



Leaders within the legal industry and employers across sectors and jurisdictions must take responsibility for improving diversity and providing a welcoming and inclusive working environment for all employees. Removing cultural, sexual, racial and other barriers will not only foster a happier working environment, but improve productivity, creativity, employee engagement, cultural insights and company reputation, and minimise employee turnover across the board. It's those at the top who must ring in the changes.

"When you feel like you are not accepted or included in the workforce, it is not just uncomfortable, it also affects retention in reality because you don't see a great future for yourself in the company," said Hailey Kim, general counsel at Dell Korea, during yesterday's session *The importance of diversity and the benefits coming from it*.

"If I look at senior management and don't see any women, or if I look at the executive level and I don't see an Asian person, what does that say about my future? It is not just statistics; it can be everyday working life, your sexual orientation or marriage status. If all the executives are married and have picnics with their families, and talk about their kids together, how included will you feel?" she continued.

An everyday working environment should have a culture that not only

respects diversity, but allows employees to see their future at the company. This applies to the entire legal profession.

According to Kieran Pender, senior legal advisor at the IBA, the first step is recognising that there is a problem. "It is fairly evident that the legal profession has a significant inclusion and diversity problem. Look at any law firm website anywhere in the world and very few firms don't have a disproportionate representation of men," he said, adding: "some do better than others, but we all have a long way to go".

The next step is compiling the necessary data. It's important for the people at leadership level – who are statistically more likely to be of the class that is overrepresented – to understand that they have a significant role to play in driving change.

"I always find it really disheartening when I speak at diversity and inclusion events – there may be 300 people in the room but only about 30 of them are men," continued Pender. "Because 60 to 70% of law firms are male, if they are not in those rooms having these discussions then we are not effectively driving change, because change happens from the top."

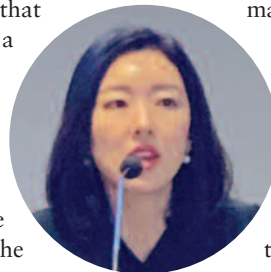
Diversity isn't just an issue for women, or ethnic minorities. It is every-

one's issue. So why, in the era of #metoo and enormous advances in equality and inclusion taking hold across the world, is there still the need for this session?

Kim told delegates that she has witnessed situations firsthand where female lawyers have been taken off cases purely because of their gender. "The fact that [addressing diversity] is becoming a priority is a good trend. It could be upsetting to established institutions and the relatively privileged group that were given this advantage in the past," she said. "In order to level the playing field quickly, proactive action is a necessary risk that we have to take."

Ekpemi Ekhabafe of the International Labour Organisation in Abuja, Nigeria, told delegates of an experience she had at the start of her career. "I went for an interview at a law firm – I was young and just out of law school. The lawyer said: 'I can't hire you, because in five years' time you will be married and will have to take leave, and my firm will suffer'. He literally said this to me," she said, adding that he was denying her the opportunity to learn and gain the experience that would allow her to become a partner in ten years' time.

"If we still have this issue of diversity and inclusion in 2019, then something needs to change."



Hailey Kim



DAILY NEWS HIGHLIGHTS

A selection of the best of the 230 sessions

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VOX POPS

What's been the highlight of your week?

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THE WEEK IN PHOTOS

All the best images from sessions and social events

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Restructuring innovates in Asia

In yesterday morning's session *Hot topics and recent trends in corporate restructuring in Asia*, panelists from Korea, Japan and Singapore discussed the latest changes and innovations in their jurisdictions to make

it easier for struggling businesses to restructure.

According to Hon. June Young Chung from the Seoul High Court, Korea has seen an increase in corporate restructuring since the

Bankruptcy Act came into effect in 2006. Cases skyrocketed from 76 in 2006 to 980 in 2017. "The rise in the number of cases is due to an increase in market confidence in judicial
Continued on page 7

Preserving the rule of law

In his first speech to the IBA delegation as President, Horacio Bernardes Neto offered delegates a warm welcome to Seoul, signifying that the IBA remained committed to the city as its preferred location to demonstrate its commitment to the reestablishment of the rule of law across the Korean peninsula.

“We hope very soon the whole peninsula can be in a state of peace and under the rule of law. That is the hope of the IBA, and we came to Seoul to express that,” he said during Sunday night’s opening ceremony.

Bernardes Neto spoke of the crucial role that lawyers play on the world scene in ensuring that crucial constructs of society such as human rights and democracy are upheld, especially as countries once so enshrined in peace and stability show signs of weakness.

Addressing a challenge many attendees will be acutely aware of – keeping people in meeting rooms – Bernardes Neto urged delegates to attend the week’s panels. “Although there is a large opportunity for us to

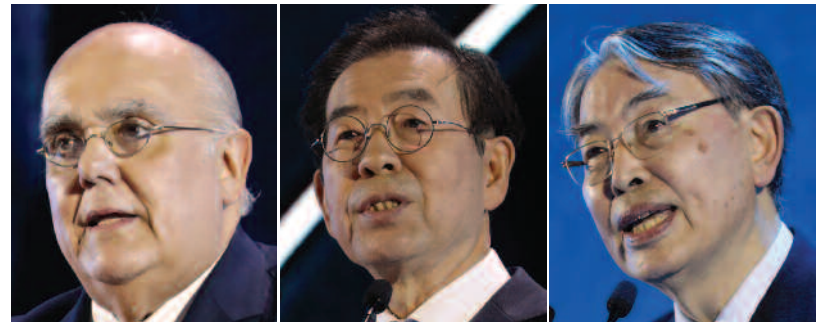
visit clients and colleagues, and you should do that – go to cocktail parties – the best place to network is the sessions. In the sessions you are going to find people who have the same interest as you, and one day may send you a client,” he said.

The cornerstone of functioning democracy

“Imagine a world without the rule of law: no independent media, no freedom to assembly and peaceful protest, no freedom to think individual ideas or articulate opinions, no independent judiciary or legal profession.” These were the words of former Secretary-General of the United Nations, Ban Ki-moon, who rounded off the ceremony with a video address.

“We live in an increasingly interconnected world, where what happens on one half of our planet is immediately and occasionally felt in another part,” said Ki-moon, adding that against this backdrop, the rule of law has been eroded in a relatively short period.

Ki-moon went on to echo sentiments by suggesting present members



of the legal market were in fact the cornerstone of functioning democracies and societies, and that members of the IBA have a key responsibility to safeguard areas like human rights as much as possible.

Before that, Park Won-soon – the Mayor of Seoul – also extended a warm welcome to the delegates and expressed his excitement at the prospect of sharing his city with so many lawyers from across the globe. Quoting a passage from the Magna Carta, he too spoke of the importance of the legal industry: “As a lawyer, first and foremost your goal and responsibility is to promote human rights and justice. Without lawyers, democracy would not have happened in Korea,” he said.

He was preceded by the Honourable Song Sang-Hyun, chair of the IBA Seoul Annual Conference Host

Committee and former President of the International Criminal Court, who has been instrumental in ensuring this week’s event will be one to remember for years to come.

“We attach great importance to the IBA holding its annual conference in Seoul. It is an unparalleled opportunity for all of those attending to help promote human rights, the rule of law, the future of democracy, peace, justice, sustainable development, good governance, the impact of modern technology, and climate change,” he said.

The evening kicked off with a rousing drum and taekwondo performance followed by a video message from Moon Jae-in, the current President of the Republic of Korea, who praised the IBA for its decades of service in leadership and dedicated promotion of the rule of law.

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Legal 500 2019



Planetary in scale

The onus is on the legal industry to help drive the necessary change that will stop climate change in its tracks and protect our world for future generations.

Increasingly, governments are ignoring international climate law and shunning accepted science, and must be held to account. UN frameworks and international treaties like the Paris Agreement have made little headway; climate litigation is an increasingly important measure in the lawyer's toolkit.

"Climate measures, regardless if government-led, are increasingly seen as a societal responsibility. The vacuum of government inaction has seen significant climate litigation emerge over the past decade," said Professor Lee Godden of Melbourne Law School during Monday's session *Climate change law in an increasingly (bi)polarised world*.

"If mainstream science is increasingly certain, why is the concept of climate change polarising? It is a complex situation, but in short, the phenomenon is planetary in scale and

due to its long-term and potentially irreversible consequences, each generation will feel its impact," she said.

"It requires complex collective action that necessitates lifestyle shifts in energy and economic systems. Climate change requires action to address long-term threats in a world of short-term political cycles."

The IPCC assessment report concluded that human input on the climate system is significant, and the more we disrupt our climate the more we risk severe, pervasive, and irrefutable impacts. We have the means to limit climate change and build a more prosperous and sustainable future. Litigation measures are therefore designed to keep climate change below dangerous levels.

In 2014 the IBA released a groundbreaking report, *Achieving Justice and Human Rights in an Era of Climate Disruption*. The first and most substantive report of its kind, it sought to promote legal frameworks enshrining lawyers' role in addressing climate change. "It is not just policymakers, but the legal system that provides the



solution to preventing climate change," said Roger Martella, general counsel for General Electric's environment, health and safety operations and member of the Energy, Environmental, natural Resources and Infrastructure Law Section (SEERIL). "We committed at that time to do more and to turn that analysis into action."



Roger Martella

The report is for groups or individuals who are impacted by climate change and impatient with their government's inaction. For those who have tried to petition their government but been ignored, it allows them to do more than be frustrated.

In these situations actors often will

go to court, and in almost all of these cases, the courts have opted to hold the government accountable.

The report looks at whether the government and regulators need to take further action. There are a number of landmark cases, such as *Massachusetts v EPA* in the US, as well as similar cases in the Netherlands and Pakistan that consider failures to act against governments.

"The IBA model statute ratifies that pattern. It creates the cause of action and the framework by which any person in any country – if the model statute were adopted – can bring these types of cases for failure to act," said Martella.



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Ensuring access to justice for the forgotten middle

In Monday's session *Legal expense insurance schemes and access to justice*, panellists discussed the barriers and opportunities to the usage of legal expense insurance (LEI) schemes. Lack of awareness and information to consumers, gaps in indemnity and perceptions of conflicting interest are identified as major barriers to LEI.

LEI is a product through which individuals can get legal assistance from a private provider with some or all of the expenses covered by an insurer. The idea is that parts of society get access and affordability to legal services when they need to – especially the “forgotten middle”. The forgotten middle are those who lack the disposable income to spend on legal assistance from a private provider at will, but do not qualify for legal aid or pro bono assistance.

According to Anna McNee, commercial lawyer legal policy & research

unit at the IBA and primary author of the Association's *Legal Expenses Insurance and Access to Justice* report, there are a number of reasons why LEI lags behind. Firstly, there is poor availability of information and promotion of LEI as a purchasable product to individuals. In Germany, Sweden and Japan, where LEI uptake is high, consumers are much more aware of LEI products. For instance, over half of Germans hold LEI, and 43% would contact their insurer when a legal issue arises.

Another issue is that the automatic inclusion of LEI in an insurance bundle results in policyholders being unaware of its existence. “The long terms and conditions in insurance policies means that policyholders often do not even know that LEI is included,” said McNee.

Furthermore, coverage is primarily provided for representation in

litigation. Areas such as family and criminal law are almost always excluded. “The greater indemnity coverage through increased premiums means it is hard for consumers to get wide protection, and the forgotten middle is left with very limited coverage,” said McNee.

Finally, the lack of a free choice of lawyer is an issue that plagues LEI. LEI policies often contain terms allowing an individual's free choice of lawyer for a higher premium. While more progressive jurisdictions such as Japan and the EU have statutory protection of the right for free choice of lawyer, these provisions are few and far between in most countries.

Sarah Ramsey, chairman at The Bar of Northern Ireland, said that in addition to the lack of awareness among the public and practitioners of LEI, in Northern Ireland, legal aid is seen as the sole source of assistance.

“There is a lack of willingness to consider other forms of funding, and the high level of dependency on legal aid relates directly to the prevalence of social deprivation across society,” said Ramsey.

According to Paul Tamburro, lawyer at King & Wood Mallesons in Australia, certain professions – such as medicine and accountancy which tend to be on the higher end of the economic scale – use LEI more.

However, this doesn't solve the problem of the community's access to justice. He added that there is a public perception that LEI is not necessary, so the obstacles to commercial viability are too high. “Even if they are viable, limited coverage or high premiums mean that LEI does not actually address access to justice problems,” said Tamburro.

How Tamburro sees LEI working best is complementing other improvements that have been made in the Australian legal system, such as mandatory conciliation processes and the use of ombudsmen. Improved technology and more sophisticated data can also help make LEI more accessible in the future.

HIGHLIGHTS MONDAY

Pinning hopes on the millennials

At Monday lunchtime's *Conversation with Yong-ho Thae*, Mark Ellis, executive director of the IBA, interviewed the former North Korean diplomat who served as deputy ambassador to the UK and defected with his family to South Korea in 2016. The highest-ranking North Korean to have defected in this century shared his compelling journey with the audience and explained why hopes for a re-

united Korea are dependent on the millennial generation.

Following the defection of 13 North Koreans from China in March 2016, Kim Jong-un demanded that university students returned to North Korea by July 2016. Thae was angry that his son couldn't finish his education. “We had an open and honest family discussion and when I thought about the future, I thought: how can I ask my children to go back to North

Korea when they know about human rights and democracy?” said Thae.

This sentiment appears to be building with the millennial generation of North Korean students. With a growing market of grey goods, the next generation of North Koreans know a better world exists beyond their borders. While they may be loyal to Kim's system during the day, by night many are consuming American and South Korean TV dramas. “The sys-

tem will begin to falter in the next 10 to 20 years,” said Thae. “The next generation is growing up in a conflicted society, and will take to the streets.”

Unlike the current core class, many of whom are children of victims of the Korean War, “don't have strong hatred for Americans and South Koreans”, said Thae. “They have disbelief of the system, and will push against it when they come into power.”



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The GC's fine balancing act in a changing world

During Tuesday's showcase session *The role of the general counsel in a fast-moving world: how to deal with complexities, challenges and change*, a diverse panel of in-house and private practice lawyers shared their insights on the rapidly-changing role of the general counsel (GC) in a highly complex and fragmenting world and the impact of the GC on company culture.

According to Simon Davis, president at The Law Society of England and Wales, in-house membership at the Society now stands at 25%. One of the main motivations for private practice lawyers to move into in-house roles is the opportunity to be involved in deals from start to finish. "As a

private practice lawyer, you only dip into deals and work on separate pieces," said Davis.

Edith Shih, head group general counsel and executive director at CK Hutchison in Hong Kong added: "GCs can see a transaction from beginning to end. But you have to live with your decisions because there's no quick fix. You have to turn every stone and make sure you are happy with decisions, as you'll be accountable to the company in the years to come."

Not surprisingly, in-house roles are often filled by the best and brightest who are recruited from the external law firms that work with the business. While there might be a concern that



law firms are gradually losing their top talent to in-house, Charles Jacobs, senior partner at Linklaters in the UK, doesn't think it's something to be concerned about.

"The trend hasn't changed all that much," said Jacobs. "If you look back to the early 1990s, lawyers would get their training in a law firm then opt for the investment banking route because of the big bonuses. Nowadays, banks are recruiting less, but lawyers are joining hedge funds and startups."

For Sirgoo Lee, CEO at Dunamu in

South Korea, change was his biggest motivation to go in-house. Working in the cryptocurrency industry, he is able to create change not just within his company, but the broader industry too. "Working with cutting-edge technology means that there is no law or regulation, and we're making the rules as we go," said Lee.

Lee added: "The GC has to wear two hats, both of the referee and businessman. It takes a lot of self-discipline and being able to think in long-term value return."

HIGHLIGHTS TUESDAY

The girl with seven names

Tuesday's lunchtime *Conversation with Hyeonseo Lee* left most of the auditorium with tears in their eyes.

Lee told delegates of the difficulties she faced growing up in the northern half of this tragically divided country, captivating a packed auditorium with accounts of her father's brave personal sacrifice, the difficulties of living as a defector in China for 10 years, and the help she received in trying to rescue her family from the grips of Kim Jung Il's tyrannical regime.

The first account was of her father, who she had a troubled relationship with. After he had committed suicide,

Lee discovered that he was not her biological father, and for many years was torn with the mixed emotions of both hating him for what he had done to her family, but missing his presence. She realised it was his most grave of sacrifices that had kept her entire family from certain imprisonment.

Lee told IBA executive director Mark Ellis and delegates of a mysterious Australian backpacker, Dick Stolp, who had overheard her woes at not having the US dollars available to pay a bribe to have her mother, brother and three other defectors released from prison and into China. On hearing her story, Stolp instantly took Lee to an



ATM and returned with her to pay the amount, saying: "I am not helping you, I am helping the North Korean people."

"It was on this day I knew: there are angels walking among us," she said.

Echoing sentiments from Monday's conversation with Thae Yong-ho, Lee told delegates about her country's relationship with former leader Kim Il-sung, whose death had broken a bubble

and shown many in the country that he was not a god, as so many had believed.

"Not many people had TV at the time. I was crying and crying; everyone was so shocked. But people who didn't see the TV, who didn't have one at home, they couldn't believe what we said – they said 'this is a lie, you must be joking, he is god – how could he die?' People didn't believe it at all," she said.

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HIGHLIGHTS TUESDAY

Too little in the way of undue influence

In Tuesday's session *The cook, the thief, their spouse and their lover*, the Family Law Committee and the Private Client Tax Committee assessed how easy it can be to take advantage of the vulnerable and the elderly – particularly where money is involved.

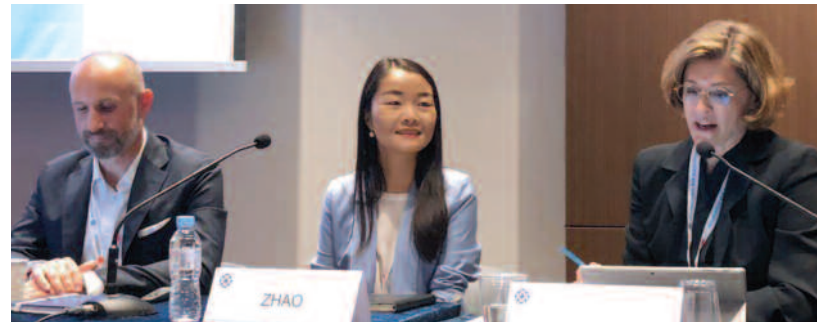
Unfortunately, the financial affairs of the elderly and their next of kin are often at risk from those in positions of trust. It can be from children, spouses, or even professional advisers and lawyers, who are able to abuse their position for professional gain to the detriment of the elderly individuals and their familial wealth.

"Diminishing capacity is of huge importance," said Joshua Rubenstein of Katten in New York. "We're all living longer – which isn't necessarily a good thing."

Whether it's the cliché of marriage to a much younger spouse or manipulation from children or longstanding loyal caretakers, the elderly can be taken advantage of from multiple angles.

Florian Zechberger of Koenig Reibholz Zechberger recalled the story of an increasingly vulnerable German woman with diminishing capacity. A relative in Germany was appointed her legal guardian, but as she lived abroad in Monaco she was provided with another guardian by authorities.

In a sad, twisted tale, both guardians abused their position and manipulated her, with the Monaco-based guardian paying for helicopters to Germany and her relative using her wealth to attempt to purchase a property in California, despite the



fact that she had never visited the US state and that medical staff had said she was in too ill health to manage the journey.

Zechberger stressed the importance of establishing a clear structure from the beginning. "It is difficult, if not impossible, to set this up later on," he said.

His cautionary tale was not the only Shakespearean psychodrama on offer from the panel, either. There were tales of secret marriages in China and South Africa too.

"We feel like there is nothing we can do at the moment," said Beijing-based Anjie Law Firm lawyer Echo

Zhao, who recalled another case where the former partner and siblings of a man with dementia had struggled to invalidate his sudden secret marriage to one of his staff members.

Katten's Rubenstein said that should you feel your relative is at risk of being in one of these situations, the best option available (at least in the US) is to obtain a guardianship. The only problem is that, should proceedings fail, you risk cutting yourself out.

"If you are going to shoot the king, you'd better kill him," he said. "If you don't, he's going to retaliate."

HIGHLIGHTS WEDNESDAY

Sextortion: the importance of a definition

Being able to define a crime is essential to being able to prosecute it – and to bring justice for its victims. That's why panellists in Wednesday's session *Sextortion: a new anticorruption paradigm* were pleased to finally have a word for the act of when someone in a position of power seeks to extort sexual favours in exchange for something within their power to grant and withhold.

Sextortion is a different type of bribe, whereby sex rather than money is the chosen currency. The definition is so important because "we're so programmed to think of corruption as money changing hands", said Nancy Hendry, senior advisor at the International Association of Women Judges, which coined the term in 2008.

"How do we begin to talk about a problem for which we have no vocabulary?"

"When coming up with a definition we considered: is this rape? There is a seemingly consensual element, albeit under considerable duress. Is it sexual harassment?" she added. "How do we begin to talk about a problem for which we have no vocabulary?"

The session marked the launch of a new IBA report, *Sextortion: a crime of corruption and sexual exploitation*.

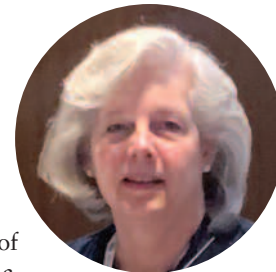
Recent examples mentioned by panellists include Canadian ex-immigration judge Stevan Ellis seeking sex from a South Korean refugee complainant in return for a favourable decision, and a similar case in Norway involving ex-cabinet minister Svein Ludvigsen, who was imprisoned for sexually abusing three asylum seekers. "In these cases the perpetrators had an enormous amount of power over the claimants – their entire future rested on them," said Sara Carnegie, legal director of the IBA's Legal Policy & Research Unit and author of the report.

There are several barriers to identifying and prosecuting such a crime: the victim; may be unaware they are a victim; gender is typically ignored in the anti-corruption context (while women

are not the only victims of sextortion, they are a disproportionate majority); and in much anti-corruption legislation, there is a requirement that the bribe-taker is a public official – and a risk that the victim is criminalised too for accepting the terms of the bribe. "There is a need for clarity and consistency in how this crime is defined and punished – until now it has not been widely understood or reported," added Carnegie.

The public official requirement present in typical anti-corruption legislation does not work in this concept because any person in a position of power can be the perpetrator of sextortion. For instance, it's also prevalent in the humanitarian aid sector. Following the deadly cyclone in Mozambique in March 2019, some aid workers determined that food and medicine would be available only in return for sexual favours. As the IBA report states, 'so-called 'humanitarian aid' actually increased the human horror'.

It can also happen online: cyber sextortion is the act of hacking someone, stealing indecent images, and threaten-



Nancy Hendry

ing the victim with their publication.

The #metoo movement that followed the accusations of multiple women against Hollywood director Harvey Weinstein has made victims both better-equipped to recognise when they are a victim of sextortion, and

more comfortable coming forward.

"These cases are difficult for so many reasons, but victims deserve for their stories to be told and the public needs to know this has happened," said David Sachar, executive director of the Judicial Discipline & Disability Commission in Arkansas. "Plus, declarations matter – verdicts drive settlements."

It's also complicated because of the nature of a bribe: there is of course a benefit for the victim of the crime, too. "The victim may at first want to take advantage, and for that reason may not acknowledge the incredible abuse that it is," continued Sachar. "But the judiciary should be a place of justice, not debauchery."

It's also difficult for lawyers working in this field because of the status of the perpetrators. "Everyone I deal with is politically powerful. They may not threaten to punch me in the elevator like a criminal in the traditional sense of the word, but they can threaten to call the senator on me."

The future of work

During Wednesday's session *The IBA report on the future of work: contribution by the IBA to the ILO debate about the 'Future of Work', with special considerations to law and disruptive technologies*, a diverse panel of lawyers discussed the implications of technology on a changing workplace and how it will change the very meaning of work.

The discussion was based on the findings of the IBA's research as part of a two-year initiative with the United Nations' International Labour Organization (ILO) to assess the challenges facing the world of work.

The report brings to light a number of pressing issues that governments and businesses are faced with as the workplace is disrupted by technologies such as artificial intelligence (AI), and the workforce is increasingly replaced by the use of platform workers. What is clear is that a human-centered agenda will be necessary to fine-tune and create equitable social and economic policies, and business practices around work.

Rabindra Jhunjunwala, partner at Khaitan & Co in Mumbai, pointed out that from a corporate law and technology perspective, businesses need to look at the implications of new-age employment structures like

the gig economy and online platforms. Furthermore, technology advancements have transformed the mode of global business with tools such as e-voting and video-conferencing.

Sajai Singh, partner at J Sagar Associates in Bangalore, added that sooner or later, technology knowledge will be required less and less because robots will be replacing humans. This translates to a need to re-skill.

An area of concern from a criminal law and corporate compliance point of view is data privacy. "Should governments enable companies to do background checks on potential employees and monitor employee behaviour?" asked Adriana De Buerba, partner at Pérez-Llorca in Madrid. Unintended surveillance and employees being monitored without their knowledge is concerning as it encroaches on the fundamental human right to privacy.

Joe Duffy, partner at Matheson in Dublin, said that tax policies will need to look at how countries invest in entrepreneurs. This will mean re-defining the employee and what it means to be self-employed for tax purposes. An important issue to consider is where value is created and which country should impose a tax. "Employee levels may fall dramatically, and that would significantly



impact the tax revenues of many countries," said Duffy. "Perhaps robots will need to be taxed."

According to John Wilson, partner at John Wilson Partners in Colombo, countries are grappling with new interpretations of their intellectual property laws regarding ownership and protection of AI inventions. It will be imperative for companies to change the way they reward innovation in their businesses.

Els de Wind, partner at Van Doorne in Amsterdam, said that a key question to ask is what will constitute a workplace in the future. Technology is having sweeping changes on where and when work is done. "The psychological health of workers is a big concern," said de Wind. "The workplace culture is changing when jobs are being cut in different pieces, and we're talking about performing tasks not jobs."

Freelancers, distant workers and employees of fixed and indefinite terms are the workers of the future. The idea of a social workplace may

fade away, and this will likely impact the psychological health of workers. "From a psychological point of view, some people rely on their workplace being a sociable place, and they may not get that when working from home or at coffee shops," said de Wind.

What is concerning is the lack of equilibrium when it comes to the employer and employee relationship. "Employers are in a much more powerful position, and there is a lack of equilibrium between employers wanting workplace efficiency and workers' rights," de Wind told the *IBA Daily News* ahead of the session.

Salvador del Rey, partner at Cuatrecasas in Madrid and session chair told the *IBA Daily News* that governments around the world need to address the issues that technology present to the workplace without delay. "The fundamental rights of workers are at risk, and the law can't fall behind," said del Rey. "But I'm optimistic that the law can and will cope with these challenges."

Continued from page 1

proceedings, better insolvency legislation, and innovative approaches by the courts," said Chung.

Many businesses went bankrupt when Korea suffered the financial crisis in 1997, but most opted against reorganisation out of fears of losing control to third parties. With the implementation of the new bankruptcy law in 2006, the result was sensational. The time it took to reorganise was dramatically reduced from 10 years to six months. By serving as a bridge between debtor and creditor, a summary rehabilitation plan, which was created under the 2006 law, helps to clarify the restructuring roadmap.

Another innovation in Korea has been the creation of the Seoul Bankruptcy Court: it is independent, had 34 active judges as of March 2017, has general jurisdiction of insolvency cases and exclusive jurisdiction over cross-border cases.

Young added that to speed up the

process debtors can get financing from their main creditors, who are likely to step in to avoid bankruptcy filings. "However, these have been criticised as zombie-making proceedings because of their too-big-to-fail approach," said Young. Through a hybrid restructuring programme, creditors can get protection from the court and negotiate with debtors, and if that fails, the court would commence judicial proceedings.

Unlike jurisdictions such as the US, Korea does not have superpriority claims. Businesses are increasingly looking to combine a prearranged restructuring plan and the sale of distressed assets to attract private equity firms and banks to provide them with exit loans.

In contrast to Korea, Yutaka Kuroda, partner at Nagashima Ohno & Tsunematsu in Tokyo, has observed a continued declining trend in the number of restructuring cases from 2008 to 2017. However, this

could change if the anticipated global recession does come to pass.

The number of out-of-court restructuring cases has picked up, however, due to a strengthening of corporate governance in Japan and an increase in foreign investors, which has resulted in more cross-border cases.

The creation of the turnaround alternative dispute resolution system in 2009 has made out-of-court restructurings possible. Central to this system is the need for unanimous consent of creditors to a formalised procedure presided by the Japanese Association of Turnaround Professionals. The question is if one or two creditors oppose the plan, it is not possible to move forward.

Like Korea, it is common in Japan for debtors to combine the sale of assets with a restructuring plan. But un-

like Korea, there is more flexibility when it comes to superpriority debt financing. The option is possible if approved by the court, but collateral is needed. Kuroda observed that new players are taking interest in this area.

According to Fay Fong, partner at Allen & Gledhill in Singapore, there has been an increased use of the court system for restructurings in the country, especially for the suffering shipping industry. Unlike Japan, there is an ability to cram down dissenting creditors, provided that there is majority consent.

The restructuring legal environment is much more favourable to debtors than in the past as it allows them more time to negotiate. Once an application has been filed, a 30-day moratorium is given.



Hon. June Young Chung

Decisions, decisions

The choice of where to list your company has long been a cause for debate. In a fully globalised world, it's a key consideration to be made simultaneously with whether to list at all. Despite concerns, the US still holds court, according to speakers in Wednesday's panel *The battle to ring the initial public offering bell: dual listings and competition among international stock exchanges*.

There are a number of considerations to be taken into account, with some preferring a domestic exchange over one overseas: more than 60 countries are represented on the London Stock Exchange. The US is also a very popular destination for foreign companies. In 2018, 25% of initial public offering proceeds raised in the US were from cross-border listings.

The question is why foreign companies would choose to go to London or New York for a listing. There are a lot of Chinese companies listed in the US, notably Alibaba.

According to Delano Musafér, responsible for APAC capital markets at the New York Stock Exchange in Hong

Kong SAR: "There are attractive and sustainably high valuations where you have a strong institutional investor base. It is also a profile and prestige thing, and it can be strategically important for expanding a business in a particular jurisdiction."

"The US is a particularly attractive option for newer economies. That is the main difference over and above a local listing," he continued. "Specifically there is a large base of very sophisticated tech institutional investors in the US who really understand new economy companies and are willing to pay a premium, sustainable evaluation."

Liquidity is also very important. The US' liquidity pool is typically two to three times deeper than that seen on the local markets. "It is an aspirational thing as well, don't ever discount the importance of someone like Jack Ma ringing the bell for Alibaba in NYC. All our tech prospects want to do exactly the same," said Musafér.

When asked if the current political tension in the US and its frayed relationship with China and others would lead to a slowdown of overseas companies



looking to list in the US, Musafér remained positive. "It hasn't yet – everyone understands the value proposition is still there."

Some panellists, however, feel that a domestic listing can offer more value than overseas. Patrick Schleiffer of Lenz & Staehelin in Zürich told delegates that while exceptions can be made for certain technology or biotech companies, the first option should be to look to your home jurisdiction. "In my experience, home is best. In terms of cost and culture, you are more familiar with your own law, and if your own law is the same it is easier," he said.

David Flechner of Paul Hastings in São Paulo added that in Latin America and similar regions, markets are so much smaller – even the larger ones such as Brazil – which can give big, sophisticated companies more value.

"One of my biggest clients is a payment services company in Brazil that has only Brazilian operations, assets and employees – it is a fully Brazilian entity with 92% of its shareholder base and billions of dollars of market load made up of US investors," he said. "The management team chose to list on the New York Stock Exchange (NYSE) directly without going through the exchange process in Brazil."

"In 2019 we are seeing a very tech-friendly environment. It's almost as if you have to go to New York to get the valuation and trading that you want," he continued.

Home jurisdiction advantage can apply from both a corporate governance and ongoing reporting perspective – companies are of course more familiar with the regulatory framework in their own jurisdiction.



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QUESTION

What's been the highlight of your week?



Clement Oha
Independent National
Electoral Commission
Nigeria

The session on mediation. It's really helpful to be introduced to international mediation standards as it improves my practice.



Jasmine Cheung
Law Society of Hong Kong
Hong Kong SAR

The unlimited number of receptions. The fried chicken I had at one of them was the best I've ever had. It was so perfectly spiced.



Mateusz Rogoziński
Crido
Poland

There are a lot of networking opportunities. The party at Octagon yesterday was the best. Some of the receptions were held at the 76th floor of Lotte Tower, which has an amazing view. I also found the M&A sessions quite good.



Keungsun Lee
Samsung
South Korea

This is my first time at the IBA and it's been great for networking. I also really enjoyed Korean night hosted by the Korean Bar Association.



Massimo Calderan
Altenburger
Switzerland

The session on the automotive industry on Wednesday. It was a really lively, practical discussion with an incredibly knowledgeable panel.



Kate McMahon
Edmonds Marshall McMahon
UK

Seeing my friends from all over the world. I've met up with friends from Australia, Poland and France, as well as meeting some lawyers from Korea.

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The week in pictures

A selection of some of the best moments of the IBA annual conference 2019



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