Investment Law is based on a large number of criticisms made in the past regarding the effectiveness, certainty and implementation of procedures, all of which the government has tried to improve.”

The government has addressed these problems by including a one-door policy in the new law whereby a foreigner only has to go through one place to acquire its licences. This would be a huge improvement, but other government authorities such as the manpower department dispute this policy, claiming that investors will still need to go through them to obtain the appropriate licences for more technical industries such as mining.

“For businesses the new Investment Law just doesn’t offer the right opportunities,” says Rahayu Hoed of Makarim & Tauf, citing the confusion over the Negative Investment List as one of numerous problems with the new law. Hoed refers to sectors such as distribution business, now closed to foreign investment, and pharmaceuticals, previously open for 100% shareholding but now only for 65%, as two examples that could now force foreign companies to restructure their businesses.

The absence of exchange control, previously referred to as a cornerstone of Indonesian investment law, has also raised manufacturing locations in the country for over 20 years said: “If you take a look in general at the country, it is, and always has been, government policy to attract foreign investment and certain policies, notably the special economic zones were attractive to us.”

Jonathan Serrano, Puno & Puno Law Offices

“In the Philippines we are still where we were three or four years ago regarding red tape”

Jonathan Serrano, Puno & Puno Law Offices
eyebrows in the legal and business community. Exchange control has now been qualified, meaning that the government can take control of a foreign company if it believes obligations under the new law are not being met. Article 74 of this August’s new Company Law, which requires companies involved in environmental activities to engage in corporate social responsibility (the first time CSR has been made obligatory by law) has increased worries. The Indonesian Investment Law is under review and a commission has been formed to monitor the Company Law.

**Malaysia**

Indonesia’s common law neighbour Malaysia has created a much more stable and favourable climate for FDI, which is assessed sector-by-sector and depends on the industry in which the investor wants to spend. Nonetheless, the Malaysian government continues to promote the country and adapt legislation. Swiee Kee Ng, partner at Shearn Delamore, says government agencies as the Ministry of Trade and Industry, the Central Bank and The Ministry of Manpower all “have an understanding to be receptive to FDI and are more accommodating than ever before”. Even in sectors deemed to be of more national importance, such as financial services, acquisitions by foreigners are taking place. Private equity firms also made some large purchases in the country last year, such as Paperbox Holdings’ (a BVI SPV established by funds advised by CVC Asia Pacific) RM745 million ($219 million) acquisition of the Malaysian paper and packaging business of Genting Berhard and “are tending to find that shares are undervalued” according to Swee.

Bryan Chia, partner at Wong & Partners says: “The Asian financial crisis of 1998 is what triggered it all off – since then we’ve seen a relaxing of foreign equity capital within certain industries.” Legislative changes include the suspension of real property gains tax, which has further bolstered interest in the already “very, very cheap” real property sector when compared to neighbouring jurisdictions, not only “stratospheric Singapore” but also Thailand and Indonesia. Other initiatives include the various development regions designated as special economic zones such as Iskandar Development Region in the south of the country. Investors in these zones enjoy incentives such as exemption from corporate tax for the first 10 years of operation and the ability to employ foreign employees.

Governments in south-east Asia are aware that they are going to have to up their game to compete, not only with China and India, but with their neighbouring countries in the region. Having an up-to-date legislative structure in place is a good start to winning FDI, but to compete properly on a global stage governments are going to be forced to make investments of their own, which could entail anything from spending money to improve infrastructure or implementing procedures to weed out corruption and reorganize bureaucratic institutions.

**Ease of doing business in east Asia and the Pacific**

<table>
<thead>
<tr>
<th>Country</th>
<th>Ease of doing business</th>
<th>Dealing with licences</th>
<th>Registering property</th>
<th>Protecting investors</th>
<th>Trading across borders</th>
<th>Enforcing contracts</th>
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<td>Singapore</td>
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Economies are ranked on their ease of doing business, from 1 – 178, with first place being the best. A high ranking on the ease of doing business index means the regulatory environment is conducive to the operation of business. This index averages the country’s percentile rankings on 10 topics, made up of a variety of indicators, giving equal weight to each topic.

“The Indonesian Investment Law is not the great surge forward we were hoping for, but there are still good things in it”

Theodoor Bakker, Ali Budirjo Nugroho Reksodiputro

**“The Malaysian ministries all have an understanding to be receptive to FDI and are more accommodating than ever before”**

Swee Kee Ng, Shearn Delamore

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TODAY’S SCHEDULE

0800 – 0930
ABA Breakfast
Balroom 1

0900 – 1030
Law firms and bar associations – friends, foes or merely acquaintances?
Room 306

0900 – 1300
Bikinis and burkas, satellites and snipers – what limits should the law impose on surveillance technology?
Room 314

0930 – 1230
Corporate governance and the evolving directors’ and officers’ liability insurance
Room 203

Pursuing and defending discrimination claims in the workplace
Room 307

Wireless distribution IP issues
Room 303

0930 – 1230
IBA Task Force on Extraterritorial Jurisdiction
Room 209

The interface between merger control and foreign investment promotion and other industrial policy imperatives
Room 208

Club deals: legal, ethical and practical issues when representing a private equity consortium
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Room 325

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EPC contracting in the PPP environment
Room 312

Influence of China and India on the mineral industry
Room 313

Islamic finance
Room 202

Recent developments regarding the law of clearing and settlement: a global perspective
Room 201

Understanding human resources law for non-Asian multinationals operating in Asian countries
Room 205

Global business immigration update
Room 308

The new corporate raiders: the role of hedge funds in financial restructuring
Room 305

Mediation in aircraft accidents
Room 310

Limitation on benefits and other treaty and EU law attacks on structures considered abusive
Room 309

Establishing professional development within the firm – when is it practicable and how should it be done?
Room 311

Where have all the flowers gone? The latest strategies for attracting and retaining young lawyers
Room 304

1115 – 1300
The public interest work of bar associations
Room 306

1130
Maritime and Transport Law Committee lunch excursion
Mount Faber

1230
Asia Pacific Forum lunch
Pearl River Restaurant

Committees on Banking Law and Securities Law joint lunch
Long Bar Steakhouse, Raffles Hotel

Consumer Litigation Committee lunch
My Humble House

Corporate Counsel Forum lunch
Balroom 1

International Franchising Committee lunch
Ba Xian

Latin American Regional Forum lunch
Balroom 2

1430 – 1630
Latin American Forum: Open forum business meeting
Room 314

1430 – 1730
Increase your value to current and future clients: the RAINBOW strategy
Balroom 3

IBA Foundation open forum
Room 204

Cross-border strategic alliances for closely held and growing businesses: identifying the key challenges
Room 301

Investment treaty arbitration workshop
Room 325

Strategies for companies facing patent litigation – is it possible to win?
Room 326

Getting paid – the contractors’ challenge
Room 312

Incentive based mechanisms in the water and wastewater sectors risk sharing in water projects: contractual versus regulatory
Room 313

Anatomy of a fund blow-up: what happens when things go wrong?
Room 201

Communication strategies in securities and M&A transactions
Room 208

Understanding human resources law for Asian multinationals operating in non-Asian countries
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Collision course? Coordination of immigration law and tax law strategies for expatriates
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How to protect your distribution network around the world: dos and don’ts
Room 309

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Theatre

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Room 310

Tax-efficient investment in China
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Room 302

Mandatory v voluntary membership of bar associations
Room 306

Trial observations: a practical approach
Room 311

Strategic planning: is it an oxymoron for the smaller firm?
Room 304

How to money-launder – a guide for lawyers
Room 202

1630 – 1730
Arab Regional Forum: Open forum business meeting
Room 323

1745
Newcomers’ reception
Balroom 1

1930
African Regional Forum dinner
Clarin’s 107

Business Organisations Committee dinner
Long Bar Steakhouse, Raffles Hotel

Committees on Communications Law and Outer Space Law joint dinner
Indochine Waterfront

Section on Insolvency, Restructuring and Creditors’ Rights dinner
East India rooms, Raffles Hotel

Investment Funds Committee dinner
Senso

Taxation Section dinner
Tower Club

2000
Committees on Art, Cultural Institutions and Heritage Law and Media Law Joint Dinner
Senso

Committees on Employment and Industrial Relations Law and Discrimination and Gender Equality Law joint dinner
My Humble House

Committees on International Sales and Product Law and Advertising joint dinner
China Club

2030
Intellectual Property and Entertainment Law Committee dinner
China Club

Section on Energy, Environment, Natural Resources and Infrastructure Law (SEERIL) dinner
Ba Xian

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IBA Daily News - Tuesday, October 16 2007
Just pieces of paper

Joint ventures between Chinese and foreign companies are often frustrated by different understandings of how a controlling interest should operate. At a packed session yesterday afternoon, lawyers heard that control essentially lies with the Chinese partner, regardless of who owns a majority.

“The percentages that we get so excited about are just pieces of paper,” said Carl Cheng of Freshfields Bruckhaus Deringer’s Shanghai office. “If I’m the Chinese director, it doesn’t matter what’s written down if everyone is reporting to me.” Cheng gave the example of Danone’s joint venture with Wahaha in China. Danone owned 51% of the venture but this did not prevent Wahaha continuing various activities on the side.

Cheng and his fellow panellists discussed the burdens and obligations of shareholders.

“It doesn’t matter what’s written down if everyone is reporting to me” from America and France, to Uruguay and China, before considering a fictional case study.

China is laying the building blocks for a law, specifically the gap between theory and practice, make investment and other ventures difficult. As Cheng commented: “The practice has not caught up with the theory and often there is a simple disregard for the law. The law is written in a way which makes it impractical to apply.”

The situation in America and Europe is unsurprisingly more stringent. Once a shareholder declares a majority stake in the US, the courts will scrutinize its actions to ensure that it has interests in common with minority shareholders.

However 60 to 70% of shareholders in America are sophistication institutional investors, the majority with short-term interests. “No one says the controlling shareholder has to act in the best interests of the company; but they mustn’t manipulate and harm minority shareholders,” said Chief Justice Myron Steele of the Delaware Supreme Court.

In Europe the issue at stake has been more how minority shareholders can manipulate a board into a particular course of action. Jacques Buhart cited the case of Dutch bank ABN Amro. “ABN was destabilized by a fund [The Children’s Investment Fund] that bought 0.8% and went to the board with a set of questions they wanted answered, leaving the board shivering in its boots,” he said. “But they had not abused their rights, they used them.”

More worrying, Buhart said, was when an institution increased its shareholding and suddenly asked to have people on the board. “It then has a representative who has fiduciary duties; the fund is just a normal shareholder and has access to all kinds of information.”

Dodging the censors

Yesterday IBA delegates were treated to a selection of readings, videos and play excerpts at a session viewing Singaporean culture from the stage. Five talented and diverse actors performed these excerpts, introducing each one and afterwards analysing how they reflect on local culture.

It is well known that Singapore has censored art in the past, indeed ex-Prime Minister Lee Kuan Yew explained the reasoning behind this decision at Sunday’s opening ceremony. But it is a very different thing to hear about the impact of censorship from those who suffer as a result of it.

“We can say more on the stage than anyone can write in columns in Singapore,” said director of the Theatre Training and Research Programme T Sasitharan. “But that doesn’t mean we can perform what we want. Every play needs a public entertainment licence and scripts are vetted beforehand. Only a few companies are allowed to censor themselves.”

One of the most popular sections of the afternoon came when Yeo Yann Yann and Peter Sau acted out a scene from Mergers & Acquisitions by Eleanor Wong. The witty script (“The people I do this with usually have breasts,” and “how much does it cost to get a silicone implant?”) told the story of a lesbian lawyer struggling with life in Singapore. The play was one of a few borderline plays deemed appropriate by the censor, being staged in 1992, but many other plays have not been so lucky and have taken years to be put on.

The people I do this with usually have breasts,” and “how much does it cost to get a silicone implant?” told the story of a lesbian lawyer struggling with life in Singapore. The play was one of a few borderline plays deemed appropriate by the censor, being staged in 1992, but many other plays have not been so lucky and have taken years to be put on.

Other scenes focused on feminism, nudity, domestic violence and mental health. When quizzed on censorship by IBA Daily News at the end of the session, Audi Moshtad admitted that things are getting better. “In the last 10 years, there has been a lot more leeway,” she said. “Yet we struggle to see the markers and know where the sensitivities are. That said, the censorship probably made us more creative.”

Sasitharan had a much stronger opinion: “As an artist, any type of censorship is a violation,” he said. “All of us in Singapore theatre are lobbying the government to ease up. Hopefully we are moving in the right direction and the freedom of the internet is helping to turn censorship into a blunt instrument.”

Earlier in the session, the actors turned to scenes that commented on communication in Singapore: English may well be the business language and many Singaporeans are willing to learn as many dialects as possible, but there is still conflict and confusion.
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