

YOUNG LAWYERS

INTERNATIONAL BAR ASSOCIATION
PUBLIC AND PROFESSIONAL INTEREST DIVISION



the global voice of
the legal profession

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FROM THE CHAIR

New Chair's welcome note

Eric Rieger

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Dear members and friends, The start of 2009 has seen a major shift in our committee's team of officers. I am very happy to welcome three new and highly motivated colleagues who have agreed to spend part of their limited free time on IBA Young Lawyers' issues. Don't believe those who say that they were simply not quick enough to leave the room when the vacant positions were discussed in Buenos Aires! The new officers are:

- Heather Irvine from South Africa, who is the new Communications Officer and local point of contact for our African national representatives;
- Amit Bansal from India, who is responsible for the committee's website and local point of contact for our Asian and Pacific national representatives; and
- Adam Goodman from Canada, the new Events Officer, who serves simultaneously as local point of contact for our North American national representatives.

The rest of the team should be already known to you. They are now busy with their new tasks within the committee:

- Rouven Bodenheimer is the new Vice-Chair and local point of contact for European national representatives;
- Agustin Mayer is the new Secretary, responsible for all kinds of membership issues (including applications to become national representatives) and is also the local point of contact for Latin America; and
- myself as the new Chair.

Continued overleaf

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For ease of reference biographies of all the committee's officers appear later in this edition. Please continue to show your interest in the work of the committee and to offer your most valuable support. Since we are all new to our committee positions, any input will be highly appreciated!

We will try to structure newsletters by introducing subcategories such as Section National Representatives, IBA/Committee news and Related Issues and Section Professional Interest and by choosing a focus topic per edition. This time it was not difficult to identify the latest IBA Annual Conference in Buenos Aires as our focus. Readers who were there with us will agree that Argentinean hospitality and nightlife set bench marks that will be hard to match. Also in this issue enjoy first-hand reports from our 'investigative journalists' Bogna and Michela and a perfect round-up from Ross.

Please note that Bogna and Michela won 2008 LPD Committee scholarships, a highly recommendable initiative which is currently open for this year's Annual Conference in Madrid. Do not miss our overview on potential funding opportunities!

As Madrid 2009 is already casting its shadow, please be assured that we are doing our very best to organise interesting and educative Committee Sessions, all in our very own style. We have placed a certain focus on cooperation with other committees, as this is an excellent opportunity to learn more about the variety of legal issues covered by the IBA and to network with other colleagues with whom you might share a professional interest.

Enjoy reading this edition of the newsletter and be on the lookout for our new initiatives and plans for Madrid. We will tell you more about these in due time.

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

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MINI-BIOGRAPHIES OF THE YOUNG LAWYERS' COMMITTEE 2009-10

Chair: Eric Rieger



Eric Rieger was born on 12 November 1974 in Rheydt/Mönchengladbach, Germany and is admitted to the Bar of Düsseldorf, Germany (since 2004). He studied law at the Universities of Trier, Germany and Thessaloniki, Greece, where he focused on EU and international law.

Eric obtained an MA in International Politics from the Université de Paris – Sud 11, Centre Européen de Recherches Internationales et Stratégiques (CERIS). He has been with his firm Heuking Kühn Lüer Wojtek since 2004 and is based at its offices in Brussels and Düsseldorf.

Eric predominantly advises international clients on environmental, health and safety regulations (at EU and German level), EU law, EC and German competition law, merger control and state aid, international trade and M&A. His daily work entails presenting his clients' interest before the European Commission, the European Courts of Justice as well as before various German administrations and law courts. Given his specialisation in competition law, Eric regularly advises companies which face cartel investigations, are involved in merger notifications (both EU and Germany) or need counsel on EU state aid. He has also gathered significant expertise in international trade issues such as anti-dumping and anti-subsidy investigations as well as in the EU's customs law. Finally, as far as EHS is concerned, Eric advises international clients on compliance issues, product safety and consumer protection obligations. Having started his professional career in the European Parliament, Eric has built up his network of contacts with various stakeholders in the EU Institutions as well as in EU Member State administrations.

After serving as Newsletter Editor on the Young Lawyers' Committee, Eric looks forward to chairing the YLC for the next two years. He hopes to continue the extremely successful work of his predecessor Carmen Pombo and will try to introduce some of his own ideas and projects to bring forward the committee's main goal, which is to become the global voice of the young legal profession. Needless to say that, apart from such important policy and development issues, Eric enjoys meeting young colleagues from all over the world and appreciates the excellent networking opportunities provided by the IBA and the YLC.

Vice-Chair: Rouven Bodenheimer



Rouven Bodenheimer specialises in conflict resolution and renders advice on corporate law and construction law in particular. Besides civil court proceedings he has been involved in various arbitration cases governed by the arbitration rules

of DIS (German Institution for Arbitration), ICC or LCIA. He has also participated in ad hoc arbitration proceedings and in the work of dispute adjudication boards. At present, Rouven is studying business mediation at the Humboldt University in Berlin in a part-time programme.

Rouven's expertise is of advantage in another field, sports law. Advising athletes, sport clubs as well as companies involved in the field of sports and appearing in state courts as well as special sport courts.

Rouven studied law in Goettingen, Cambridge, Leuven and Bonn and completed his legal training in Düsseldorf, Tel Aviv and London. His doctoral thesis is on trade law topic in a comparative perspective. After working for an international law firm he has been with L&L since 2007. Rouven has lectured in business law at the West German Institute for Communication (WAK) since 2008.

He is an active member of the IBA Young Lawyers' Committee and was formerly the website officer until 2008. Rouven is currently the Committee's Vice-Chair. He regards being a member of the committee as a great pleasure, a lot of fun, but also a wonderful opportunity to share experiences and to stay in contact with young lawyers from around the world in a wonderful atmosphere. He describes getting active on the committee when being an IBA member as 'definitely the right choice'.

Secretary: Agustín Mayer West



Agustín Mayer West is a lawyer, trademark and patent agent in his native city of Montevideo, Uruguay. He was educated at the University of the Republic, Uruguay and is currently a partner, head of the food and drug practice group and head of the intellectual property practice group at Ferrere Attorneys at Law.

In addition to being the IBA Young Lawyers' Committee's Secretary, he is the Uruguayan delegate at the Inter-American Association of Intellectual Property (ASAPI) and a member of the Uruguayan Association of Industrial Property Agents (AUDAPI).

Commenting on his work as an officer with the Young Lawyers' Committee, Agustín states:

Beyond the differences that may arise in the different countries, young lawyers around the world share similar interests, problems and concerns. Hence, having a venue that allows us to exchange experiences and situations is a very important nexus for professional enrichment and development for all of us.

In that light, the possibility of collaborating with other young lawyers to develop their professional careers and fulfil their goals and objectives are the chief motivations for working as an officer.

Accomplishing those objectives is the greatest challenge we face.

Communications Officer: Heather Irvine



Heather Irvine is a director of a South African commercial law firm, Deneys Reitz and is based in the firm's Johannesburg office. She specialises in antitrust law and has extensive experience in merger notifications, competition law opinions and prohibited practices litigation, as well as compliance programmes, summons and seizure proceedings and leniency applications. Heather was awarded her LLB degree magna cum laude at the University of Cape Town after completing an honours degree in English literature with distinction. She served as a researcher to Justice Albie Sachs at the South African Constitutional Court in 2000. Heather comments:

The Young Lawyers' Committee plays an essential role in facilitating the participation of younger practitioners in the IBA. I hope that acting as Communications Officer will enable me to gain a deeper understanding of the opportunities offered by the IBA and to communicate these to young lawyers within the organisation. I also hope to bring an African perspective to the committee's work during my term.

Events Officer: Adam S Goodman



Adam S Goodman practices civil litigation and competition/antitrust law at the Toronto office of Heenan Blaikie LLP, a Canadian national law firm. He has worked in proceedings involving constitutional, Aboriginal, intellectual property, shareholder dispute, professional negligence and privacy issues. He has represented clients at all levels of Ontario and federal courts, and has been involved in cases before several Canadian public bodies, including two public inquiries. In addition to his litigation practice, Adam regularly advises clients regarding compliance with Canadian competition/antitrust, foreign investment and other regulatory legislation in transactions and in support of clients' Canadian business activities.

Outside of the office, Adam serves as Secretary to the Canadian Shaare Zedek Hospital Foundation, a non-profit making organisation which provides support to the Shaare Zedek Medical Center in Jerusalem. Adam is also a board member and newsletter editor of the Young Canadian Arbitration Practitioners (YCAP).

Adam is currently serving as the Events Coordinator of the IBA Young Lawyers Committee. In this capacity, Adam hopes to maximise participation in the committee's seminars, workshops and other events by young and seasoned lawyers alike. Adam wants to hear from committee members as well as the broader IBA membership with ideas for programmes they would like to see from the committee.

Website Editor: Amit Bansal



Amit is a partner with a medium-sized law firm based in New Delhi, India. His area of specialisation is commercial litigation as well as arbitration, both domestic and international. Amit gained his LLM from Northwestern University, an experience which gave him contact with many international lawyers from different jurisdictions. His first job was in the legal department of erstwhile Arthur Andersen, which gave much exposure to international work, which he has continued in the firm he co-founded in 1997. A large part of the current firm's practice is advising and representing multinational corporations operating or intending to do business in India. Amit says:

The international exposure that I have had in my practice makes me interested in international lawyers' forum such as the IBA, which I have been attending for the last few years. I believe there is a great degree of commonality between young lawyers from different jurisdictions, which makes them gel more than their older counterparts. So this makes it very interesting for me to be more actively involved in the affairs and activities of the committee. In my view, IBA can be a very active forum for career advancement opportunities for young lawyers from different jurisdictions. As a committee officer, I hope to attract more and more young lawyers towards the Young Lawyers' Committee and offer more opportunities for them to achieve career goals.

More particularly, if we can create opportunities for international internships, it would be a great achievement. I hope to work in this direction. As the website officer, I hope to make the website more user-friendly and add more information and content regarding the plans and programmes of the committee. I am really looking forward to the next two years and look forward to support from fellow office bearers, both present and past.

IBA Annual Conference

Madrid 2009:

Young Lawyers' Committee Sessions



Young lawyers' introductory meeting

A must-attend if this is your first IBA event!

IBA annual conferences can be rather overwhelming or even intimidating – particularly for those who attend a conference for the first time. To that end, the Young Lawyers' Committee is organising an introductory meeting for young lawyers, to which you are warmly invited. Officers of the Young Lawyers' Committee will start the session by generally introducing the IBA, then guide you through the conference programme, share with you how to get the most out of the conference, and inform you of social events particularly targeted at young lawyers. This event will provide a convenient setting to meet all the national representatives of the committee. Additionally, officers from various IBA committees are invited to personally introduce their committees to you.

MONDAY 1000 – 1300

Establishing national young lawyers' associations

Presenting the first success stories stemming from our Guidelines.

In previous years, the IBA's Young Lawyers' Committee collaborated with other young lawyers' associations, notably the ABA's Young Lawyers' division and AIJA, in creating guidelines for establishing a presence of young lawyers' associations or committees in countries where young lawyers have not hitherto been acknowledged as a particular constituency. These guidelines were approved by the IBA Council in May 2008, and they are considered to provide direction in the development of associations, such as is currently planned in a number of countries worldwide. Implementation of the guidelines in these countries has given their respective legal communities opportunities to review, discuss, change and strengthen the framework of their legal profession.

As members in the applying countries have come to realise, young lawyers' associations are necessary because they give developing attorneys a chance to collaborate with local and national bars to address the needs and desires of today's young lawyers, whilst also preparing them for the future in both the short- and long-term. This session will be a workshop on utilising the guidelines to help create young lawyers' divisions within bar associations, as well as reviewing how the guidelines can help shape and maintain existing young lawyers' groups. With the attendance of the national representatives of the young lawyers' associations from all over the world, this session is an excellent opportunity to get involved in one of the most exciting and important areas within professional legal development.

We are delighted to announce that we have invited key representatives of the bars in those countries where the guidelines are applied in setting up young lawyers' associations to share their experience and accomplishments in this process.

WEDNESDAY 1000 – 1300

Mediation techniques workshop

Joint session with the Mediation Committee.

This session will demonstrate a variety of techniques for both the experienced mediator and the beginner. This interactive session will include a workshop led by a leading academic, a role play exploring how power imbalances of various types might be handled, and some hot tips from leading practitioners.

WEDNESDAY 1500 – 1800

Going green- why the environment matters to young lawyers

Joint session with the Environment, Health and Safety Law Committee.

In previous decades, discussing environmental concerns within a law firm may have amounted to a partner contemplating landscaping improvements at a summer villa. However, we now have a generation of young lawyers who face environmental issues every day, including:

- the dependence on fossil fuels and the search for alternative energy sources;
- the expanding scope of environmental regulations and protections, and the short-term costs of implementing such measures during difficult economic times compared to the potential long-term consequences of keeping our societal head in the sand;
- competitive disadvantages for regulated manufacturers compared to those in emerging economies;
- environmental due diligence;
- population growth, food shortages and deforestation;
- water shortages in Spain due to urban expansion and the seasonal migration of other EU citizens; and
- commercial fishing.

Prominent speakers nominated by both committees will explain why they chose environmental law as their profession and how this career track has led them to where they are today. Moreover, the panel will discuss such topics as:

- Are we in the legal community doing enough to create and enforce environmental protections?
- How do we keep conservation measures from being cast aside and dealt with during a 'more convenient' economic time?
- How do we cut a balance between environmental compliance requirements and the economic burden they place on industry?

THURSDAY 1500 – 1800

Developing the skills of young lawyers: the roles of the mentor and of the law firm

Joint session with the Senior Lawyers' Committee and the Law Firm Management Committee.

Developing the skills of young lawyers is a key investment for the future of any law firm, yet many firms lack any kind of programme designed for this purpose. Our panellists will explore this topic in depth, both from the perspective of successful programmes created by law firms in order to develop the skills of their young lawyers, and from the perspective of young lawyers themselves and what steps they should be undertaking in order to ensure that they receive optimum training in all aspects of the practice of law. Among other things, our panellists will discuss:

- how to establish a successful training programme within a firm, across practice groups, between offices, or between networked offices;
- organising activities to aid the formation of mentor-mentee relationships;
- involving senior lawyers in mentoring programmes;
- how to structure a mentoring programme;
- why the mentor-mentee relationship need not be monogamous;
- finding mentors for the mentors;
- what steps young lawyers can undertake in order to maximise the development of their skills and in order to focus that development in the areas most requiring attention; and
- every law firm says that it wants to devote significant resources to training its young lawyers – is this actually happening?

Do not miss this unique opportunity not only to learn from both highly experienced partners and mentors but also to gain an exciting inside view of experiences of young colleagues participating in mentoring and training schemes.

FRIDAY 1000 – 1300

IBA Annual Conference 2008, Buenos Aires – Young Lawyers' Committee session reports

'Top 5' – speed talk tables

13 October 2008

Session Chair

Agustín Mayer West *Ferrere Abogados, Montevideo, Uruguay; Events Officer, Young Lawyers' Committee*

Speakers

James Brumm *Mitsubishi International Corporation, New York, USA; Senior Co-Chair, Corporate Counsel Forum*

Niamh Loughran *LK Shields Solicitors, Dublin, Ireland; Young Litigators' Club*

Barry Mordsley *Salans, London, England; Chair, Discrimination Law Committee*

William Shearer *Powell Goldstein LLP, Atlanta, Georgia, USA*

Victoria Zöldi *Basilico Santurio & Andrada, Buenos Aires, Argentina*

The session was held jointly with the International Sales Committee, the Corporate Counsel Forum, the Discrimination Law Committee, the Young Litigators Club, and the Leisure Industries Section. Its purpose was to explore subjects of interest to young lawyers involved in the matters addressed by each committee.

Each speaker briefly introduced one of the subjects which their particular committee was going to adopt during the conference week. The session was then divided into five roundtables at which the speakers would discuss those issues with the participating young lawyers. The subjects addressed were:

- Who is winning the war on litigation (Holger Bielesz, Young Litigators Club);
- Representing the athlete and sport franchise (William Shearer, Leisure Industries Section);
- The preservation of privilege for in-house lawyers (James Brum, Corporate Counsel Forum);
- E-commerce and electronic sales (International Sales Committee); and
- How age and gender affect lawyers (Barry Mordsley, Discrimination Law Committee).

The session format and dynamics proved highly enriching, since the young lawyers had the chance to discuss the subjects raised directly with the speakers. The possibility of sitting down to exchange ideas at a roundtable with speakers and other young lawyers gave the participants an interesting and challenging opportunity. For the young lawyers it was a chance to interact directly with the speakers, and for the speakers it was a chance for closer contact with the young lawyers.

The conversations at the different tables gave rise to a variety of very interesting issues and viewpoints. The

discussion around the particular position of in-house lawyers in the practice of the profession roused heated and highly productive debate.

Another such session is expected for the forthcoming 2009 IBA Annual Conference in Madrid, to give young lawyers an opportunity to participate actively in the discussion of certain subjects over the course of the week.

The importance of bar associations having Young Lawyers' Committees

14 October 2008

Session Co-Chairs

Irina Anghel *AIJA, Cabinet de Avocatu Irina Anghel, Bucharest, Romania*

Alberto Perez Cedillo *Alberto Perez Cedillo Spanish Lawyers and Solicitors, London, England; Council Liaison Officer, Young Lawyers' Committee*

Carmen Pombo *Centro de Investigaciòn Principe Felipe, Valencia, Spain; Chair Young Lawyers' Committee*

Eduardo Sanguinetti *Sanguinetti Fodere Bragard Abogados, Montevideo, Uruguay; Secretary, Latin American Regional Forum*

This was a joint session with the Bar Issues Commission and AIJA. It took the form of a workshop on the creation of young lawyers' divisions within bar associations. With the attendance of the national representatives of young lawyers' associations from all over the world and bar leaders, this session proved an excellent opportunity for participants to get involved with one of the most exciting and important areas for the young lawyer community within the legal profession.

The President of the Law Society of England and Wales, Paul Marsh, was the special guest and opened the session with an introductory speech addressing the session's themes and issues.

The Counsel Liaison Officer and Chair of the IBA young Lawyers committee Alberto Perez Cedillo and Carmen Pombo explained that over the past three years, the IBA Young Lawyers' Committee, the ABA Young Lawyers' Division and the AIJA, as well as other young lawyers' associations around the world, have been working together to set out guidelines for establishing new young lawyers' associations or committees in those countries where young lawyers have not been acknowledged as a particular constituency. The guidelines were finally approved in May 2008 by the IBA council and the AIJA. The

CONFERENCE REPORTS

ABA had already previously given the guidelines their official stamp of approval. The elected president of AIJA Duarte de Athayde and Irina Anghel the AIJA's representative for this joint project participated in the debate making clear their willingness to work shoulder-to-shoulder with the IBA. They have already confirmed that a session to take the project further will be held at the AIJA's annual conference in Budapest in August 2009.

Various items to be considered when starting or reactivating a YLO were discussed with the national representatives of Nigeria, Japan, India and Poland. Issues debated included the need for an organisation to provide training for young lawyers, whether or not young lawyers in the community have an opportunity to influence their profession through the senior bar or are being ignored and excluded. The resources and strategies necessary to develop a YLO and the long-term planning required were also examined. The problems of funding and the potential membership of the association including the age limit of applicants were discussed. Polish representatives currently involved with the establishment of their local bar asked for our support and it has been agreed that our incoming Chair Eric Rieger will attend their meeting in Poland in 2009.

Alejandro Ogarrio and Eduardo Sanguineti, BIC representatives, indicated the need to develop relationships with senior bar counterparts and emphasised that the key to a successful relationship is communication and involvement. They offered their support for the new YLO to nurture and enhance their relationship with the senior bars and in particular those actively represented within the IBA.

At the next IBA Annual Conference in Madrid in 2009 a new joint session will be held to continue identifying countries where the implementation of the guidelines is most urgently required. The session will also monitor the progress of the setting up of the YLO in Poland and take further the decisions which will by then have been made at the AIJA's conference in Budapest.

Trans-border practice – Yes! Lawyers can work all over the world!

15 October 2008

Session Chair

Alberto Perez Cedillo *Alberto Perez Cedillo Spanish Lawyers and Solicitors, London, England; Council Liaison Officer, Young Lawyers' Committee*

Speakers

Khawla Rasheed Al-Abyath *Lawyer and Legal Advisor, Baghdad, Iraq*

Morvan Le Berre *Wardyński & Partners, Brussels, Belgium*

Pablo Falabella *Weil Gotshal & Manges LLP, New York, USA*

Desmond Hudson *The Law Society of England & Wales, London, England*

Rita Jaballah *Al Tamimi & Company, Dubai, United Arab Emirates*

Pii Ketvel *Clyde & Co LLP, London, England; Co-Chair, European Forum*

Mikiko Otani *Otani Law Office, Tokyo, Japan; Young Membership Officer, Family Law Committee*

Marcos Vergara del Carril *Clifford Chance, Madrid, Spain*

The practice of law is increasingly globalised, with lawyers taking up work jurisdictions around the world. Young lawyers are particularly well placed to take up these exciting global opportunities. This session, chaired by Alberto Perez Cedillo, focused on the advantages and challenges of trans-border practice, as well as the skills required to adapt successfully to practicing abroad.

On the one hand, skilled lawyers are highly sought after and legal firms are recruiting across the world in order to secure the best talent. On the other, in jurisdictions facing tough economic conditions or with a surplus of highly qualified practitioners, lawyers naturally seek opportunities abroad. While some lawyers envisage a permanent move to a new country, many are merely seeking short-term opportunities to learn new skills.

Speakers from various jurisdictions provided a range of interesting perspectives. Participants agreed that international experience is regarded as impressive by employers. As business becomes increasingly global, legal practitioners need to be able to interact with clients from across the world. Some areas of practice, such as international financing or antitrust, may require lawyers to deal with regulators in a number of different countries. Work experience or further education in another jurisdiction is therefore a significant asset for a young lawyer.

Many larger law firms assist younger practitioners in gaining international experience, for example by seconding young lawyers to 'best friend firms' or clients. Arrangements of this kind have many benefits, both for the lawyer and the firm involved. The seconded lawyers gain valuable experience and an opportunity to build a network of foreign contacts which greatly benefits their firm when they return.

Challenges associated with trans-border practice nevertheless remain. Perhaps the greatest of these is successfully negotiating the legal requirements associated with emigration. In Europe, lawyers are generally free to practice in any EU Member States, and this has significantly contributed to making trans-border practice a reality. In other jurisdictions, however, legal restrictions on employment of non-citizens make securing positions more difficult. Another challenge is adapting to a foreign legal system. Many jurisdictions still require those practicing law to re-qualify before starting work, even if their area of practice is relatively global (such as banking and finance). Some jurisdictions even prohibit non-citizens from practicing law. The global financial crisis will also impact on the ability of lawyers to secure employment abroad.

Ideally, lawyers considering opportunities abroad should start the process as early in their careers as possible. In general, it is easier to obtain work in another jurisdiction if one has the support of a prospective employer, who may also assist with a relocation allowance to cover travel and insurance costs associated with the move, and even temporary accommodation. Before making the move, it is advisable to talk to as many colleagues as possible in order to understand the legal and other requirements. Be sure to investigate practicalities thoroughly such as securing a visa or work permit and registering for income purposes.

Organisations such as the IBA remain an important source of contacts and support for young lawyers seeking opportunities abroad.

Inaugural IBA Outstanding Young lawyer of the Year Award presented in Buenos Aires

The first ever IBA Outstanding Young Lawyer of the Year Award presentation took place at the Young Lawyers' Committee reception in Buenos Aires. The award, established by LexisNexis and the IBA, was presented to Mr Naeem Shahzad.

The Young Lawyers' Committee leadership and Nigel Roberts, Director, Global Associations for LexisNexis, have worked together over the last year to establish this new award. It has been created to honour former IBA President William Reece Smith Jr, and to recognise a young lawyer for professional excellence, the advancement of legal ethics and service to the community.

The award was presented in front of an audience of approximately 200 lawyers, by IBA President Fernando Pombo, Chair of the Young Lawyers' Committee Carmen Pombo, and LexisNexis Global Chief Legal Officer Ken Thompson.

The inaugural honouree, Mr Naeem Shahzad who is from Lahore, Pakistan demonstrated his commitment to professional excellence and service to the community, by providing free legal assistance to people in his region. This young lawyer has to drive

over 20 miles just to be able to access e-mail. Without any fear or hesitation, Naeem has also demonstrated his commitment to upholding the rule of law, the supremacy of the constitution, the independence of the judiciary and the restoration of judges in his country. Personal sacrifice, risk and danger were realities that Naeem faced and ignored.

Carmen Pombo, Chair of the Young Lawyers' Committee commented that she was 'delighted to have the opportunity to partner with LexisNexis to establish the Outstanding Young Lawyer of the Year Award. What a thrill to see the award being presented to Naeem Shahzad and especially with William Reece Smith Jr present.'

Naeem Shahzad said 'the award totally changed my life...'. He also stated that: 'The Lahore Bar Association invited me as a chief guest and the Lahore High Court Bar Association also invited me to talk about receiving the Outstanding Young Lawyer of the Year Award. The President of Lahore High Court Bar Association said that it is not the award of Naeem Shahzad, in fact it is the award of Pakistan and they are proud of me.'

Our first IBA conference: An overview of Buenos Aires by two IBA scholarship winners

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We were asked to write about our experiences at the 2008 IBA Buenos Aires Annual Conference. We accepted this request with pleasure, especially because during the Annual Conference we became best friends. However, before we reveal how this happened, we would like to give details of the IBA Scholarship Programme.

The International Bar Association's Legal Practice Division (LPD) offers a fund from which scholarships are awarded to young lawyers who wish to participate in the IBA Annual Conference but whose financial resources prevent such participation. Scholarships can be awarded to lawyers up to and including the age of 35, regardless whether they are members of the IBA or not. This initiative takes place each year, for each Annual Conference. The scholarship covers the registration fee and accommodation during the conference. A contribution towards travel costs is also provided. All the scholars become members of the Scholarship Alumni Group. The scholars also get two years' free membership of the IBA, LPD and Public and Professional Interest Division (PPID) and a waiver of the registration fee either for the next Annual Conference or one of the conferences of a chosen committee.

Lawyers applying for a scholarship must write a paper in English on an issue selected by an awarding committee. They also have to present a motivation letter, providing their reasons for wishing to attend the conference. If they are not native English speakers, they must demonstrate their proficiency level by enclosing a certificate issued by an official English Language Institute.

We were awarded scholarships by two different sections: the Maritime & Transport Law Committee and the Leisure Industries Committee. Each of us wrote a paper on a subject related to the respective committee's activities.

The paper for which a scholarship was awarded to Bogna by the Maritime & Transport Law Committee discussed legal means of limiting the liability of ship owners for maritime claims, and the assessment of their effectiveness.

Michela's scholarship was awarded by the Leisure Industries Committee for a paper on the global greening of tourism, in both developed and developing nations, and on the impact of environmental regulations from an international perspective.

The scholarship gave us the chance to attend the sessions of the awarding committees and other selected committees, to widen our knowledge of IBA activities and policy, and to exchange opinions with international colleagues. We also attended the sessions of the IBA Young Lawyers' Committee which is a great platform for exchange and networking.

The conference offered us a unique opportunity to get to know other lawyers and gain new friends from across the globe. The IBA's LPD sections provided 22 lawyers with a scholarship. We formed a very international clique. The communication between scholars began even before the Buenos Aires Conference. We created a mailing list and were exchanging opinions and questions.

As we all stayed in the same hotel, the *Melia Buenos Aires*, we had a great opportunity to see each other almost every day. As we were in the heart of Buenos Aires, we were able to enjoy city life to the full. We will never forget the fabulous cultural events which accompanied the conference. These included the magnificent opening ceremony at *La Rural* with the following *Opera Pampa* and the closing *Tango Show*.

During the day we were very involved in our own different sections of work. On 15 October for example, Michela participated in a most interesting international roundtable discussion which generated considerable audience participation. The starting point was represented by a travel law case. The facts were presented for discussion and legal issues debated and then resolved by the group. The case discussed the liability for a tourist during a tour (included in a travel package), arranged by his/her firm, involving his/her participation in a congress. You would never imagine how many different approaches and, consequently, how many proposed solutions emerged to the same case!

Buenos Aires offered us great evening and night programmes of events. After finishing the afternoon

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sessions, the conference participants were able to participate in several cocktail parties. These took place at a number of select venues in Buenos Aires, such as the embassies, yacht clubs and museums (the marvellous Malba Museum, for example) and at the hippodrome.

On 14 October we both had the great privilege of participating in a guided tour of the famous Boca Juniors Stadium (La Bombonera) and Boca Museum. Subsequently a private dinner was held involving the Leisure Industries Section, Latin American Regional Forum, Media Law Committee and Young Lawyers' Committee. During the dinner Bogna won a football shirt – in XXL size! She was very proud of that, being a great football fan.

We have to admit that the marvellous time we spent in Buenos Aires was to a large extent due to the great hospitality of our Argentinean colleagues. As we both speak fluent Spanish, we shared a special understanding with them. We really felt welcome and our colleagues – now firm friends – were hosting us

as only true landlords (and real landladies) could do. Thanks to them, we could relish both the everyday and the glamorous side of Buenos Aires, precisely what we were eager to discover. It allowed us to blend with the local population so much that we both had the feeling we had been living in Buenos Aires for ages! We owe a lot to our Argentinean friends, and we hope to be able to provide them with the same hospitality when they visit us in Europe.

Buenos Aires will always have a special place in our hearts. It was a great start for our friendship. We definitely intend to participate in future IBA targeted conferences and events.

After the great week in Buenos Aires, that we experienced together very much as a team in the same positive esprit, we both decided to attend the next IBA Annual Conference together. This will take place in Madrid in October. It will again be the perfect occasion to immerse ourselves fully in IBA activities and to strengthen our friendship.



Latin flair is the name of the game at the IBA Annual Conference, 2008*

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From the passion of tango, to a country where polo and football (aka soccer) are possibly more the national religions than Roman Catholicism, Buenos Aires, Argentina was the host city for the IBA Annual Conference from 12–17 October 2008. Buenos Aires is described as a city that never sleeps, but it is also where daily protests through the centre of the city, complete with firecrackers, are completely normal. So what better place to gather over 4,500 lawyers?

For the young lawyer, there is so much to engross yourself in – it is just a matter of deciding what you want to do – which can be a daunting task in-and-of itself – and determining how to fit it all in. From day one, the conference is full on, but don't let this be a deterrent. Registration day is a little hectic, the queues are long, as people are picking up registration packages, organising last minute events and sampling a variety of goodies which are scattered around the conference registration room. But once you have negotiated your way through hoards of people, it's time to start visiting the sites and the conference to begin.

The opening ceremony, held on Sunday evening at *La Rural*, a short trip away from the centre of the city, began with full fanfare of a military marching band, before the welcoming addresses were delivered. These included speeches by Fernando Pombo, the IBA President, and the keynote address, in which Professor Hernando de Soto, one of the South America's (and the world's) leading economists admitted 'lawyers hold the key to the world's problems' when discussing the problems of the current 'global financial crisis'. It was something few economists would dare to say, but received rapturous applause from the massive crowd. But the evening did not end on an intellectual note, rather, the host country put on an incredible feast at an Argentine barbecue, and (of special importance to the young lawyer who may still be suffering jetlag) a selection of excellent wines to start off the week. This was followed by *Pampa Opera*, a spectacular horse riding display of music and precision introducing visitors to the history and culture of Argentina..

Monday was the beginning of the 'working' sessions, although as a young lawyer, it was possible to attend specially organised seminars on the opening/registration weekend. The daily seminars present

a myriad of choice – from current issues of climate change and sustainability law to construction law and issues arising out of the impact of the global financial crisis; from learning about torture under government regimes around the world to legal issues associated with 'nose job' tourism – it is unlikely one can be starved of interesting discussions. But if all the choices are too much to take – the Young Lawyers' Section hosts a crash course 'introduction' session to all, which the IBA Conference has to showcase, built around the concept of 'speed-dating', in order to give a taster of which sessions may be of interest. This can be of great use if you are not familiar with the practice area, and an excellent place to get tips about social and professional events which are not set out in the programme – such as day trips for young lawyers sponsored by a local firm. You will also discover at this session that there is a very liberal definition applied to the word 'young' for purposes of the committee and session, so the session is just as useful for first timers as it is for the 'traditional' definition of young. And while it is a great idea to have in mind a 'session-plan' before you arrive, be willing to compromise, you may just bump into people you know from university days or earlier conferences and get slightly diverted to something you have spent your life trying to avoid – like tax law.

Not to be outdone, however, are the countless opportunities to attend committee breakfasts, social functions, hosted dinners and of course, one cannot possibly forget the seemingly endless list of cocktail parties, all in the name of work of course. Network! Network! Network! Of the breakfast meetings on offer, the International Legal Section of the American Bar Association is a great choice – popular among young and not-so-young lawyers alike. For others, practice section breakfasts were more in key with their agenda or professional environment and that for me meant attending the Academic Session's breakfast near the end of the week, which had a small, but entertaining feel to it. You may even have 'light bulb' moments – yes, professors can be fun – we just rarely know it.

In the words of Young Lawyers' Committee member, Rouven Bodenheimer, 'all the fun happens after dark'. The events this year only reiterate the notion that Buenos Aires does not sleep – as the dinners

rarely finished before 10pm (which several South American colleagues commented is still too early to begin dinner, let alone finish it) and the cocktail parties were only just starting to hot up. The dinners again, present much choice, whether you choose to attend the free dinners, or pay for those life-changing moment dinners, such as the dinner organised by the Young Lawyers' Committee (in conjunction with the Leisure Industries Section, Media Committee and Latin American Regional Forum). This was held at *La Bombonera* ('the chocolate box' as it is affectionately known by locals), the home of one of South America's most famous football clubs, Boca Juniors. There was access to the locker rooms, the club museum holding all the trophies, and especially for the IBA, walk on access to the sacred turf of the club – a privilege not normally granted to tourists. And, while such an event can burn a small hole in the wallet, especially with an Aussie dollar that is slightly depleted at present, such events should be considered because you can enjoy a wonderful meal and gain great contacts in the process.

The mind is full, the stomach satisfied – and yet there is still more – the cocktail parties, hosted by a mix of local and international firms and law committees. Monday night was a special event hosted by the Young Lawyers' Committee of the City of Buenos Aires Bar Association. This was the chance to engage with the local young lawyers and many of their supervising partners in a more relaxed 'intimate' setting of only a few hundred people, to exchange ideas about law reform and be introduced to both general and legal culture South American style. This was just the beginning and there are too numerous other cocktail parties which all have their own highlights – whether the entertainment, the hospitality, venues like *Circulo Militar*, what seemed like the never-ending food and drinks that kept being offered. These are all fun, but remember, networking at these events is still the name of the game, so swap business cards and brochures. If

you get a quiet minute to yourself (even if it is on the lift back to your hotel room), organise business cards (into daily or session order if you can), record details of conversations you had with the person you swapped cards with. **And** do remember to follow up as soon after arriving home as possible, even if it is a quick greeting and an introductory brochure about your firm or an article you have written in a particular field the other person works in.

If the guilt of all the 'excesses' kicks in and you wonder what your trainer or dietician will say when you arrive home, there is even the opportunity to participate in the annual soccer match: Latin America versus the rest of the world. Sadly, I missed this event, but it leaves something new for 2009.

So this sounds like fun, but you missed out in 2008 don't worry! There is always 2009. The next event promises to be as big as ever, and will be hosted in Madrid, Spain, in October. And if Spain is too far, regional conferences are held on a semi-regular basis, and these often have more specific themes including environmental and energy law, intellectual property, competition law or the like. Elizabeth Lee is the Australian representative on the IBA Young Lawyers' Committee, but the Young Lawyers' Committee (and I am sure Elizabeth) are always willing to have extra assistance in promoting or exchanging ideas for young lawyers' sessions for future conferences.

Notes

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IBA and Young Polish Lawyers meeting, Kraków, Poland, 22 November 2008

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The meeting of the IBA and the Young Polish Lawyers was opened by Tomasz Wardyński, of the Wardyński i Wspólnicy Law Office who introduced all invited speakers:

- Søren Johansen, the forthcoming Co-chair of IBA European Forum;
- Professor Jerzy Pisuliński, representative of the Jagiellonian University;
- Eric Rieger, Chair elect of the IBA Young Lawyers' Committee;
- Katarzyna Uryga, the Secretary General of ELSA Poland;
- Maria Piętak, the representative of the National Council of Legal Advisers;
- Bogna Krysińska, the representative of the Polish Bar Association;
- Freek Jonkhart, of the IBA European Forum; and
- Paweł Mazur, of the Cabała Mazur Grochowska Law Office.

The main purpose of the meeting was to give students and young lawyers an opportunity to learn about the work of the IBA, what the organisation has to offer and how participation can contribute to their professional careers.

After the introductory remarks Professor Pisuliński presented an overview of the Faculty of Law and Administration at Jagiellonian University. The speaker briefly described the broad educational opportunities for those law students who want to participate in international events and programmes. He stressed that the main purpose of these programmes is to help students understand the working culture of other countries, as well as to gain familiarisation with foreign legal systems. The speaker was of the opinion that skills obtained via these programmes are highly useful in future career development.

General presentation of IBA

The next speaker was Søren Johansen, the forthcoming Co-chair of IBA European Forum who presented an outline of the IBA to the audience. While explaining the strengths and the structure of the organisation, the speaker pointed out the role of the European Forum, which is aimed at evolving and strengthening the IBA throughout Europe. The network opportunities together with the chance of gaining international experience and useful information were also described, as were other advantages of IBA membership.

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IBA Young Lawyers' Committee

Eric Rieger's presentation gave many facts about the IBA Young Lawyers' Committee and its place in the Public and Professional Interest Division of the organisation. While conveying tips to young lawyers on career development, Mr Rieger turned the attention of the audience to skills that the law firms look for in young lawyers. The speaker pointed out that law firms today expect young lawyers to work hard, be loyal, committed and available. In response to these requirements, members can expect the Young Lawyers' Committee to offer new opportunities, skills, education, satisfaction and guidance by mentors. The speaker also stressed the primary objective of the committee is to open the doors of the IBA to young lawyers.

Presentations of Polish Bar and Legal Advisors Associations

Two speakers represented the Polish legal associations: Ms Bogna Krysińska and Ms Maria Piętak. The Polish Bar Association and the National Council of Legal Advisers are both self-governing bodies established to provide legal assistance, as well as to cooperate in protecting civil rights and liberties. Both organisations are members of the IBA and actively participate at the IBA meetings and events.

In 2007 the IBA cooperated with the two Polish legal organisations to conduct research in Poland which resulted in the publication of the report *Justice under Siege*. The aim of this mission was to investigate the threats to the rule of law in Poland and in particular to the independence of the judiciary and the legal profession. The report contained suggestions to remedy these fears. Another study was prepared last year on recent developments and significant achievements made by the Polish Government as a result of the recommendations contained in the initial 2007 report.

Presentation of ELSA

Katarzyna Uryga gave a presentation on the European Law Students' Association and received a very warm welcome from the audience. The speaker presented the vision of the organisation aims as 'a just world in

which there is respect for human dignity and cultural diversity.' Its main purpose 'to contribute to legal education, to foster mutual understanding and to promote social responsibility of law students and young lawyers.' Membership of the ELSA is widespread across Europe with 30,000 members at 200 universities. It also has a special consultative status in many important institutions such as the United Nations, the Council of Europe and observer status with the World Intellectual Property Organization.

After all the presentations had been given, the audience and guests participated in a panel discussion.

The panel discussions began with a comparison between the International Bar Association and the American Bar Association. Freek Jonkhart, a member of both organisations stressed that both focus on professionalism, but also highlighted the different character of these bodies with the IBA highlighting the value of personal relations between lawyers in different countries. The speaker shared his opinion that in professional contacts the most important thing is to build up network connections based on mutual trust. When recommending foreign specialists to clients, each lawyer has to ensure that the services which will be rendered will meet the highest professional standards. In the speaker's opinion, participation in the IBA helps lawyers establish not only a business

platform, but it also provides for informal personal contacts which are crucial for building up trust.

Mr Wardyński underlined how the IBA contributes to the idea of supporting and developing democracy in the world and to the protection of the rule of law.

As a result of the questions from the audience the discussion turned its focus to the links between opportunities given by membership of an international organisation such as the IBA and the hiring process of large law firms. According to the panellists leading factors contributing to the hiring of new lawyers include not only university grades or personal interests, but possibly even more importantly the candidate's international experience. Personality of course also plays a great part too. Most desirable features are humanity, creativity, curiosity and synthetic thinking. All of the above skills can be developed by participating in events and conferences organised by international organisations. Speakers agreed that getting involved with the IBA or the ELSA will definitely be beneficial to the progression of a candidate's legal career.

Following the discussion and closing remarks, delegates adjourned for dinner at a Kraków restaurant. In the more informal surroundings, students and young lawyers had an opportunity to widen their knowledge about the IBA through questions in a more relaxed atmosphere.

IBA Law Firm Management Conference, Moscow, 3-4 December 2008

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This year's conference of the IBA in Moscow on 3-4 December 2008 can be summarised as an unqualified success. Members received the warmest of welcomes in the impressive metropolis of Russia.

This year's topic Law Firm Management stimulated a good response from all conference participants. It was a great pleasure for me to represent the Young Lawyers' Committee at the event, speaking about young lawyers' expectations. This topic might be one of the most important aspects with regard to a stable growth of a reputable law firm.

In the run-up to the presentation the Young Lawyers' Committee carried out a survey on the question of what young lawyers expect from potential employers. HR companies were also interviewed on these points and the results of the survey included several unexpected responses. I would like to thank all the young lawyers who were polled for giving such a fantastic response.

Firstly, the interviewees commented on the question of what the most important aspects are when choosing an employer. 'Gut instinct' and 'working atmosphere' were specified as the most crucial issues. The potential employer's law firm should provide a good and non-competitive atmosphere between colleagues. The support, in terms of training and mentoring, as well as opportunities for promotion were also important features looked for by potential recruits.

From the young lawyers' point of view, these intangible assets are of greater importance than the level of remuneration. It should be noted that they ranked annual salary just sixth out of ten in this survey.

By contrast, recruiting agencies and headhunters placed more emphasis on the financial aspect. It seems worth noting that in this regard, the pecuniary aspect is underlined by headhunters whose commission depends on the annual salary of the employee.

Interviewees also gave their opinions on their greatest disappointments and how these might be avoided. The lack of mentoring was particularly highlighted. Young lawyers miss individual support as well as competent feedback from their employers. In order to avoid this letdown, the employer's company should be clearly structured. An unambiguous responsibility of partners for associates should exist and mentors should sharpen their training and mentoring skills. Another disappointment mentioned was the lack of transparency and flexibility in view to the career path towards partnership. Objective criteria should be clearly determined as conditions for a partnership. In addition, other attractive alternatives besides partner track should be created to enable more individual career paths.

Summing up, the survey provided some unexpected aspects regarding young lawyers' expectations. It would be in the interest of all young lawyers if potential employers took some of the foregoing suggestions into consideration to render their law firms more attractive for young lawyers.

Finally I would like to express my sincere appreciation to the organisers and participants who helped make my stay in Moscow so pleasant and comfortable. I look forward to seeing all my contacts both old and new at the next conference.

Scholarships available to young lawyers for the 2009 IBA Annual Conference in Madrid

This year various sections and committees of the IBA Legal Practice Division are once again offering scholarships to young lawyers who wish to participate in the IBA Annual Conference, but who may find financial difficulties in doing so.

The 2009 scholarship awards include the following:

- free registration for the IBA 2009 Annual Conference, 4–9 October 2009, Madrid, Spain;
- a contribution towards travel costs to the conference;
- cover of accommodation costs while attending the conference;
- two years' free IBA membership including membership of one LPD Committee and one PPID Constituent;
- a waiver of either the next IBA Annual Conference registration fee or the registration fee of one of the chosen committees' specialist conference in 2010; and
- free membership of the Scholarship Alumni Group.

The following LPD sections and committees are awarding scholarships:

- Antitrust and Trade Law Section
- Corporate Law Section
- Criminal Law Section
- Dispute Resolution Section
- Energy, Environment, Natural Resources and Infrastructure Law Section
- Financial Services Section
- Human Resources Section

- Insolvency, Restructuring & Creditors' Rights Section
- Intellectual Property, Communications & Technology Law Section
- International Sales, Franchising & Product Law Section
- Law & Individual Rights Section
- Leisure Industries Section
- Maritime and Transport Law Committee
- Public Law Section
- Real Estate Section
- Taxation Section

To find out more information about the relevant section/committee, visit the IBA website and click on one of the links on the February IBA E-news page at www.ibanet.org/ENews_Archive/IBA_Feb_2009_ENews_Scholarships_for_Madrid_2009.aspx.

Each application must be accompanied by a paper on a subject selected by each of the sections/committees, further details of which are available by clicking on the above links.

Please be advised that applicants are only permitted to apply for one section or committee scholarship and must be 35 years or under at the time of the conference. The deadline for submissions is **Monday 27 April 2009**.

Please pass this information to any young lawyer you think would be interested in applying for the scholarship.

The Italian Stock Exchange's new amendments to the instructions accompanying market rules



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Borsa Italiana SpA (the Italian Stock Exchange) reaches its 200th anniversary in 2008, and is now part of the London Stock Exchange Group plc.

Its institutional objective 'is to ensure the development of the managed markets, maximising their liquidity, transparency and competitiveness and at the same time pursuing high levels of efficiency and profitability.'

Borsa Italiana organises and manages the Italian stock market with the participation of domestic and international brokers. It is currently providing and modifying rules and procedures regulating the financial market.

The aim of this article is to provide a brief description of the four recent Notices, which entered into force early in 2009, containing several amendments to the market rules and instructions.

1. Italian Exchange Notice no. 20847 of 26 November 2008: Amendments to the Market Rules and to the Instructions, entered into force 12 January 2009

The aim of this Notice is the elimination of the 'local give-up' procedure for the IDEM (Italian Derivates) Market.

On 4 June 2008 the Italian Consob Commission (the supervisory authority for the Italian financial products market), approved the amendments to the market rules, already adopted at Borsa Italiana's shareholders' meeting of 21 April 2008, by enacting the resolution n.16502.

This amendment provides for the elimination of the so-called 'local give-up' procedure, governed by Article 4.7.7 of the Rules and by Article IA.9.2.6 of the Instructions that are consequently deleted. The amendment entered into force on 12 January 2009.

Thanks to the elimination of the afore-mentioned articles and rules, there is currently only an 'international' procedure, governed by Article B.3.1.5 of the rules of Cassa di Compensazione e Garanzia SpA. The CC&G manages the Central Counterparty Guarantee System (CCP) on the markets regulated and managed by Borsa Italiana SpA and eliminates counterparty risk, becoming the guarantor of the final settlement of the contracts. This is used on the main derivatives markets and allows intermediaries to organise their IDEM post-trading functions in the same way as the other markets in which they operate.

2. Italian Exchange Notice no. 22039 of 19 December 2008: Amendments to the Instructions of the Market Rules, entered into force on 19 January 2009

On 6 November 2008, the board of directors of Borsa Italiana approved the four amendments to the instructions described in this notice that entered into force on 19 January 2009.

The first amendment is related to the issue of financial instruments fungible with those already listed. In this case the issuer shall promptly send to Borsa Italiana the information requested for the admission to listing. The requirements of the related documents will be simplified by the authority.

The second amendment modified the type of documentation that must be provided for admission to listing of shares. Aimed at simplifying the procedures, these amendments state that the requested documentation is: the interim balance sheet and income statement on a solo or a consolidated basis. These must be attached only if they provide the basis for the pro forma documents for a preponderant extent. (Table 1, point 3.06 of the Instructions.)

The third amendment relates to the Instructions provided by the Article IA.3.2: the market intermediary must attest that persons acting as specialists must know the rules governing and the manner of performing the activity of a specialist, the related technical instruments and have adequate professional qualifications. Therefore, it is also suggested to request the declaration mentioned above during the admission procedure. This is in case new financial instruments and the documentation relating to the application for listing on MTA Market, has been amended in the section concerning the specialists' information.

The final amendment concerns the protection of personal data: it is required that the data controller provides all data subjects with precise information on the processing, if any, of their personal data.

3. Italian Exchange Notice no. 22040 of 19 December 2008: Amendments to the Instructions of the Market Rules, entered into force on 19 January 2009

In order to respond to financial and economical changes and to growing international competition, Borsa Italiana approved the following three amendments, which entered into force on Monday 19 January 2009. They can be briefly summarised:

- The first amendment relates to the definition of extraordinary dividend for the purpose of adjusting derivative contracts when dividends are detached. The contest is governed by Articles IA.9.1.7 and by IA.9.1.11 of the Instructions accompanying the Market Rules that statute/state about the adjustment of stock options and stock futures, respectively.

After having defined the ordinary and the extraordinary dividends, having considered the current situation of financial markets, Borsa Italiana

decided to increase the threshold from eight per cent (introduced in 2001) to ten per cent.

- The second amendment statute/state about the market makers' quotation obligations for S&P/MIB options contract and stock option contracts, as governed by Chapter IA.9.3 of the Instructions. The aim of this amendment is to increase the market liquidity of the order book for S&P/MIB index options and stock options.

Borsa Italiana reviewed several paragraphs of the afore-mentioned Chapter IA 9.3.9; in particular, the most important review are related to paragraphs 1, 2, 3, 5, 7, 8.

- The last amendment concerns the revision of quotation obligations of primary market makers for stock futures contracts as stated by Chapter IA. 9.3 of the Instructions. The principal reviews are related to the role of PMM (Primary Market Maker) and the duty, prior to the Registration, of specifying at least the 20 underlings of future contracts for which the PMM intend to act as market maker. (Article IA.9.3.11 paragraph 3).

4. Italian Exchange Notice no. 1450 of 2 February 2009: Amendments to the Instructions of the Market Rules, entered into force on 18 February 2009

On 29 January 2009 The Board of Directors of Borsa Italiana, approved the amendments to the Instructions mentioned above, entered into force on 18 February 2009. The amendment states that Borsa Italiana will verify the market capitalisation limit once a year, starting in September (2009), instead of twice a year (in March and in September). The market capitalisation limit (Euro 1,000 million) is fundamental for dividing the blue-chip segment from the others on MTA market.

Takeover bids and acting in concert



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On 2 December 2008, the Danish Financial Supervisory Authority (the Danish FSA) made a leading decision in a case concerning takeover bids turning on the issue of whether shareholders may be considered to have a joint controlling influence by having acted in concert. The key question of the case was whether the large shareholder A, in cooperation with others, including shareholder B, had purchased more than a third of the votes in the target company (the Company). If this was the case it would trigger a duty to make a redemption offer to the remaining shareholders of the Company. The Danish FSA determined that A, regardless of the fact that A achieved a controlling influence of the Company based on the composition of shareholders, had not achieved 1 in 3 of the votes. Accordingly, a duty to make a redemption offer to the other shareholders could not be imposed upon such a shareholder.

The case in brief

At an ordinary general meeting held on 23 April 2008 in the Company, which had its shares admitted to trading on NASDAQ OMX Copenhagen A/S, the board of directors were replaced by persons suggested by A's majority shareholder. In this connection, the Danish FSA examined if a group of shareholders led by A had jointly purchased 1/3 of the votes of the Company and had gained a controlling influence, thus triggering the duty to present a takeover bid to the remaining shareholders of the Company pursuant to section 31(1)(5) of the Danish Securities Trading Act.

Rules applying to takeover bids and the term 'acting in concert'

The rules applying to takeover bids are described in Section 31(1) of the Danish Securities Trading Act. The rules of the Danish Securities Trading Act are supplemented by Executive Order number 1228 of 22 October 2007 on Takeover Bids (the 'Executive Order').

The wording of Section 31(1)(5), of the Danish Securities Trading Act is as follows: '*If a shareholding is directly or indirectly assigned in a company which has one or more share classes admitted to trading on a regulated market or an alternative market place, the purchaser must give all the shareholders of the company the opportunity to sell their shares on identical terms, if a consequence of the assignment is that the purchaser gets to exercise a controlling influence over the company and gets to own more than a third of the voting rights.*'

Further, Section 2(1) of the Executive Order states that the voting rights acquired by persons acting in concert with the purchaser must be added in at the making up of the purchaser's voting rights in the company.

The purpose of the rules on takeover bids is, inter alia, to protect the minority shareholders of the company in connection with a takeover bid. In this connection, legislators have realised that an actual controlling influence may also trigger a duty to make a redemption offer. Based on this, the provision has been inserted into Section 5(1) of the Danish Securities Trading Act, which applies to situations in which a purchaser, through the purchase of shares in a company, achieves an opportunity to exercise an actual controlling influence, but where the situation is not encompassed by the other provisions of the Danish Securities Trading Act. In the assessment hereof, circumstances such as the purchaser's opportunity to exercise influence on the composition of the Board of Directors and majority as well as the composition of the shareholders are taken into consideration.

The decision of the Danish FSA

The Danish FSA stated that A had acted in concert with B on the acquisition of control of the Company, as shares included in A's option agreements had to be added when measuring A's shareholdings. Furthermore, the Danish FSA stated that A, based on the shareholder composition of the Company, achieved a controlling influence. However, the Danish FSA did

not find sufficient evidence to conclude that A, in cooperation with others, had purchased more than a third of the voting rights of the Company, in that A by mutual agreement with B only had purchased 33.28 per cent of the votes of the Company at the time where the ordinary general meeting was held in the Company on 23 April 2008. In connection herewith, the Danish FSA noted that the Company's holding of own shares was included in the final make up of the voting rights. Based on this, the Danish FSA concluded that neither A nor A's majority shareholder personally as direct purchaser of shares in the Company through his ownership of A could be ordered to make a takeover bid to the other shareholders of the Company.

Implications of the decision

In its decision, the Danish FSA lists four key interpretation issues regarding Section 31(1)(5) of the Danish Securities Trading Act. Based on this, the Danish FSA reaches the following conclusions:

A company's holding of own shares must be added in at the make up of the purchaser's ownership of the voting rights in the company.

As a starting point, the voting rights which are associated with an option agreement must not be added until the option has been exercised. At the same time, it must be possible to emphasise the facts behind a specific option agreement so that the shares in question must be added to the make up of the option owner's total voting rights, anyhow. It is the opinion of the Danish FSA that such cases may exist in situations where option agreements actually express the financing of a shareholding. This was the situation in the present case.

In the assessment of whether other person or legal entities may be said to act in concert with the purchaser to achieve joint control, the presence of a

coordinated practices between the shareholders on exercising controlling influence over the company so that such shareholders, in practice, have voted, acted and, moreover, outwardly acted as if they were *one* shareholder, has been emphasised. This has also been emphasised if agreements on pre-emptive rights or voting agreements have been concluded between the shareholders. In order to establish identity between more persons, a long-term coordinated practice or actual agreements must exist between the shareholders. An agreement between the shareholders on voting is insufficient to constitute identity alone.

The question of when the purchaser is considered to exercise controlling influence over a company pursuant to Section 31(1)(5) of the Danish Securities Trading Act is assessed on a case-by-case basis. The more diffused the ownership, the fewer voting rights are needed to exercise controlling influence and, for instance, elect the Board of Directors. When a purchaser achieves an opportunity to exercise actual controlling influence there is, *per se*, a reason to assume that the purchaser *will* exercise such controlling influence. At the outset, such purchaser will therefore be obliged to make a redemption offer to the other shareholders.

The Danish FSA's decision in the present case invokes special interest since only limited practice on the interpretation of Section 31(1)(5) of the Danish Securities Trading Act, including the term 'acting in concert', exists. With this decision, the Danish FSA has stipulated a set of guidelines on how to interpret Section 31(1)(5) of the Danish Securities Trading Act and the term 'acting in concert'.

Public-private partnerships in Brazil: an overview



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The objective of this article is to provide an overall idea of how public-private partnerships work in Brazil. The federal law, used for partnerships with the union will be analysed, as different states have their own legislation. It is important to state that due to the complexity of the subject, future articles may be published regarding different facets of such partnerships.

In Brazil, the public-private partnerships have as their main legislation Federal Law 11.079, dated 30 December 2004. This law created two new types of administrative contracts: administrative concession where public entities make direct or indirect use of the services; and issued, where the contract demands not only the value charged from the users, but also a payment, in money, from the public partner to the private partner.

The conditions for use of public-private partnerships are stated in Article 2, §4, of the stated law. It states that the contract must be of a value greater than BRL 20,000,000 (Euro 8,000,000.00) and signed for a period of between five and 35 years. The object of the contract cannot be for providing labour (as those who work for the public entities must, in most cases, undertake a public examination, under Article 37, II, of the Brazilian Constitution), installation of equipment or execution of public constructions. These matters must be object of bidding, price survey, invitation to bidders or invitation to tender, in the form suggested by Federal Law 8.666 of 21 June 1993.

Article 4 of the public-private partnership law states that its principles involve:

- efficiency in complying with the missions of the state and in managing the resources of society;
- respect for the interests and rights of the service consumers as well as of the private companies which will execute such services;
- impossibility of delegation of the activities which are exclusive to the State, such as regulation and judicial, amongst others;
- tax responsibility in the celebration and execution of the partnerships;

- clarity of the procedure and decisions; and
- financial sustainability and social-economic advantages of the partnerships.

The public partner can provide the private partner with guarantees such as institution of special funds, contract of insurance with companies not controlled by public entities, guarantees provided by international companies or financial institutions not controlled by the Public Entities of Brazil and, guarantees provided by a fund or state company created with this objective.

The execution of the public-private partnership contract will be carried out by a third company, constituted with this objective, a 'society of specific purposes'. This necessity, foreseen in Articles 5, 9, and 27 of Federal Law 11079/04 is justified as there needs to be a control of the investment limit of the partnerships as well as the risks in the projects. The ideal 'model' of such a society would be that of a publicly-held company, due to the value of the PPP contract. It is important to state that, in the majority of cases, the public administration cannot hold the greater part of the voting capital. The public partner will yield the private partner through bank order, assignment of non-tax credits, amongst others, stated in Article 6.

In order to contract a public-private partnership, there will be a public tender, ruled by Federal Law 8666/93. However, the procedures to contract public-private partnerships have specific rules, stated in Article 12 of Federal Law 11079/04, which are the object of a specific study. It is important to state, however, that the criteria can involve the combination of lowest value and best technique.

Article 14 of the PPP Law determines the institution of a committee to administrate the public-private partnerships. Such a committee, created by Decree 5.385, of 4 March 2005, is composed by members of the Ministry of Economy, Treasury and Planning, Federal Revenue Office and of the Civilian Household (Article 2). The main competences of the committee, stated in Article 3 are to define which aspects need to be given priority in the contracting of partnerships and discipline the procedures for such contracts, as well as

send to the Union Accounts Tribunal an annual report of the achievements made by contracts.

We hope that this article sheds light on how PPPs work in Brazil, and observe that specific aspects will be subject to further research and future articles.

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Notes

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The newly elected Canadian Government and proposed changes to Canada's foreign investment and competition legislation



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After a 37-day campaign, the Conservative Party of Canada reassumed a minority government position in the recent general election. Given the likely reluctance of the opposition parties to force another federal election in the near future, this government may be in place for some time. For the first time in many years, it looks like significant changes may be coming to Canada's competition and foreign investment regimes, based on statements made by prime minister Stephen Harper during the campaign.

On 12 September 2008, Mr Harper announced that a re-elected Conservative government would liberalise foreign investment rules for certain sensitive sectors, increase the threshold for foreign investment review generally and add a national security test for foreign investments. This announcement was followed on 25 September by an announcement that the Conservatives would toughen the criminal and civil provisions of the Competition Act and implement new consumer protection initiatives.

Mr Harper's campaign announcements followed the issuing in June 2008 of the report of the Competition Policy Review Panel, *Competing to Win*. The report proposed wide-ranging changes to both the Investment Canada Act and the Competition Act.

While these issues attracted scant attention during the election, their possible implementation will be of fundamental importance to entities doing business in Canada and foreign investors contemplating investments in Canada.

Investment Canada Act proposals

The Investment Canada Act is federal legislation that applies to the acquisition of control of Canadian businesses by foreign investors. Currently, direct investments in Canadian businesses with assets greater than CAD \$295 million are subject to review by the Minister of Industry (and/or, in some cases, the Minister of Canadian Heritage) to ensure they are of 'net benefit' to Canada. Transactions exceeding

the threshold cannot proceed without a ministerial determination of net benefit that are typically secured through the provision of undertakings (such as commitments to retain specific numbers of employees). The threshold for review drops significantly for investments into sensitive sectors (such as cultural industries) and for acquisitions by investors from non-WTO countries.

The Conservatives have pledged to increase the threshold for review under the Investment Canada Act to CAD \$1 billion, change the method that the threshold is calculated from Canadian target gross assets to 'enterprise value', and implement a national security test for foreign acquisitions of Canadian businesses.

Competition Act and Consumer Protection proposals

The Competition Act is Canada's general antitrust statute. The Conservatives have proposed a significant increase in the maximum sentences for conspiracy and bid rigging (both of which are criminal offences) from CAD \$10 million fine and five years imprisonment to CAD \$25 million and 14 years in jail.

Also under the Conservative plan, dominant firms that contravene the abuse of dominance provisions would, for the first time, face potential fines of up to CAD \$15 million. Currently, abuse of dominance is civilly (not criminally) reviewable conduct subject to prohibition orders against the offending conduct.

Consistent with the Harper Government's consumer-centric approach to other economic issues (such as bank ATM fees) the Conservatives have also pledged to amend the Competition Act's criminal deceptive marketing provisions. The Act currently permits unlimited fines and five years in prison. The proposed amendments to the deceptive marketing provisions would permit restitution orders to victims and increase maximum sentences to 14 years imprisonment. For civil penalties, the maximum fine would increase from CAD \$50,000 to \$750,000.

As a policy, the Conservatives pledged to focus the criminal enforcement activities on cartel activities and bid rigging, while pursuing other anti-competitive activities through the civilly reviewable practices provisions.

Prospects for change

Foreign investment proposals

Like many other jurisdictions, Canada has been reconsidering its approach to foreign investment review in light of recent trends, including a wave of natural resource deals that resulted in non-Canadians owning many of Canada's mining giants and acquisitions of Canadian businesses by sovereign investors, such as sovereign wealth funds (SWFs) and state-owned

enterprises (SOEs). In this light, it is very likely that the Conservative government will follow through on its promise of introducing a broadly-framed national security test for foreign investments, particularly given what appears to be widespread support in the House of Commons for such measures, as evidenced in the opposition's response to the government's block of the MacDonald Dettwiler & Associates Ltd/Alliant Techsystems Inc transaction.¹ Such a national security test will toughen the approach taken to investments in certain sectors, such as defence, certain types of infrastructure and some energy sectors.

On the other hand, raising the asset thresholds for investments unrelated to national security will generally reduce barriers to foreign investments. This will be more contentious, particularly with the return of another minority government. By way of example, during the campaign NDP leader Jack Layton criticised Mr Harper's proposals, calling the Investment Canada Act a 'rubber stamp' that should not be 'further undermined'.

Competition proposals

Unlike the Conservatives' plan to amend the Investment Canada Act, Mr Harper's proposals regarding the Competition Act are, for the most part, not novel. Some of these proposals were, in fact, proposed (in part) by the last Liberal government. In our view, it is likely that these amendments will pass in some form.

The task of overseeing the Conservatives' proposals will fall to the government's new Minister of Industry, Tony Clement. Mr Clement, previously the Minister of Health, took over the Industry portfolio from Jim Prentice in late October 2008.

To read the Conservative Party's press releases of 12 and 25 October 2008, which explain the Canadian government's plans for the Investment Canada Act, the Competition Act and consumer protection see: www.conservative.ca/EN/1091/104789; and www.conservative.ca/EN/1091/106349.

Notes

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1 In the Spring of 2008, Industry Minister Jim Prentice decided that he was not satisfied that US-based Alliant's proposed acquisition of the space and satellite operations of MDA (a leading Canadian technology firm that developed surveillance and intelligence technology systems) was of net benefit to Canada. The proposed transaction was therefore blocked from proceeding. This was the first time the Investment Canada Act review process was used to block a non-cultural investment. Minister Prentice's decision was generally supported by opposition parties.

The revised Swedish Corporate Governance Code



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Introduction

One of the major purposes of corporate governance is to ensure that companies not directly managed by their owners are operated in the best interest of the shareholders. Accordingly, corporate governance primarily concerns companies with shares traded on a market place where the majority of the shareholders are not actively participating in the management of the company. The current Swedish Code of Corporate Governance (the Code) is applicable to Swedish companies whose shares are listed on a regulated market in Sweden (Listed Companies). At present, there are two regulated markets in Sweden, OMX Nordic Exchange Stockholm AB (the Stockholm Exchange) and NGM Equity. The Code complements the Swedish Corporate Act Sw Aktiebolagslagen (2005:551) and other mandatory legislation by providing a general norm for what is considered as market practice in relation to Swedish corporate governance.

The risk that the executive management in Listed Companies is not acting in the best interest of shareholders is increased with the number of shareholders. The priorities and goals of the executive management may obviously be different than those of the shareholders with respect to issues such as earnings, risks, remunerations and financial structure. In order to reduce the risk of conflicts of interest between the executive management and the shareholders, corporate governance codes have been introduced mainly to complement corporate legislation. A number of international organisations, such as the Organisation for Economic Cooperation and Development and the European Union, have also issued guidelines and recommendations within the corporate governance area. The Code, however, is based on the Swedish Corporate Act and Swedish corporate traditions for corporate governance. Consequently, the Code deviates

in many important aspects from the common law approach that forms the basis for corporate governance in many other countries.

Recent development

The Swedish Corporate Governance Board (*Kollegiet för Svensk Bolagsstyrning*) has recently completed a revision of the Code. The previous Code has been in effect since 1 July 2005 and required all companies listed on the Stockholm Exchange and whose market value exceeds SEK 3 billion (approximately USD 360 million¹) to apply the Code. Since 1 July 2005, approximately 100 listed companies have continuously applied the Code.

In order to improve the quality of Swedish corporate governance as well as to strengthen the confidence in listed companies among the Swedish general public and on the Swedish and international capital markets, the Code has been revised. As a result of the revision, the Swedish Corporate Governance Board decided that the Code, as of 1 July 2008, would apply to all listed companies in Sweden (as of 1 July 2008, there were more than 300 listed companies in Sweden). The main aims of revising the Code were to shorten and simplify the Code as much as possible without reducing the applicability of the Code and to include listed companies with a market value less than SEK 3 billion within the scope of the Code. The Swedish Corporate Governance Board also harmonised the Code with respect to corresponding corporate governance codes in other Nordic countries as well as to general Swedish corporate law.

The revised Code and significant changes

The revised Code contains a number of amendments. There are various reasons for the changes, but the changes do not affect the underlying corporate

governance principles of the rules, but rather reflect recent changes in Swedish legislation, particularly where changes in the legislation have been enacted after the original Code was introduced.

Below is a brief summary of the changes in the Code that in my view are the most relevant (I have made some comments to the changes *in italics*).

Shareholders' meetings²

- The revised Code stipulates that it is sufficient that the date and time of shareholders' meetings is published on the company's website.³ Such information should always be published without delay.
- The notice of a shareholders' meeting and other documents relevant to the shareholders' meeting shall be made available in such time and form as to sufficiently provide the shareholders with an opportunity to make a well-founded assessment of the issues that will be raised at the meeting. *This new rule will facilitate foreign shareholders' preparation for the meeting.*

Appointment and remuneration of the board of directors and auditors

THE NOMINATION COMMITTEE

- The revised Code includes a requirement that the nomination committee shall have a chair appointed by the shareholders.⁴
- The revised Code contains new requirements regarding the independence of the nomination committee members: (i) a majority of the members shall be independent in relation to the company and its executive management; and (ii) at least one member shall be independent in relation to the company's largest shareholders or group of shareholders in terms of votes.⁵
- Furthermore, the revised Code clarifies that more than one board member of the company may be a member of the nomination committee as long as the company's board members do not constitute the majority of the committee. Another clarification in this respect is that if more than one board member is a member of the nomination committee, only one of them may be dependent in relation to a major shareholder of the company.

Since 1 July 2005, according to the Swedish Corporate Governance Board, one of the most common deviations from the Code has been that more than 50 per cent of the directors also have been members of the nomination committee. The intention of the Code is not for the nomination committee to have the board evaluating itself and proposing its own re-election. Consequently, in this respect, the Swedish Corporate Governance Board has assessed it to be necessary with an explicit clarification included in the Code.

APPOINTMENT OF THE BOARD OF DIRECTORS

- To facilitate foreign shareholders' involvement in, and ability to form an opinion on the proposals of the nomination committee, the committee shall set forth the reasons for its proposals when the notice of the shareholders' meeting is issued and not, as before, at the meeting.

The size and composition of the board of directors

- The majority of the directors elected by the shareholders' meeting shall be independent in relation to the company and its executive management. At least two of these directors shall also be independent in relation to the company's major shareholders.

This rule has been changed to reflect the independence rules of the board of directors as set out in the regulated markets' respective rule book. There have been cases in which companies have neglected the independent requirements of the rule books with the motivation that they have prioritised competence and experience. The Swedish Shareholders' Association has stated on its website (www.aktiespararna.se) that the opinion that dependent directors would bring competence to the board of directors is one of the most usual misunderstandings and the experience from the Swedish Shareholders' Association speaks in a contrary direction – independent directors often increase the competence of the board of directors.

Information regarding corporate governance

- The company shall complete a corporate governance report and attach the report to the company's annual report. In addition to the previous requirement that deviations from the Code should be explained in the corporate governance report, the company shall now state every deviation from the Code, describe the alternative that has been chosen and explain the reasons for choosing the alternative. *Companies are thus not obligated to follow every rule in the Code at all times, (for example, if a company finds that a certain rule is inappropriate due to special circumstances, it may deviate from the Code) but it is no longer sufficient to only state why a deviation has been made but also the alternative that has been chosen*
- According to the revised Code it shall also be clearly stated which parts of the corporate governance report have been reviewed by the company's auditor.
- Additional information that shall be included in the corporate governance report pursuant to the revised Code includes: (i) information regarding significant shareholdings of related persons to the CEO as well as the CEO's shareholding and partnership in entities that the company has a considerable business relationship with; (ii) information regarding potential infringements of the regulated market's

rule book or any breach of fair practice on the stock market; and (iii) a specific section covering the internal control and the risk management with respect to the financial reporting.

The listed company's website

- The section for corporate governance on the listed company's website shall contain: (i) updated information regarding its directors, CEO and auditors; and (ii) a detailed account of each of the outstanding share and share price-related incentive programmes.⁶

Conclusion

Qualitative corporate governance is a matter of ensuring that companies are operated as efficiently as possible in the best interest of their shareholders. The maintenance of such quality is of crucial importance for existing shareholders to remain as shareholders as well as for potential investments for new and existing shareholders.

The most significant change with the revised Code is the fact that the Code applies to all listed companies. The listed companies in Sweden are of varying sizes and complexity, ranging from large, globally active companies, to small entrepreneur-operated companies. This obviously places a great demand on the Code to allow flexibility when applying individual rules in practice, but also on the listed companies to choose pragmatic solutions other than those specified in the Code and to explain such deviations and the selected alternative.

Considering the actual amendments made to the Code, I believe that the new independent requirements with respect to the nomination committee are of great importance and will contribute to an increase in the credibility of corporate governance in Sweden. These new requirements are also in line with international standards and, in my opinion, the amendments will strengthen the objectives of the Code. These are namely to: (i) create good conditions for active and responsible ownership; (ii) establish clear and well-balanced roles and responsibilities between owners, boards of directors and executive management; (iii) ensure that the principle of equal treatment outlined in the Swedish Companies Act is applied in practice; and (iv) create a maximum of transparency towards shareholders, the capital markets and society in general.

Notes

- 1 Calculated on the exchange rate as of 3 December 2008.
- 2 In addition to the rules set out in the Code, the Swedish Corporate Act contains mandatory rules with respect to shareholders' meetings. Briefly, the notice to the shareholders' meeting shall be distributed in accordance with the procedure stipulated for in the company's articles of association. Furthermore, listed companies must publicly announce the notice in the Official Swedish Gazette as well as in one Swedish newspaper with nationwide coverage.
- 3 The previous Code prescribed that the date and time of shareholders' meetings had to be published by a press release.
- 4 The previous Code contained no such requirement.
- 5 The previous Code 'only' required that the nomination committee should consist of at least three members and that the majority of the members could not also be members of the company's board of directors. Furthermore, according to the previous Code, members of the executive management of the company were not allowed to be members of the nomination committee and no board member could be chairman of the nomination committee.
- 6 The previous Code stipulated that the website should contain more general information regarding corporate governance but since this rule was indistinct it has been made more specific.