



# Young Lawyers

Newsletter of the International Bar Association Public and Professional Interest Division

the global voice of  
the legal profession®

**OCTOBER 2015 VOL 21 NO 1**



# International Bar Association Conferences 2015–2016



**4 NOVEMBER 2015** JAKARTA, INDONESIA

Asia Pacific Arbitration Group Training Day – Best Practices in International Arbitration

**12 NOVEMBER 2015** MOSCOW, RUSSIA

7th Annual Mergers and Acquisitions in Russia and CIS Conference

**12 NOVEMBER 2015** LONDON, ENGLAND

Private Equity Transactions Symposium

**13 NOVEMBER 2015** SÃO PAULO, BRAZIL

Celebrating Magna Carta and the Rule of Law

**14–15 NOVEMBER 2015** LONDON, ENGLAND

IBA-ELSA Law Students' Conference 2015

**18–20 NOVEMBER 2015**

LIVINGSTONE, ZAMBIA

Building on the Foundations for a Successful Future: Economic Development and the Rule of Law in Africa

**18–20 NOVEMBER 2015** LONDON, ENGLAND

7th Biennial Global Immigration Conference

**19–20 NOVEMBER 2015**

SEOUL, SOUTH KOREA

Mergers & Acquisitions in the Technology Sector: Current Asian and International Trends

**3 DECEMBER 2015** LONDON, ENGLAND

Third Party Funding and International Arbitration: a 360 degree perspective

**3–4 DECEMBER 2015** MEXICO CITY, MEXICO

The New Era of Taxation: The keys to providing legal advice on tax law in a rapidly changing world

**4 DECEMBER 2015** MOSCOW, RUSSIA

9th Annual Law Firm Management Conference

**4 DECEMBER 2015** PARIS, FRANCE

The Rise of Ethics and Transparency in Mediation and ADR: Fighting Corruption and Abuses Through New Means

**5 DECEMBER 2015** NEW DELHI, INDIA

Magna Carta 800th Anniversary – Foundation of Democracy and the New Trends of Dispute Resolution in India

**27–29 JANUARY 2016** MEXICO CITY, MEXICO

Mexico's Energy Reform: The Bidding Has Begun

**30–31 JANUARY 2016**

THE PEACE PALACE, THE HAGUE

Legal Challenges of Modern Warfare

**3–5 FEBRUARY 2016** TOKYO, JAPAN

IBA/ABA International Cartel Workshop

**8–9 FEBRUARY 2016** LONDON, ENGLAND

5th Annual IBA Taxation Conference

**11–12 FEBRUARY 2016** PARIS, FRANCE

4th IBA European Corporate and Private M&A Conference

**17–19 FEBRUARY 2016**

ADELAIDE, AUSTRALIA

Innovation in Legal Practice

**29 FEBRUARY – 1 MARCH 2016**

LONDON, ENGLAND

21st Annual International Wealth Transfer Practice Law Conference

**4 MARCH 2016** SHANGHAI, CHINA

19th Annual International Arbitration Day

**6–8 MARCH 2016** LONDON, ENGLAND

17th Annual International Conference on Private Investment Funds

**9–11 MARCH 2016** RIO DE JANEIRO, BRAZIL

Biennial Latin American Regional Forum Conference

**10–11 MARCH 2016** SINGAPORE

2nd Asia-based International Financial Law Conference

**7–8 APRIL 2016** BERLIN, GERMANY

7th World Women Lawyers' Conference

**14–15 APRIL 2016** COPENHAGEN, DENMARK

8th Annual Real Estate Investment Conference

**14–15 APRIL 2016** MEXICO CITY, MEXICO

IBA Annual Employment and Discrimination Law Conference

**17–20 APRIL 2016** NEW YORK, USA

Biennial Conference of the Section on Energy, Environment, Natural Resources and Infrastructure Law

**27–29 APRIL 2016** SAN FRANCISCO, USA

IBA Annual Litigation Forum 2016

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Contributions to this newsletter are always welcome and should be sent to the Communications Officers – Masha Ooijevaar at [masha.ooijevaar@warnerbros.com](mailto:masha.ooijevaar@warnerbros.com) or Bruno Barata at [brunobarata@cmtadv.com.br](mailto:brunobarata@cmtadv.com.br).

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This newsletter is intended to provide general information regarding recent developments affecting young lawyers. The views expressed are not necessarily those of the International Bar Association.

# Welcome to Vienna!

**A**nticipation for the Annual Conference in Vienna, Austria is mounting as our committee prepares for what we know will be an action packed week of fascinating working sessions and the equally important more social aspects. We trust that as many of you as possible will join us for our wide variety of sessions and events throughout the week and we hope to see some new faces along the way.

We are delighted to announce that we are holding another of our highly successful Young Lawyers' Training Courses immediately prior to the main conference. Entitled 'The Fundamentals of International Legal Business Practice', the course will take place in Vienna on Saturday 3 October as part of an on-going programme devised by the IBA's Public and Professional Interest Division (PPID) and Young Lawyers' Committee to assist young lawyers and junior members of the profession with their understanding of the fundamentals of international legal practice. Topics will include cross-border transactions, a quick guide to cross-border disputes and the future of legal practice and the skills young lawyers will need to succeed. All young lawyers are welcome to attend. More information and registration details can be found at [tinyurl.com/omkl3wn](http://tinyurl.com/omkl3wn).

We kick off the Annual Conference week with an invitation only networking breakfast for conference newcomers and senior individuals within the IBA. This event is the first of its kind to be held by the committee at the Annual Conference and if, as we hope, it is a success, will lead to bigger and more regular events of this kind. Watch this space.

The breakfast is followed by our traditional Young Lawyers' Introductory session at 0930 which is especially useful for conference newcomers. The session introduces and explains in simple terms the sometimes daunting structure of the IBA as an organisation and suggests tried and tested tips for getting more involved and making the most out of the week. It is a great chance to meet the committee officers and to find out about the Committee's programme of sessions in Vienna.

We are also very proud to present the LexisNexis-sponsored IBA Young Lawyers' Committee Outstanding Young Lawyer of the Year Award in recognition of the late William Reece Smith Jr to a very deserving candidate at this session. The Award, which was

first presented at the Annual Conference in Buenos Aires in 2008, was created to recognise young lawyers who demonstrate professional excellence, the advancement of legal ethics and service to their community. This year we have received a record number of entries from young lawyers all over the world. The quality of the entries is a testament to the enormous contribution young lawyers are making to the profession and their communities.

We have an interesting and varied programme of working sessions in Vienna, with many sessions held jointly with other committees.

On the social side, we hope you will join us for the Young Lawyers' Committee and Leisure Industries Committee joint dinner at 1930 on Thursday 7 October. The annual dinner is always a lively occasion and allows members to meet informally and network in a relaxed atmosphere. The committee dinner will be held at Vienna restaurant, the Clementine. Details on how to book your place at the dinner can be found in the Vienna Social programme at [www.ibanet.org/Conferences/vienna\\_social\\_programme.aspx](http://www.ibanet.org/Conferences/vienna_social_programme.aspx).

Last but absolutely not least, the now infamous and legendary Young Lawyers' Committee Night Out! Taking place on the Thursday evening from 2200 until late at fantastic Vienna venue Grelle Forellem, the Committee's Night Out is one of the highlights of the IBA Annual Conference social calendar – and Vienna promises to be no exception! We very much hope you will join us for an evening of drinks and conversation in a casual setting. All ages welcome.

For the first time ever, Committee officers are holding a retreat immediately following the Conference. We plan to spend a few days planning fantastic future events, sessions and conferences to make sure our members get the absolute most out of their committee membership. Any ideas for or queries about future events and how we might make the Young Lawyers' Committee even better are always very gratefully received so please do get in touch or speak to us in Vienna.

Lastly we would like to take this opportunity to wish you a wonderfully productive, interesting and successful conference in beautiful Vienna. We are most grateful to you, our members, for your continued support and enthusiasm. We hope you enjoy this newsletter. If you are interested in writing an article for a future edition, please do get in touch.

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# Vienna 4–9 October 2015

## ANNUAL CONFERENCE OF THE INTERNATIONAL BAR ASSOCIATION



### Young Lawyers' Committee sessions

#### Monday 0800 – 0930

##### **Committee business meeting and breakfast**

*Presented by the Young Lawyers' Committee*

A closed networking breakfast (by invitation only) held by the Young Lawyers' Committee with representation from young lawyers and conference newcomers, and senior individuals within the IBA.

**Mark Gilligan** *Squire Patton Boggs, Abu Dhabi, United Arab Emirates; Events Officer, Young Lawyers' Committee*

**Makoto Hirasawa** *Okuno & Partners, Tokyo, Japan; Senior Vice Chair, Young Lawyers' Committee*

**Rainer Kaspar** *PHH Rechtsanwälte, Vienna, Austria; Secretary, Young Lawyers' Committee*

**Alberto Mata Rodriguez** *Gómez-Acebo & Pombo Abogados, Madrid, Spain; Student Liaison Young Lawyers' Committee*

FOYER B

ROOMS 1.85 & 1.86

#### Monday 0930 – 1230

##### **Young lawyers' introductory session**

*Presented by the Young Lawyers' Committee*

*Session Co-Chairs*

**Adam S Goodman** *Dentons Canada, Toronto, Ontario, Canada; Co-Chair, Young Lawyers' Committee*

**Catriona Watt** *Fox, London, England; Co-Chair, Young Lawyers' Committee*

This session will assist young lawyers in navigating and making the most of the Annual Conference, from tips on how to network effectively, assisting them in understanding the structure and the functioning of the IBA, as well as becoming involved in its committees.

The prestigious IBA Young Lawyer of the year Award in recognition of William Reece Smith Jr will be presented at this session.

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*Speakers*

**Itzik Amiel** *EyeRon Group / Power Networking Academy, Nieuw Vennep, the Netherlands*

**Bruno Barata** *Correa de Mello Tolomei Giglio Damian e Barata Advogados, Rio de Janeiro, Brazil; Communications Officer, Young Lawyers' Committee*

**Robert Bernstein** *Holland & Knight, New York, USA; Vice Chair, Young Lawyers' Committee*

**Alexia Eskinazi** *CGR Legal, Paris, France; National Representatives Officer, Young Lawyers' Committee*

**Mariana Estrade** *Hughes & Hughes, Montevideo, Uruguay; Vice Chair, Young Lawyers' Committee*

#### Monday 1430 – 1545

##### **Dual qualification – enhancing your career prospects through qualifications**

*Presented by the Academic and Professional Development Committee, the Bar Issues Commission and the Young Lawyers' Committee*

*Session Chair*

**Sarah Hutchinson** *BARBRI International, London, England; SPPI Council Member*

What are the benefits, costs and return on investment (both time and money) for the lawyer and the firm? How is this best handled from the perspective of the individual and the bar association? What are the routes and/or alternatives to dual qualification?

*Speakers*

**Geraldine Clarke** *Gleeson McGrath Baldwin, Dublin, Ireland; SPPI Council Member*

**Ghada Karam** *Holy Spirit University of Kaslik, Kaslik, Lebanon; Secretary, Academic and Professional Development Committee*

**Kimathi Kuenyehia Sr** *Kimathi & Partners Corporate Attorneys, Accra, Ghana; Young Lawyers Initiatives Officer, Young Lawyers' Committee*

ROOM 2.15

## Tuesday 0930 – 1230

### The influence of international arbitration on domestic litigation and vice versa

Presented by the Young Lawyers' Committee, the Arbitration Committee, the Forum for Barristers and Advocates and the Litigation Committee

Session Co-Chairs

**Rouven Bodenheimer** *LLS Lungerich Lenz Schuhmacher, Cologne, Germany*

**Julien Fouret** *Betto Seraglini, Paris, France; Co-Chair, IBA Arb40 Subcommittee*

This interactive and dynamic session will explore if and how (i) some of the most common arbitration techniques can be used before domestic courts and which techniques may be completely alien in the domestic court (for example, common law cross examination and production of documents in civil courts); and (ii) certain domestic procedural techniques alien to arbitration can be used in an arbitration, and, if so, how that impacts the way arbitral tribunals are constituted.

The world café format of the session will ensure the opportunity for lively debate and analysis between participants and the panellists and experts from all around the globe.

Speakers

**Till Alexander Backsmann** *Veirano Advogados, São Paulo, Brazil*

**Jane Colston** *Stewarts Law, London, England; Co-Chair, Young Litigators Forum*

**Christopher Harris** *3 Verulam Buildings, London, England*

**Gisela Knuts** *Roschier, Helsinki, Finland*

**Caline Mouawad** *King & Spalding, New York, USA*

**Alvin Yeo SC** *WongPartnership, Singapore*

HALL N2

## Wednesday 0930 – 1045

### Business development comme il faut or how social media and new technologies can help you step up your game

Presented by the Law Firm Management Committee, Technology Law Committee and Young Lawyers' Committee

Session Co-Chairs

**Rainer Kaspar** *PHH Rechtsanwälte, Vienna, Austria; Secretary, Young Lawyers' Committee*

**Garrett Miller** *Eugene F Collins, Dublin, Ireland*

Business development of law firms is often based on personal contacts and relationships of the attorneys working at that law firm.

With the rise of Facebook, LinkedIn and the like, the ways to contact potential clients has dramatically expanded and can be considered a gift for law firms trying to expand their business. This session will explore the possibilities and share insights on how to use social media and new technologies to promote your business, generate traffic to specific websites and to spark interest in your offerings.

Speakers

**Itzik Amiel** *EyeRon Group / Power Networking Academy, Nieuw Vennep, the Netherlands*

**Anurag Bana** *International Bar Association, London, England*

**Ceylin Beyli** *CBL Law Office, Istanbul, Turkey; Scholarship and Young Members Officer, Technology Law Committee*

**Max Hübner** *PGGM, Amsterdam, the Netherlands*

**Joanna Michaels** *Beyond Social Buzz, London, England*

**Karen Monroe** *Wilk Auslander, Geneva, Switzerland*

HALL F2

## Wednesday 0930 – 1230

### Always a student, never a master – international perspectives on advocacy training

Presented by the Forum for Barristers and Advocates and the Young Lawyers' Committee

Session Chair

**Mark Livesey QC** *Bar Chambers, Adelaide, South Australia, Australia; Co-Chair, Forum for Barristers and Advocates*

The Forum for Barristers and Advocates is committed to the crucial role played by specialist advocates in maintaining the rule of law.

The session will focus on the work of bar associations in relation to the ongoing training of advocates. It will be argued that the development and training of advocacy skills is a fundamental obligation of bar associations.

Speakers will address recent initiatives in advocacy training and concentrate on how these might form the basis of high-quality international standards.

The session will include an advocacy exercise performed by young lawyers in front of a judge, which will be reviewed by experienced advocates.

Speakers

**Philip Aldworth** *The Bar of Northern Ireland, Belfast, Northern Ireland*

**Bruno Barata** *Correa de Mello Tolomei Giglio Damian e Barata Advogados, Rio de Janeiro, Brazil; Communications Officer, Young Lawyers' Committee*

**David Barnville SC** *The Bar Council of Ireland, Dublin, Ireland; Co-Vice Chair, Forum for Barristers and Advocates*

**Russell Coleman SC** *Temple Chambers, Hong Kong SAR*

**Alistair MacDonald QC** *Bar Council of England and Wales, London, England*

**Brendan Siva** *Bar Council Malaysia, Kuala Lumpur, Malaysia*

**Anesta Weekes QC** *23 Essex Street Chambers, London, England*

**Deanne Wood SC** *Bar of South Africa, Sandton, South Africa*

HALL L5

Continued overleaf →

## Wednesday 1430 – 1730

### Conducting internal investigations

*Presented by the Young Lawyers' Committee, the Antitrust Committee and the Corporate Counsel Forum*

*Session Co-Moderators*

**Leonor Cordovil** *Grinberg Cordovil Advogados, São Paulo, Brazil; Conference Coordinator, Antitrust Committee*

**Adam S Goodman** *Dentons Canada, Toronto, Ontario, Canada; Co-Chair, Young Lawyers' Committee*

A practical skills workshop covering the conduct of internal corporate investigations from the beginning of the evidence-gathering process after a dawn raid (or other initial event), interviewing techniques, maintaining employee cooperation, coordination of an international investigation, the role of in-house counsel, optimal maintenance of interview notes, optimal proffering of evidence during an immunity/leniency application, maintaining privilege over the investigation and general best practices.

*Speakers*

**Daniel Bitton** *Axinn Veltrop & Harkrider, New York, USA*

**Tsuyoshi Ikeda** *Mori Hamada & Matsumoto, Tokyo, Japan*

**Magdalena Jakubicz** *Cisco Systems, Madrid, Spain*

**Bubile Lungu-Mupeso** *Bank of Zambia, Lusaka, Zambia*

**Christian Steinle** *Gleiss Lutz, Stuttgart, Germany*

HALL M1

## Thursday 0930 – 1230

### Lost in translation part 2: the impact of gender and cultural issues on the legal profession

*Presented by the Senior Lawyers' Committee, the Women Lawyers' Interest Group and the Young Lawyers' Committee*

*Session Chair*

**Peter Alfandary** *PRA CrossCultural & Development, London, England; Vice Chair, Senior Lawyers' Committee*

The session will look at how gender issues 'play out' in the legal profession in different jurisdictions – their relevance as to how practices are run in various countries; how female professionals are perceived and possibly treated in such jurisdictions (both by colleagues and clients) and women's roles in various jurisdictions in law firm management. As with the session at the IBA Annual Conference in Tokyo 2014, the cross-cultural issues will be a central part of the session.

*Speakers*

**Michelle Bakhos** *LexisNexis, Sydney, New South Wales, Australia; Secretary, Young Lawyers' Committee*

**Sidika Baysal Hatipoglu** *B+B Law Office, Istanbul, Turkey; Vice Chair, European Regional Forum*

**Eva Fischer** *Wolf Theiss, Vienna, Austria*

**Ellen Kratzer** *Fiduciary Trust Company, New York, USA*

**Nicola Mumford** *Wragge Lawrence Gramam & Co, London, England*

**Helga Ottarsdottir** *LOGOS Legal Services, Reykjavik, Iceland*

**Irina Paliashvili** *RULG Ukrainian Legal Group, Kiev, Ukraine*

ROOM -2.16

## Friday 0930 – 1230

### The empowerment of diaspora workers: what is the value placed on human capital and what is the role of the employer?

*Presented by the Young Lawyers' Committee, the Employment and Industrial Relations Law Committee, the Immigration and Nationality Law Committee and the Poverty, Empowerment and the Rule of Law Working Group*

*Session Co-Chairs*

**Carmen Pombo** *Fundación Fernando Pombo, Madrid, Spain; Vice Chair, Poverty, Empowerment and the Rule of Law Working Group*

**Gregory Siskind** *Siskind Susser, Memphis, Tennessee, USA; Membership Officer, Immigration and Nationality Law Committee*

This session will explore how workers' rights in the diaspora are and can be defended, and the role of business. Topics covered will include the realities facing workers in the diaspora (including cases of unforeseeable irregular status after mass dismissals, or situations of unsafe work conditions and accommodation standards), the commitment of business to the rule of law, businesses' social responsibility in the supply chain and practical strategies for the empowerment of diaspora workers.

*Speakers*

**Avik Biswas** *Infosys, Bangalore, India*

**Barbara Linder** *Ludwig Boltzmann Institute of Human Rights, Vienna, Austria*

**Naeem Shahzad** *Lahore Law Associates, Dhabliwala, Pakistan*

**Liesbet van Dael** *VWEW Advocaten, Brussels, Belgium*

HALL N1

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# Overview of the Mexican financial reform

On 26 November 2013, the Mexican Congress approved the Mexican financial reform, which included amendments to 34 different statutes in banking and finance matters, as well as a new statute, the Law for Regulating Financial Groups (*Ley para Regular a las Agrupaciones Financieras*). The main purpose of the reform was to boost credit and investment activities and consequently the national economy, as well as to create mechanisms that allow financial entities to obtain greater resources for such purposes. The reform was enacted by the President of Mexico on 9 January 2014.

The primary areas of the reform are:

- **Reinforcement of regulators:** The faculties and authorities of the regulators of the Mexican financial system (Mexico's Central Bank (BANXICO), Ministry of Finance and Public Credit (SHCP), National Banking and Securities Commission (CNBV), National Insurance and Bonds Commission (CNSF), National Commission for the Defence of Users of the Financial System (CONDUSEF), Antitrust Commission (CFCE)) were reinforced to allow them to – through prudential, corrective and disciplinary measures – cause resources of financial entities (primarily banks) to be placed in the credit market and be used in investments for the development of the national economy. Also the SHCP was granted authority to evaluate the performance of banks in the placement of credit.
- **CONDUSEF and CFCE authorities:** Additional faculties were granted to CONDUSEF, including: (1) approving standard form contracts used by financial entities in their operations with clients; (2) imposing penalties for the use of abusive clauses and restricting distorted practices by financial entities such as tied sales of financial products; and (3) implementing an arbitration system to solve controversies between financial entities and their users. Additionally, the resolutions and awards issued by CONDUSEF were enhanced to be considered as *títulos ejecutivos* and financial entities were required to register contingent liabilities and reserve amounts for any unsettled complaints processed by their clients before CONDUSEF until such complaints are definitively resolved. Also, the CFCE was granted with the authority to evaluate antitrust conditions within the financial system, as well as to issue recommendations and impose penalties. With these new authorities, the CFCE was authorised to evaluate and sanction the financial sector for the first time.
- **Banking capitalisation:** Prudential, corrective, liquidation, insolvency and capitalisation ratio measures, as well as minimum capitalisation requirements for banks, were reinforced as a result of the application of the principles adopted under Basel III, provided that said measures can be applied asymmetrically by the regulators. On the other hand, banks were required to use at least one credit bureau, and the government is creating a new state owned credit bureau.
- **Multiple purpose financial companies (SOFOMES) and corporate governance of financial entities:** Controls over financial entities were increased through, among other things, the transformation of non-regulated entities into regulated entities (SOFOMES), the implementation of better corporate governance practices in financial groups, banks and brokers, as well as through the inclusion of additional liabilities for board members and relevant officers of financial institutions; all of the above with the purpose of preventing fraud and creating trust in the financial system.
- **Development banks:** Development banks were provided with a more flexible legal framework, through the implementation of mechanisms that allow such entities to: (1) obtain better human and material resources; (2) reduce their administrative burden; (3) uniform their regulations; (4) eliminate authorisations from SHCP for the granting of direct loans; (5) promote the financial inclusion of micro, small and medium enterprises, as well as to make

rural and agronomic loans more flexible; and (6) broaden the scope of its permitted investments. The permitted investments of banking entities were also expanded.

- **Commercial reforms:** The Commerce Code (*Código de Comercio*) and the Organic Law of the Federal Judicial Branch (*Ley Orgánica del Poder Judicial de la Federación*) were amended to: (1) reinforce precautionary measures to protect lenders, such as the restraining of debtors and/or the seizure of assets, including the seizure of cash when debts are due and payable, even when such debts are not documented in a *título ejecutivo*; (2) broaden the list of *títulos ejecutivos* to include resolutions of CONDUSEF and the Consumer Bureau (PROFECO) as previously explained herein; (3) allow for the first time the possibility of submitting to multiple jurisdictions to the election of the plaintiff; (4) introduce oral elements in commercial litigations regarding clarification of judgments; and (4) provide the mandatory jurisdiction of federal district courts when the plaintiff has decided to submit its claim to such courts, as opposed to a local concurrent jurisdiction.
- **Collateral:** This includes: (1) pledges over cash may now be perfected and also be used as an alternate extrajudicial payment source upon default of the secured obligation; (2) banks and brokers may act as both trustees and beneficiaries in security trusts securing obligations in which they act as secured parties, without limiting the type of operation being secured; and (3) the pledge over securities (*prenda bursátil*) was amended to allow the foreclosure of the pledged assets without the need of a court order by the secured party in an event of a default.
- **Bankruptcy and insolvency:** The Insolvency Law (*Ley de Concursos Mercantiles*) was amended to, among other things: (1) regulate insolvency and bankruptcy of holding companies and subsidiaries, limiting the collection and voting rights of the latter in the event they participate as creditors in an insolvency proceeding of their holding company; (2) impose and increase penalties for fraudulent conveyances causing the insolvency and bankruptcy of holding companies; (3) regulate the participation of creditors in collective loans (such as capital market certificates (*certificados bursátiles*), debentures, bonds, etc); and (4) establish a new regime of liabilities for management and relevant officers of an insolvent entity,

when the insolvency or bankruptcy of such entity is caused as a result of a breach of their fiduciary duties of loyalty and care. Additionally new felonies were included in matters of fraudulent management when related to insolvency and bankruptcy. Also, provisions regarding agreements with creditors were amended to cover affected parties from such agreements when collection rights or the bankruptcy estate is affected or decreased, as well as to allow an insolvency proceeding with a restructuring plan to be approved by a simple majority of recognised creditors.

- **Financial groups:** A new regulatory framework for financial groups and their financial entity members was established to broaden the scope of their permitted investments, reinforce their corporate governance, and create special rules for their merger, spin-off and dissolution, the separation of entities from a financial group, their capitalisation, liquidation and insolvency.
- **Capital markets:** This includes: (1) public and private offers of securities not registered with the National Securities Registry (*Registro Nacional de Valores*) were specifically regulated; (2) the regime of liabilities for relevant officers of issuers was amended for the cases where they use privileged information or disclose such information to investors; (3) a specific framework was established for real estate investment trusts, development certificates and indexed certificates; (4) additional liabilities for underwriters in the underwriting of securities were established; (5) the possibility to reference securities to underlying assets listed in the international market system (SIC) of the National Securities Registry (*Registro Nacional de Valores*) was included; and (6) the legal framework for investment advisors (*asesores de inversiones*) and their operations, was established.
- **Investment funds:** A new regime of investment funds was established (formerly known as investment companies (*sociedades de inversión*)) which facilitates their incorporation and daily operations, in response to practical needs of such type of financial entities.
- **Foreign investment:** This includes: (1) the temporary participation of foreign governments in the corporate capital of financial institutions, by exemption only, was regulated when such participation is as a result of a financial intervention or

a bailout; and (2) foreign investment was allowed in insurance companies, bond companies, general deposit warehouses (*Almacenes Generales de Depósito*), foreign exchange brokers, and employment pension management companies (AFORES), with the intention to reinforce competition among such sectors.

- *Substitution of loans*: Measures were included to allow users of the financial

system to transfer their loans from a financial institution to another at any moment, in order to allow clients to elect the best loan conditions.

The abovementioned amendments intend to strengthen the competition among financial institutions and create a greater offer of financial products, incentivising loans under equitable and competitive conditions.

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# A legal appraisal of child labour and child sexual abuse in developing countries

## Who is a child?

The United Nations Convention on the Rights of the Child defines a child as 'every human being below the age of 18 years unless under the applicable law to the child, majority is attained earlier'.

The word 'child' is synonymous to an infant, a minor or a juvenile and is a universal term used to describe a natural person who is an offspring of another (either by birth or by adoption). The word may also represent any human being from the moment of birth (in a live state) until the attainment of the age of majority.

There is, however, some uncertainty as to whether a person above 14 years of age is a child. This seems to be associated with the concept that a person above the age of 14 is in a position to rationalise their conduct and thus distinguish between right and wrong. This perhaps explains why the Children and Young Persons Act refers to a person who has attained the age of 14 but is under the age of 17 as a 'young person' while it reserves the word 'child' for a person less than 14 years old. In summary, Cohen J stated in the *Re-Calton* case that the measure of the word 'child' must in every case depend on the context in which it appears.

## An overview of the concept of child labour

According to official statistics, child labour is only that which is recorded in the formal

sector of the economy where children are remunerated for their work. This, however, does not give the true picture of reality as it does not cover the scope of the informal sector.

Generally, child labour can simply be defined as any type of economic tasks, paid or unpaid, that is exploitative in nature engaged by a person less than 18 years of age and is detrimental to the physical, mental, social, educational and moral development of the child. Although child labour is a global problem, it is an established fact that this occurs mostly in developing countries. In such countries, child labour manifests itself in the form of street hawking, trading, bus conducting, working in factories, hotels, restaurants, and working as domestic servants.

Considering the harsh economic conditions in most developing countries, parents and guardians alike are compelled to engage their children prematurely in strenuous and hazardous economic activities to the detriment of the full development of their children in order to supplement the meagre family income. In essence, hundreds of thousands of children hawk various goods on the streets, car parks, market places and along highways in major towns and cities of many developing countries and do all and every form of menial jobs.

Another major form of child labour which regrettably is still prevalent in most developing countries today is child trafficking. Children are trafficked from one country to another to work as domestic servants or

even as prostitutes. The child traffickers take advantage of the cultural tradition of 'fostering' where a poor rural family sends a child to live and work with a family member in an urban area for educational and employment purposes. Often these children do not receive any formal education. Instead, they are treated with less care and are forced to serve as domestic servants with little or no pay. Some become street hawkers or engage in other activities which make them vulnerable to physical or sexual abuse by their so-called guardians.

However, it is important to note that child labour as a concept varies from one society to another, that is, what may be viewed as child labour in a particular society may not be seen as such in another society. In African society for instance, some types of child labour is often considered as a necessary means of imparting the virtue of hard work and dignity of labour in the child. It is seen as a form of training required to be performed by the child in readiness for adulthood to enable the child to fit in well into society.

In most developed countries on the other hand, exploitation of a child is totally frowned upon. The violation of the rights of a child in these countries attracts the attention of the government with sanctions imposed on the violator by the government. Some of the causes of child labour includes, but is not limited to, poverty, ignorance, illiteracy and gender discrimination

### **An overview of the concept of child sexual abuse**

Child sexual abuse has been defined in various ways and in essence it does not have a universal definition. But in general, sexual abuse of a child can be described as the misuse of a child sexually. It is the abuse of a child by an adult or some other person significantly older or in a position of power or control over the child. It can also be seen as the involvement of a child in sexual activities he/she does not fully comprehend to be able to give informed consent. It is a relationship of a sexual nature that has the attendant risk of damaging the health and sexual development of a child. It includes but is not limited to fondling of a child's genitals constantly, excessive kissing, vaginal or anal penetration, oral sex, and rape. It may also include other non-physical contact such as exposure to sexual activities performed by adults, and child pornography.

It is to be noted that the statistics of child sexual abuse cannot be easily ascertained due to the problem of under reporting. The victim of this form of abuse will prefer to keep it a secret which may be due to the fear of being ridiculed or threatened by the perpetrator. The issue of child sexual abuse on a daily basis raises health, psychological and moral concerns. This is because the victims in most cases suffer much emotional imbalance which invariably affects their contribution to the society at large.

One of the major causes of child sexual abuse often pointed to is a lack of parental care. But one cannot fully agree with this because even the most careful and vigilant parents cannot hope to supervise their children 24 hours a day and every day of the week. Though a child may be taught not to talk to strangers and that they should stay away from them, the sad irony of it all lies in the fact that the perpetrators of these acts are not usually total strangers. In most cases they include a person the child knows and is supposed to trust, such as relatives, family friends and neighbours.

The case of *R v Masch (1974) Qd 131, 191* is insightful and illustrates the fact that most perpetrators are known to the child. The painful reality of sexual abuse on a child is that in a case where a child is molested outside the home by a stranger, such a child can still run back home for help and comfort. But where the perpetrator of the act dwells under the same roof with the child, such a child is forced to live with this nightmare. Some of the causes of child sexual abuse includes but is not limited to inadequate parental care/guardianship, abuse of drugs and alcohol, war and poverty.

### **Legal appraisal**

The problem of child labour and sexual abuse in developing countries and the world at large deserves serious and urgent attention. It must be stated without the mincing of words that society at large and the government are directly responsible for the predicaments that befall the children who have been grossly abused, neglected and exploited. However, in ameliorating the effects of child labour and sexual abuse, certain steps have to be taken towards stamping out such cases in society.

In most developing countries, the laws protecting the rights of a child are contained in different legislation. In other words, the legal implication of child labour and child

sexual abuse can only be glimpsed by a consideration of the various legislations so provided. In order to wipe out this ravaging menace and secure the future of all children, the government needs to promulgate a comprehensive law on child abuse, its prevention, treatment and punishment. Such an enactment among other things should prescribe the rights of the child, guarantee their health, welfare, maintenance and protection from abuse and exploitation, education and training, the rehabilitation of abused children and severe punishment for abusive parents, guardians or other perpetrators.

Also there is a need to address the socio-economic conditions under which children are raised. In developing countries where poverty, illiteracy and unemployment are endemic, they affect the rights of the child negatively. Although laws may be enacted to assist in defining and enforcing appropriate behaviours towards children, effective social and welfare programmes will be useful to induce such behaviours from the parents, guardians and the society at large.

However, on the international scene considerable efforts have been made to enact laws to protect the rights of the child. Most states are subject to international law and have strived to ensure that children are protected through treaties and conventions signed by them. To this end, many international treaties have been put in place to secure the future of the world's children. These include:

- Declaration of the Right of the Child;
- The UN Convention on the Rights of the Child;
- African Charter on the Rights and Welfare of the Child; and

- The International Labour Organization's Convention No 138 on the Minimum Age for Admission to Employment (1973) and Convention No 182 on the Worst Forms of Child Labour (1999).

However, the international community must work conscientiously in order to eliminate the climate that creates the incidence of child abuse, especially in developing countries. This can be done by establishing agencies to oversee the regulation and enforcement of the various conventions and treaties signed by states with respect to the rights of the child. Such agencies should be established in order to consider multilateral sanctions to be meted out on erring states. In other words, violation of these laws should result in heavy sanctions by the international community. It is hoped that these enactments will be adhered to in order to safeguard the future of tomorrow's leaders.

### Conclusion

UNESCO proclaimed 1979 as the international year of the child and although this time may have passed, the suffering and exploitation of children around the world continues. Today, children suffer from various forms of abuse including child labour and sexual abuse. When you look into the eyes of a child, the hope, trust and innocence one expects to see have been replaced by betrayal, hunger, fear and suspicion which results from the various abuses.

On a daily basis, millions of children lose the joy of childhood due to the abuses they are exposed to. It is worthy of note that humanity will only progress if we are able, throughout the world, to prepare the children of today to become better citizens tomorrow by respecting their rights and giving them a good platform on which to find their place in society.

# Mexican anti-corruption reform and civil society

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**M**exico is ranked 103 out of 174 countries in the *Corruption Perception Index 2014* according to Transparency International.

Mexico is ranked 21st out of the 31 economies in the Americas evaluated by Transparency International. In the 2014–2015 *Global Competitiveness Report*, Mexico ranked 61st while losing some positions due to a drop in the perceived functioning of institutions (102), among others, which was Mexico's second worst grade out of the 12 indexes evaluated by the World Economic Forum. The *Global Competitiveness Report* established that the most problematic factor for doing business in Mexico is corruption.

In this context, on 27 May 2015 a new constitutional reform to tackle corruption was published in the *Official Federal Gazette* (the 'Anti-Corruption Reform'). The reform was made at a constitutional level, which means that it was approved by more than two-thirds of the Mexican Congress and the majority of the states' legislatures. The Anti-Corruption Reform's main purpose is to strengthen the fight against corruption by providing an ease in the communications between the government and citizens by improving transparency standards, accountability and response to citizens in anti-corruption matters.

## National anti-corruption system

The Anti-Corruption Reform created the National Anti-Corruption System to coordinate between authorities at all government levels with regards to government prevention, detection and punishment of administrative acts of corruption and to measure and assess the performance of public servants under the principles of legality, honesty, loyalty, impartiality and efficiency in the performance of their duties.

The National Anti-Corruption System will have a managing committee that will be formed by the highest ranking officer in: (1) the Mexican Federation Accountability

Office; (2) the Special Prosecutor for Combating Corruption; (3) the Ministry of the Executive Branch responsible for the internal control; (4) the President of the Federal Court of Administrative Justice; (5) the President of the National Institute of Transparency, Access to Information and Protection of Personal Data; (6) a representative of the Federal Judiciary Council; and (7) a representative of the Committee on Citizen Participation.

The National Anti-Corruption System will also have a Citizen Participation Committee which will be composed of five citizens.

Other important elements of the Constitutional reform on anti-corruption matters are:

- *Nationwide*: The Anti-Corruption Reform is national in scope so it is expected that the states will establish local systems of corruption in the near future.
- *Federal matters*: The Mexican Congress shall enact the specific laws that will regulate the specific matters with regards to the National Anti-Corruption System.
- *Penalties for public officials*: Public servants may be subject to political trials when it comes to fundamental issues that harm public interests. Similarly, the Anti-Corruption Reform provides that the law that shall be enacted by Congress and shall include the appropriate sanctions including reprimand, suspension, dismissal and disqualification, as well as economic sanctions.
- *Sanctions to individuals*: The administrative courts shall impose sanctions to individuals involved in acts associated with gross misconduct, irrespective of other administrative or economic sanctions. These sanctions include to be disqualified from bids for acquisitions or leasing of public services or bids for public works, as well as damages in general. The law will be able to order the suspension of activities, dissolution or intervention of the respective company in the case of gross misconduct that could cause harm to the public treasury.
- *Strengthening the Mexican Federation Accountability Office*: The Reform includes several

mechanisms that strengthen the internal audit function at the federal level including:

- authority to review during the fiscal year ('real-time auditing');
  - extension of the deadline to four months for the Superior Audit Office to audit the public accounts;
  - increased opportunity in presenting the audit results;
  - extension of the subject matter of control including power to oversee the exercise of destination and resources from public debt, when states and municipalities obtain debt that is guaranteed by the federal government;
  - the Federal Court of Administrative Justice and the Special Prosecutor for Combating Corruption of the Attorney General's Office will investigate irregularities in the public account; and
  - power to audit trusts and funds, among others, that are funded with federal grants.
- *Takings*: Unjust enrichment was included as an enumerated ground for the government to forfeit property in favour of the government in the context of organised crime.
  - *Conflicts of interest*: The federal public officials are now obliged to declare any conflicts of interest in their financial statement.
  - *Secondary legislation*: The Congress will have a term of one year from the publication of the Anti-Corruption Reform to issue the secondary legislation. Also, the legislatures of the states will have 180 days to enact laws and to make

any amendment in relation to the Anti-Corruption Reform and create the state anti-corruption systems which must comply with the applicable general laws.

### Anti-corruption going forward

Although it is true that Anti-Corruption Reform might fall short in some relevant matters that were discussed during the amendment of the Constitution such as the removal of privileges to corrupt government officials (rather than political trials) or more direct enforcement mechanisms, this reform is the direct response of a Mexican civil society that has been active for the last two presidential terms. The fact that the reform includes directly the participation of citizens in the national Anti-Corruption System managing committee and the creation of the Citizen Participation Committee is a firm first step in building a strong foundation in a new enforcement of anti-corruption matters.

Nowadays, the general perception is that Mexicans are rather sceptical with regards to law enforcement in anti-corruption matters in Mexico, however the Anti-Corruption Reform is an opportunity to build trust in the government by providing more legal certainty and transparency to enforcement in this regard. The Mexican government now lacks the moral authority and the trust on its own institutions, but sooner rather than latter, Mexican people in general will start to wake up and civil society is ready to take a leading role in Mexican public affairs.

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## Climate change and small island developing states – a human rights perspective

'The best time to plant a tree was 20 years ago. The second best time is now.'

*Ancient Chinese Proverb*

**T**he alteration in international and regional climatic trends and weather patterns over a period of time can be caused due to multiple factors

both natural and human induced. Change in climatic patterns due to natural causes has been going on for millions of years and is mostly beyond human control. But adverse shifts in climatic patterns induced by human activities as opposed to natural causes can be reasonably said to be within our control. The IPCC,<sup>1</sup> in its fifth assessment report, has said

that scientists are 95 per cent sure that human beings are the chief cause behind global warming since the 1950s.

Climate change is one of the biggest threats to our planet right now, especially because of its unpredictable nature. Although, as often argued by sceptics, it is not a new phenomenon and the climate of the world has been susceptible to change throughout the history of mankind but it is now established that human actions have led to convert this susceptibility to high probability, which threatens not only human lives but also the removal of entire countries from the face of the Earth. Recently, for example, a disputed island territory which was claimed by both India and Bangladesh disappeared under rising sea levels. Some of the common causes of human induced climate change are an increased level of carbon dioxide and other greenhouse gases such as methane, nitrous oxide, etc, in the atmosphere caused by the use of fossil fuels, use of land, deforestation, etc. These can result in, among other things: (1) rising sea levels; (2) the shrinking of glaciers; (3) melting ice in lakes and rivers; (4) adverse effects on the ecological balance and biodiversity; and (5) desertification in some areas while flooding in some other areas.

In fact, small island developing states are particularly vulnerable to the threats of climate change as has been confirmed by the IPCC's fourth assessment report. The Mauritius Strategy of Implementation (MSI) of 2005 recognised 52 such island states. These have been divided into three groups: (1) the Caribbean; (2) the Pacific; and (3) the Africa, Indian Ocean, Mediterranean and South China Sea taken together.<sup>2</sup> The common identifying vulnerability can be attributed to some of the basic characteristics that are similar to these states such as a developing economy, dependence on the coastal areas, a small population and a government with a relatively weak standing to have a say in the international legal framework.

Many of the bigger nation states including the United States face severe threats from climate change as well. However, the tragedy of the plight of the small island developing states lies specifically in the realisation that apart from environmental and economic challenges caused due to climate change, some of these states might be completely wiped out without a trace. As irony would have it, the majority of the such states have historically had the lowest carbon footprints

compared to other developed states and yet presently they are some of the worst victims of climate change. Therefore from the perspective of conscientious liability the largest emitters should be liable for the victimisation of these states. However, legally pinning any such liability on any state or group of states is complicated and improbable.

Kiribati is an independent and sovereign island state located in the Pacific Ocean. It is one of the worst effected by climate change. It has a population of over 100,000. Another similar island state is Tuvalu with an even smaller population of around 10,000. These islands face the imminent threat of disappearance. The governments of these states are faced with the immensely complicated decision of flight or fight which will eventually bring with itself multiple political, economic and social repercussions in both its international relations and domestic duties.

The Tuvaluan government has rejected a migration discourse in favour of adaptation policies as it feels its endeavours to evoke international responsibility and support towards the internal adaptation and mitigation measures will be undermined by a policy of flight. The government of Kiribati however, has openly accepted the migration discourse and is working on a well-planned migration strategy. However, the long term strategy of the I-Kiribati government is skilled migration to Australia and New Zealand. They are looking into gradual migration so that the people who move first can acquire some financial security and can retain their culture and traditions abroad such that when the rest of the population moves to the new country, adaption would be easier. The government recognises that in the near future their island will become uninhabitable and therefore migration is inevitable.

The strategy the I-Kiribati government is following is simple: instead of postponing migration until it becomes inevitable to have mass migration all at once, they want to spread out the migration as part of a staggered, long term plan. Tuvalu, with a population that is one-tenth of that of Kiribati, can probably still postpone migration until it becomes the absolute necessary option. Kiribati has also purchased 6,000 acres of land on Fiji's second largest island, Vanua Levu, to ensure food security.<sup>3</sup> It goes without saying that whatever the outcome of the plans of their respective governments, the

citizens of these countries will be the ultimate sufferers with their basic human rights being grossly violated.

Article 3 of the Universal Declaration of Human Rights, Article 2 of the European Convention on Human Rights, and Article 6.1 of the International Covenant on Civil and Political Rights all recognise the right to life as an inherent right in humans that must be protected.

Many of the present and anticipated effects of climate change will directly and indirectly threaten the effected people's right to life. The IPCC, in its fifth assessment report, has projected with high confidence that there will be an increase in injury and death of people due to floods, droughts, heat waves, storms, etc. Some of the indirect effects will be increase in hunger due to the collapse of agriculture as a result of frequent and extended bouts of floods and droughts. Weather related disasters will also affect the lives of millions of people, especially those in the developing states. Protection of right to life in essence is also extended to other related rights such as the right to food, the right to water and the right to a livelihood. Water is an essential part of human existence as stated in General Comment 15 of the Committee on Economic Social and Cultural Rights. Similarly, General Comment 12 of the Committee on Economic Social and Cultural Rights remarks that 'the human right to adequate food is of crucial importance for the enjoyment of all rights'.<sup>4</sup> Multiple international conventions, such as the International Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of all Forms of Racial Discrimination explicitly, or impliedly, deal with the right to food as a basic human right and therefore denial of such right is a deprivation of a basic human right.

Climate change also puts additional stress on the already problematic water supplies in many parts of the world. Access to safe and clean drinking water, which is currently denied to 1.1 billion people globally, will be further aggravated.<sup>5</sup> It has been estimated that 600 million people will suffer from malnutrition due to climate change.<sup>6</sup> Thus climate change and its effects pose a direct threat to the right to food and water.

In small islands such as Kiribati and

Tuvalu, frequent droughts and floods – that are a result of climate change – affect both the supply of clean water and also have a destructive effect on agriculture in the islands. Due to the rise in sea levels, salt water proliferates into the fresh water sources putting these states at severe threat in terms of the dependency of the islanders' fresh water needs. Article 11.1 of the International Covenant on Economic Civil and Political Rights, as mentioned earlier, recognises the right to housing. Climate change presently threatens people living on the low lying island states and people living in the coastal areas. Rises in sea levels and frequent storms, along with frequent floods render many homeless. Many of the people in the low lying areas have already had to be relocated and many more will follow in the coming years. Shoreline erosion and frequent flooding threaten to wash away their homes and wipe out the bare means of agriculture necessary for the islanders to sustain their lives. It also affects tourism and other economic activities in the coastal areas. Article 12 of the International Covenant on Economic Civil and Political Rights recognises the right to the enjoyment of the highest attainable standard of physical and mental health. It is also referred to in Articles 12 and 14 of the Convention on Elimination of All Forms of Discrimination Against Women, Article 5 of the International Covenant on the Elimination of All Forms of Racial Discrimination, Article 24 of the Convention on the Rights of the Child, etc.

Malnutrition, injuries and other diseases due to extreme weather events, reduced immunity due to increased frequency of diseases, water borne diseases due to the lack of supply of clean drinking water effects the right to health of the people. Article 1 of the International Covenant on Economic, Social and Cultural Rights and the International on Covenant Civil and Political Rights recognises people's right to self-determination and their right to choose their political status and also the freedom of choosing their economic, social and cultural development. Rises in sea level and extreme weather conditions challenge the territorial existence of low lying islands and threaten their habitability. Thus it deprives people of the right to determine their livelihood, and also blocks the scope of freely determining their social and cultural pursuits. Many times in cases of relocation of the affected population there is always the concern that the displaced people might lose their cultural identity. Thus the effects

of climate change indirectly poses a threat to people's right to self-determination.

Human civilisation has often been seen as the custodian of the natural resources of the world, whether for the current or future generation. Therefore we are duty bound to act and act as swiftly as possible to prevent the effects of climate change. Additionally, given how the effects of climate change directly result in a gross violation of human rights, we are also duty bound to take immediate effective actions to stop the continuation of such violation. Although there are discussions in international law to address these issues, it is not enough. Implementation of agreements arrived at by such discussions is not prompt and it is often marred by political, economic and other issues. Given the degree of risk faced by small island developing states, better awareness and prompter action is required.

As Naderev Saño, the lead negotiator for the Philippines at the UN Climate Change

Conference in Doha, Qatar in 2012, brilliantly summed up the urgency of the threat that climate change poses: '... If not us, then who? If not now, then when? If not here, then where?'<sup>7</sup>

#### Notes

- 1 The Intergovernmental Panel on Climate Change.
- 2 SIDSnet, 'About SIDS (small island developing states)': [www.sidsnet.org/about-sids](http://www.sidsnet.org/about-sids).
- 3 Office of the President, Republic of Kiribati, *Kiribati Climate Change*: [www.climate.gov.ki/tag/government-of-kiribati/](http://www.climate.gov.ki/tag/government-of-kiribati/).
- 4 UN Committee on Economic Social and Cultural Rights, General Comment No 12 (1999): [www.refworld.org/docid/4538838c11.html](http://www.refworld.org/docid/4538838c11.html).
- 5 UN High Commissioner for Human Rights, 'The Relationship Between Climate Change And Human Rights' in Scott Leckie, Ezekiel Simperingham and Jordan Bakker (eds), *Climate Change And Displacement Reader* (Earthscan, 2012) 217.
- 6 *Ibid*, 218.
- 7 International Institute For Sustainable Development, Summary of the Doha Climate Change Conference (December 2012) IISD Reporting Services: [www.iisd.ca/vol12/enb12567e.html](http://www.iisd.ca/vol12/enb12567e.html).

## The relevance of chapter 39 of the 1215 Magna Carta to modern constitutional thought

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*We will sell to no man, we will not deny or defer to any man either justice or right.*  
Magna Carta (1225)

**E**ight-hundred years since the Magna Carta Libertatum (roughly translated from Latin as the 'Great Charter of Liberties') was proclaimed by King John of England, the importance of that charter to humanity is widely recognised, not only because it is still taught in practically every law school around the world – at least every school that shares a minimal western tradition – but specifically because the limitations that it has instilled on the powers of national states are still debatable, interpreted and transformed every day by national courts and its core values are widely accepted.

Whether a common law country, such as the United Kingdom, United States or Australia,<sup>1</sup> a civil law country, such as

Brazil or France, or a country that has a mixture between those two traditions, such as Mexico, the province of Quebec, Puerto Rico and the state of Louisiana,<sup>2</sup> the influence of the Magna Carta, a document originally drafted to be applied in one country, England (currently part of the United Kingdom), by an unpopular king forced by its barons to rule under the rule of law, has truly surpassed borders, not only for being one of the strongest influences in the unwritten constitution of the United Kingdom<sup>3</sup> but also for being a seminal force in establishing general constitutional principles in every democratic constitutional charter across the globe.<sup>4</sup>

The transnational force of the Magna Carta has much to do with the fact that it was the first time in modern history in which a legal document limited on the absolute right of a monarch to rule as it wished over its subjects and kingdom. If nowadays from

a western point of view<sup>5</sup> this seems to be natural, at the time – in the midst of the Middle Ages when the king was considered having his powers vested by God – it was truly a revolutionary concept.

The Magna Carta, which was written in Latin,<sup>6</sup> was to be applied and read by the well-educated barons and nobility, not to the common person, and it was not easily accepted at the time. After the death of King John in 1216, one year after its enactment, there were some doubts as to whether the Magna Carta would be recognised by his successor, the then nine-year-old King Henry III. Luckily, Henry reaffirmed the Magna Carta ten years later, in 1225, when he issued a new version of the document.<sup>7</sup>

Many centuries have passed since this moment when the Magna Carta, although still remembered, fell partly into oblivion due to internal wars in England – particularly in the 16th century – when enlightened despots, such as Henry VIII (who reigned from 1509–1545), founder of the Church of England, and his successor, his daughter Queen Elizabeth I (daughter of Anna Boleyn), known as ‘the Virgin Queen’ (reigned 1558–1603),<sup>8</sup> largely ignored its provisions under the argument of unifying the kingdom as it was plagued by religious conflicts between Catholics and Protestants.<sup>9</sup>

After the death of Queen Elizabeth – who never married or had any children – James I, son of her rival Mary of Scotland (a devout and fanatical Catholic who had been imprisoned for treason and later executed in 1587 on the orders of Queen Elizabeth) ascended the throne, ending the Tudor dynasty.

More political instability followed after that, including a truly unique period for British history – a country associated with its monarchy – the Civil War and the rise of a civilian, Oliver Cromwell, to power.<sup>10</sup> Cromwell, an extremely observant puritan (some may even say fanatical) ruled Britain with an iron fist, under the title of ‘Lord Protector of England, Wales, Scotland and Ireland’ between 1653 and his death in 1658.

The death of Cromwell and the restoration of the British monarchy in 1660, after the overthrow of his son, Richard, led to a renewed interest in the Magna Carta and the limitations on the power of the king, particularly the submission of a king’s act to the British Parliament in what became known as the ‘constitutional monarchy’. After years of political rift and instability that followed the restoration of the monarchy,

what was known in Britain as the ‘Glorious Revolution’ took place between 1688–1689.<sup>11</sup> This confirmed the supremacy of parliament over the British monarchy and limited the powers of the king under the rule of law. After this period – which established the British monarchy as it is today – no king or queen could rule under absolute power any longer, no matter how hard they tried.

The revival of interest in the Magna Carta was strongly led by the British jurist and politician, Sir Edward Coke,<sup>12</sup> who defended the supremacy of the common law against the Stuarts’ claim of royal prerogative (the Stuart dynasty followed the Tudors after the death of Elizabeth I. Sadly, Edward Coke died in 1634 without witnessing the acceptance of the Magna Carta’s ideas in the late 17th century, with the enactment of the British Bill of Rights in 1689<sup>13</sup> and subsequent legislation that followed in the next few decades, not only in Britain, but also in other common law countries, such as the United States, in the 18th century.

The British Bill of Rights, drafted by the British Parliament in 1689 in response to the authoritarian acts of King James II which were viewed as ‘contrary to the known laws and statutes and freedom of this realm’,<sup>14</sup> reaffirmed the supremacy of parliament and expanded the limitations on the right of the king to enact legislation. Among its provisions worth citing are: (1) the limitation of the king to dispense laws and the execution of law, without the consent of parliament; (2) the right of people to petition to the king without being persecuted; (3) the limitation of the king to raise and keep a standing army within his kingdom in times of peace, without the consent of parliament; (4) the limitation of the king to raise taxes by royal prerogative and without the consent of parliament; (5) the limitation on the king’s right to violate the freedom of parliament to gather and hold elections; and (6) the limitation on the king’s bench to persecute matters and causes cognisable only in parliament.<sup>15</sup>

As can be seen, the British Bill of Rights (originally named ‘An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown’) severely limited the rights of the monarch to rule by decree (royal prerogatives) and these sorts of limitation have strong roots in the 1215 Magna Carta, particularly chapter 39.

As has been previously mentioned, the Magna Carta likewise served as a strong inspiration for other countries legal

memoranda, particularly the US legal tradition, which has a strong admiration for that document,<sup>16</sup> perhaps due to it being cited more frequently by current US courts than by UK courts.<sup>17</sup>

The US fascination with this ancient document in their own constitutional development<sup>18</sup> has much to do with how the country was founded, by people escaping from religious and political persecution by the state, who did not accept an unlimited and absolute state ruling their lives. Americans traditionally have been very keen on personal and individual rights, much more than – in opposition to other countries legal traditions – social rights, which are not even mentioned under the US Constitution.<sup>19</sup>

The strongest mark of the Magna Carta in US Constitutional thought can be seen in the supremacy clause of the US Constitution (Article 6, Clause 2) that establishes the United States Constitution, federal statutes, and treaties as ‘the supreme law of the land’.<sup>20</sup>

However, in our opinion there is no more evident influence of the Magna Carta in US political thought than the enactment of the US 1791 Bill of Rights,<sup>21</sup> which established among its ten amendments: freedom of religion; freedom of speech and the press; freedom of assembly; the right to petition; the right to bear arms; the right to a jury trial; the right to due process of law; limitations on excessive bail and excessive fines and on cruel and unusual punishment; the right to an indictment and a grand jury in criminal charges; the right not to self-incrimination; limitations on the state to pursue search and seizures, without a warrant, among other rights and limitations on the powers of the state.<sup>22</sup>

It is interesting to observe that according to the website *History Today*,<sup>23</sup> in 1965 the UK Parliament created a commission for statute revision. The commissioners recommended repeal of laws that ‘cannot be shown to perform a useful function’.<sup>24</sup> They proposed a bill repealing over 200 laws, including eight chapters of the Magna Carta that they found to be ‘of no practical significance today’. Legislation that followed in 1970 left intact three chapters of the original Magna Carta (chapters 1, 13 and 39) and one chapter of the 1224 version (chapter 37). Chapter 1 of the 1215 Magna Carta declares the ‘independence of the English Church’ and chapter 13 declared the city of London to be ‘free territory, with free custom, both by land and water (and making a nowadays extensive interpretation of that act, also by air)’.<sup>25</sup>

However, it is undoubtedly chapter 39 of the 1215 Magna Carta that has had the largest influence in modern constitutional thinking and the reason the Magna Carta has become so well-known and studied around the world in different legal systems. Chapter 39 states:

‘No free man shall be taken or imprisoned, or disposed or outlawed or exiled or in any way ruined, nor will we go or send against him except by the lawful judgment of his peers or by the law of the land.’

The above chapter has generated several fundamental rights that are now seen as cornerstones in any constitutional democracy, including: (1) the supremacy of the rule of law; (2) prohibition of cruel and unusual punishment (death, life imprisonment, hard labour, banishment);<sup>26</sup> (3) the right to a jury trial; and (4) the right to habeas corpus.<sup>27</sup>

One knows that something is relevant when something is still controversial and debatable, and there is nothing more debatable than when there is the occurrence of authoritarian regimes limiting the right to *habeas corpus*, the right to appeal to a court of law or judge from illegal and arbitrary arrests, preventing unlawful or arbitrary imprisonment, and having the right to respond to criminal charges in liberty.<sup>28</sup>

Although common sense suggests that habeas corpus was created by the Magna Carta – and that is, for instance, what the current author of this essay was taught when attending law school – this does not happen to be exactly true. Habeas corpus can be extracted by chapter 39 of that Charter, but it was only introduced to the British Legal System and subsequently to other legal systems by the Habeas Corpus Act of 1679,<sup>29</sup> passed during the reign of the restored monarchy of Charles II, after the English Civil War.<sup>30</sup> It is such a fundamental right that anyone can file a writ of habeas corpus, in regular courts, without necessarily being a licensed attorney in that jurisdiction. Detainees in regular jails have written many habeas corpus writs throughout history and in many cases were able to even change the law, by Supreme Court rulings of their writs.<sup>31</sup> Any sort of paper or writable form is accepted. Recently, for instance, a Brazilian inmate filed to the Brazilian Superior Court of Justice by mail a writ of habeas corpus written on toilet paper.<sup>32</sup> It was accepted and the merits of the case will be analysed by that court.

The so called ‘writ of habeas corpus’<sup>33</sup> has been suspended several times throughout history in several countries where it has been

adopted under the argument of:

- *Internal instability*: It was suspended in the UK in 1793 when there were concerns that the French Revolution might inspire rebellion in Britain;<sup>34</sup>
- *Civil wars*: It was suspended with the creation of military courts and detention centres by President Abraham Lincoln during the American Civil War (1861–1865);<sup>35</sup>
- *External wars*: It was suspended several times during the First and Second World War by the Allied Powers when treating enemies of the state;<sup>36</sup>
- *Coups d'état*: It was suspended by many military juntas that lead coups that have occurred in Latin America, Asia and the Middle East, particularly in the 1960s and 1970s, under the argument of fighting the communist threat and internal instability (eg, the state of emergency passed by recently deposed Egyptian President Hosni Mubarak after the assassination of president Anwar Sadat in 1981, that severely suppressed individual freedoms);<sup>37</sup> and
- *The war on terrorism*: It has been suspended as a result of the ongoing 'war on terrorism'.<sup>38</sup>

Government measures have suspended the writ of habeas corpus in the past under the argument of fighting terror. Examples of this include the case of the UK government's struggle against the Irish Republican Army (IRA)<sup>39</sup> and Spain's struggle against the Basque separatist group ETA,<sup>40</sup> and the post-September 11 landscape which has included extraordinary renditions,<sup>41</sup> the Guantanamo Bay Detention Centre and CIA Black Sites. These have all raised the discussion to a different level, particularly on the detention of foreigner nationals whose countries are not officially at war with the detaining country.<sup>42</sup>

If the concept of cruel and unusual punishment is very particular to each country – for instance the US does not consider the death penalty, under certain circumstances, as cruel punishment,<sup>43</sup> and neither does Japan or South Korea,<sup>44</sup> to mention three democratic countries that hold regular elections – and if the right to a jury trial varies deeply within different countries – in Brazil, for instance, there is only a jury for willful crimes against life (homicide, attempted homicide, manslaughter, involuntary manslaughter, infanticide, etc)<sup>45</sup> – the supremacy of the rule of law and the right of habeas corpus are such fundamental rights in modern constitutional democracies that undoubtedly – for these two constitutional principles alone – the 1215 Magna Carta can be considered one of the most important legal

documents written in the history of humanity.

#### Notes

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# Cambodia's life insurance and recent regulatory change

**W**hile there are a few recent significant developments in the Cambodian insurance industry, the author intends to highlight only two matters which have drawn the most attention by the industry players and public. The first one relates to life insurance which has been a key driver in influencing the insurance business landscape. Life insurance is apparently the newest among insurance businesses in Cambodia compared to general insurance and microinsurance.<sup>1</sup> After some delay, it finally got underway in May 2012 when Cambodia Life, a government joint venture, commenced operations, followed by a Canadian-based global life insurer, Manulife, in June 2012 and the UK's largest insurance company, Prudential, added to the list in January 2013. The second matter to draw attention is the new insurance law which became effective in February 2015 and how its general guidance and direction can affect the life insurance sector.

Since their inception, the three life insurers have put a lot of focus on educating the market and promoting their brands and working closely with the insurance regulators (Ministry of Economy and Finance – MEF). They have organised various educational and client seminars as well as assisted the insurance regulators in different ways to raise public awareness of life insurance benefits and to contribute to develop life insurance rules. This article will explain how life insurance has shaped the Cambodian market and exhibits regulatory change in this sector.

## Overview of the insurance industry

The total assets of the insurance industry were recorded at US\$129m in 2014 with equity of US\$89m, gross premium of US\$60m, more than 2,000 employees and it contributed US\$3m in tax payments.<sup>2</sup> With a penetration rate of 0.26 per cent in 2012,<sup>3</sup> Cambodia stands among the least developed insurance blocks in ASEAN. Such a low rate is not uncommon for developing countries. However, to provide some additional

clarification, there are fundamental facts that should be touched upon for the Cambodian insurance sector which started differently from other developing markets.

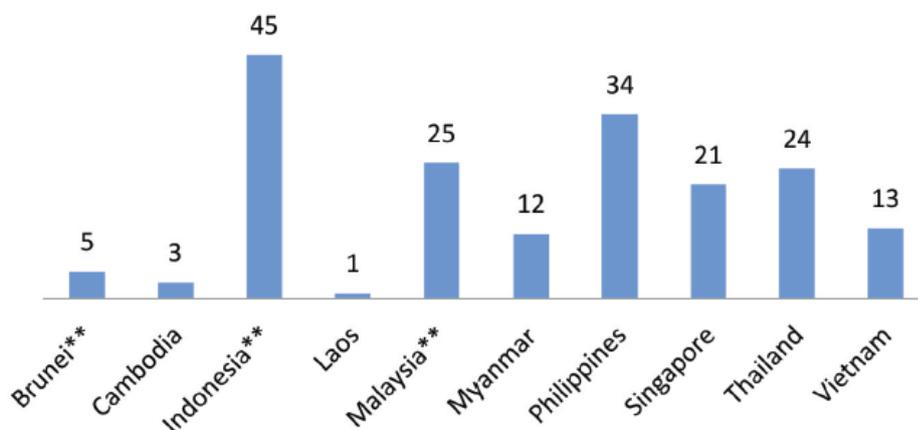
First, the entire insurance industry started about 20 years ago. For the first ten years of its existence, the sector was monopolised by a state-owned company called Caminco. Second, the legal and regulatory framework for this sector is still evolving. For instance, the tax rate at five per cent for gross premium is unusual for a life insurance tax regime.<sup>4</sup> Third, Cambodia's legal and judicial system is not strong which significantly influences consumer confidence in their ability to obtain a fair result in any insurance litigation. Insurance is about the purchase of intangible products with the promise to pay out future claims. Consumers, therefore, have to feel reassured that if the insurers do not keep their promise, they will be able to turn to a competent, fair and impartial judicial or arbitral institution for resolution.

Fourth, there is a lack of understanding among the general public about insurance which requires huge investments in education and media campaigns. Fifth, there is a shortage of local human resources in the field due to its nascent nature and lack of formal training programmes in higher education or professional institutions. In addition, the sector remains largely dominated by foreign players at 57 per cent (Asian Development Bank Institute 2013) and key senior positions are occupied by foreign talent. Last but not least, there are only three compulsory types of insurance at the moment: (1) motor vehicle third party liability insurance;<sup>5</sup> (2) passenger transport insurance for protecting the rights of those travelling by any means of transport; and (3) construction insurance for medium and large scale projects.

## Life insurance

Life insurance has grown rapidly after three years of operations. At the end of 2014, the gross premium of the three life insurance companies reached US\$7.55m taking up

## Number of life insurers



\*Data as at end of 2014;

\*\*Includes family Takaful/Shariah operators.

Source: Milliman Research Report (2015)

about 13 per cent of the total 2014 premium size.<sup>6</sup> Moreover, between January and May 2015, the gross premium of life insurance grew by up to US\$6.81m, representing 25.7 per cent of the entire insurance sector and growing at 251 per cent for the corresponding period from last year.<sup>7</sup> Given the author's experience in the industry since the launch of life insurance, it is predicted that by the end of 2015 the gross premium of life insurance will be double the 2014 premium, that is, about US\$15m. General insurance took about ten years to reach that similar number in 2006–2007. With that kind of growth momentum and entry of few life insurance companies in the next 24 months,<sup>8</sup> it is expected that it will not take long for the life sector to overtake their general insurance peers in terms of premiums.

The launch of life insurance has brought in a new distribution channel called 'bancassurance'<sup>9</sup> under a referral model. Due to the absence of specific regulations on bancassurance, the banking (National Bank of Cambodia – NBC) and the insurance (Ministry of Economy and Finance) regulators have come up with a supportive approach to allow bancassurance to emerge. The NBC requires that banks can only refer products of life insurers. Life insurers are required to fulfill some requirements such as establishing complaint handling procedures and training programmes for relevant bank staff. The insurance regulators require the banks to apply for an agency licence even though they just refer the products.<sup>10</sup> So far, each life insurance company has at least

one bank partner to refer their products to the banks' clients. Manulife has had a non-exclusive relationship with ANZ Royal since 2014 and Maybank since 2015 while Prudential has had an exclusive deal with Acleda since 2013 and Cambodia Life has had a non-exclusive bancassurance relationship with FTB and CIMB banks since 2014.

There is plenty of room for life insurance to grow in Cambodia and in the long run, the life insurance business will become an important backbone for the country's economy similar to what has been seen in many markets where life insurance premium contributes around four per cent of the global GDP in 2012 (Swiss Re 1/2012). According to the OECD Secretariat (2001), an increase in the population's standard of living driven by strong economic growth is incontestably the prerequisite for life insurance development. This is the case for Cambodia where it enjoyed an average economic growth of around eight per cent between 2000 and 2010 and around seven per cent between 2011 and 2014.<sup>11</sup> This has resulted in an increase of the GNI per capita to US\$1,010 in 2014 (World Bank 2014)<sup>12</sup> and a decrease in the percentage of the population living below the poverty line from 53 per cent in 2004 to 20.5 per cent in 2011 (World Bank 2014).<sup>13</sup> Other reasons favourable for rapid development of the life insurance industry include a continuance in the strong growth in general insurance, growth in the banking sector, a young society within the economically productive age group (15–64)

which accounts for 64 per cent of the population,<sup>14</sup> strong property development, and the emergence of the stock market.

Since entering into the Cambodian market, life insurance companies have invested heavily in marketing campaigns which has generated a new interest for insurance among the public. Even though general insurance companies have been operating in Cambodia for more than ten years, their brand names are likely to be less well known compared to the three life companies, in particular Manulife and Prudential which commenced operations only few years ago. This is unsurprising as the two companies seem to give priority to raising their brand awareness and educational campaigns. They have invested hugely in billboards, TV commercials, printed advertisement and digital platforms, and often host educational seminars in Phnom Penh and key provinces which give them direct interaction with the public. In addition, with their largest workforce in distribution channels (ie, bancassurance partners and individual sales representatives)<sup>15</sup> it will not be difficult for the life insurers to expand their interactions quickly to the public and potential customers.

### Potential regulatory changes

A long-awaited law on insurance was finally promulgated by King Norodom Sihamoni in early August 2014 and entered into force six months later in February 2015. The MEF has been a key driver in getting the law passed and it has been a challenging task given the complexity and specialty required by other line ministries and parliamentarians in understanding the insurance nature of business. The new law replaced an old law – in place since 2000 – which was often deemed as unfit in some circumstances of the current market. The old law had 56 articles, while the new law has 114 covering all insurance business activities including general insurance, life insurance and microinsurance in Cambodia.

While the new law presents some key features of comprehensiveness and modern principles of insurance business, the details of how they are applied and construed are currently unknown.<sup>16</sup> There are a few instances in that aspect. First, the new law stipulates that insurance can be distributed through either insurance agents or brokers. It does not mention at all about bancassurance or an insurance company's staff to distribute

products even though they are currently being practiced. The MEF has indicated consistently that they support sales staff and the bancassurance approach.

Second, the new law provides four types of life insurance products: (1) term life; (2) endowment; (3) whole life; and (4) annuity. Limiting to such specific types and numbers of products can be a challenge in the future. Regulating and approving various kinds of life insurance products can be challenging when the market and consumers become more educated and sophisticated. Thus, there should be a clear definition of life insurance products rather than regulating types of products. A broader definition with prior approval by the MEF, not limited by number of products, would allow life insurers the latitude and creativity to develop products that are suitable for consumers such as unit-linked, universal life, group life, dread disease/critical illness or health insurance.

It should be noted that the new law has significantly strengthened the MEF's control and procedures for more healthy growth and promoting trust in the industry. The law stipulates regulating and supervising insurance business which cover financial, legal and economic aspects in a number of articles.<sup>17</sup> Financial control includes financial projection prior to licence approval, monthly and quarterly business report and audited financial report, etc. Legal control generally consists of requiring prior regulatory approval such as changes in memorandum and articles of association, appointment/change of the chief executive officer or board member or shareholders, capital injection and new products. Economic control covers collecting data, deciding on licence issuance, maintaining fair competition and educating the public on benefits of insurance, etc. The law also empowers the MEF in handling complaints or disputes from any conflicting parties before they wish to proceed to arbitration or court.<sup>18</sup> This is a good move to involve the MEF in resolving the conflicts as adjudicating insurance disputes requires sets of skills and knowledge about the industry so that an objective and fair conclusion can be realised.

In general, many industry players have expressed positive feedback towards the new law and subsequent detailed regulations to be issued. Through various interactions with the industry players, the MEF has listened to and considered carefully proposals and feedback provided by the private sector and

has taken positive moves from time to time. Another example besides bancassurance is a temporary exemption on the increase in deposit for new capital injection. In 2013, the MEF agreed with the life insurers that, due to unclear regulations, until new rules are issued, there will be no increase in deposit when the companies bring in more capital. It is expected that the new regulations (guided by the new law) will make way for further growth in the life insurance sector. Some positive changes expected include more relaxed distribution channels (agency, bancassurance, brokerage, etc), clear complaint handling processes/mechanisms, clear investment guidelines and capital/deposit requirements (ie, consideration is being given to whether a risk-based approach should be adopted like some countries in the region).

Another regulatory change underway is the premium tax. In March 2015, the General Department of Taxation (GDT) agreed with the insurance regulators (MEF) and the life insurance industry that the current premium tax rate of five per cent of the gross premium (ie, top-line approach for profit tax) shall be applied only to products with protection in nature. Any life products with a savings element in nature shall be taxed at 20 per cent instead on profit (ie, bottom-line approach). The timing when this change is adopted is as yet unknown.

## Conclusion

The life insurance industry is a promising sector in the Cambodian economy which should contribute not only to economic growth but also to social protection. Current constraints (ie, regulatory, political, judicial and market issues, etc) do not seem to impede local and international investors in seeking operating licences in Cambodia. Perhaps, one of the key drivers for such a bold decision is the early mover advantage where they can shape and influence the industry from regulation to distribution and to consumer expectations. Another reason is related to favourable demographics with the rising income per capita. Cambodia is a young society where the economically productive age group (15–64) accounts for 64 per cent of the population<sup>19</sup> and has an increasing number of middle income earners, while there has been a drastic drop in poverty. The strong and stable economic growth since 2000 is also another important factor supporting the

promising future outlook of the Cambodian life insurance sector. Furthermore, if they look around the region, it is likely only in Cambodia where the insurance and banking regulators are so receptive and positive towards the private sector.

Thanks to the new Insurance Law and Financial Sector Development Strategy (2011–2020),<sup>20</sup> several things are expected to happen in the next few years. Undoubtedly, the detailed regulations (ie, Sub-Decree, Prakas and Circular) will be issued and, generally, they will be in favour of the life insurance operators and consumers. The expectation is that there will be continued development of the bancassurance distribution channel for the life insurance space and the development of consumer protection mechanisms such as a formal channel for handling complaints. We will see the change in the premium tax rule for life insurance approved and implemented. Additionally, the MEF is most likely to approve new licences of more life insurers. According to the Financial Sector Development Strategy, the MEF will establish an independent insurance commission by 2020 and establish an insurance institute to offer specialised training on insurance by 2017 and to become an insurance research and development centre by 2020. They will consider setting up a life insurance association and associations of agents and brokers by 2017.

## Notes

- \* All opinions expressed in this article are those of Mr Sythan Prou and do not represent in any way those of Manulife (Cambodia) Plc.
- 1 General insurance businesses started in the 1990s with monopoly by a state-owned enterprise and became open in the early 2000s while microinsurance first commenced operations in 2011.
- 2 Rattanak Chhay, Director of Insurance and Pension, Ministry of Economy and Finance, July 2015 (Seminar on Life Insurance, Battambang, 2015).
- 3 Vann Mey, Ministry of Economy and Finance, Cambodia, *Key Issues in Licensing and Supervision of Microinsurance in Cambodia* (Manila, the Philippines, ICMIF-AOA Development Network Seminar 2013).
- 4 This issue has recently been agreed in principle by the tax regulators (General Department of Taxation) to change in favour of the proposal by the life insurance industry.
- 5 This covers commercial motor vehicles for transport/travel purposes, motor vehicles of NGOs, IOs, motor propelled or towed cement mixers, and motor tricycles used for the transport of goods or passengers.
- 6 See n2 above.
- 7 *Ibid.*
- 8 It is most likely that large life insurance companies will come into play in the next few years.
- 9 The term 'bancassurance' is defined by the World Bank (O Serap and G A R L Nick, 2013) as the process of using a bank's customer relationships to sell life and non-life

insurance products. It was started in Europe in the 1980s as a main distribution channel for life insurance products and was later brought into many parts of the world, in particular in Asia where it now has a strong foothold as an alternative distribution channel of life insurance products.

- 10 Under current regulations, an agency licence means to be for sale, not necessary referral.
- 11 See: [www.worldbank.org/en/publication/global-economic-prospects/regional-outlooks/Global-Economic-Prospect-June-2015-East-Asia-and-Pacific-analysis#5](http://www.worldbank.org/en/publication/global-economic-prospects/regional-outlooks/Global-Economic-Prospect-June-2015-East-Asia-and-Pacific-analysis#5)
- 12 See: <http://data.worldbank.org/country/cambodia/khmer>
- 13 See: [www.worldbank.org/en/news/press-release/2014/02/20/poverty-has-fallen-yet-many-cambodians-are-still-at-risk-of-slipping-back-into-poverty](http://www.worldbank.org/en/news/press-release/2014/02/20/poverty-has-fallen-yet-many-cambodians-are-still-at-risk-of-slipping-back-into-poverty).
- 14 General Population Census of Cambodia 2008, National Institute of Statistics.
- 15 Manulife and Prudential each have at least several hundred insurance advisors (for Manulife) and life

insurance consultants (for Prudential) while Cambodia Life maintains dozens of sales staff representatives.

- 16 This is due to the fact that the new law only provides general direction and guidance for insurance businesses and leaves the detailed guidelines to the sub-decree and relevant regulations such as MEF Prakas and Circular which should be issued in 2015. The MEF is capable of developing such comprehensive and sophisticated regulatory regimes.
- 17 These three kinds of control are largely based on an article by Mr Antoine Fontaine published in *The Insurance and Reinsurance Law Review* (Cambodia Section) 2015
- 18 Arts 89–93 of the Law on Insurance (2014).
- 19 See n14 above.
- 20 Financial Sector Development Strategy (2011–2020) is a roadmap for the Royal Government of Cambodia in developing the financial industry between 2011 and 2020 and covers insurance, pension, banking, microfinance, capital market, etc, in Cambodia.

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