

Minutes

VANCOUVER MEETING OF THE BOARD OF DIRECTORS

September 20-24

Pan Pacific Hotel Vancouver

Wednesday, September 24, 2003

At 9:00 am

I. Call to Order/Representatives Present

The PRAC Chairman, Jan Willem Sodderland (NautaDutilh, Amsterdam) called the meeting of the Board of Directors to order.

The following representatives were present during the Board Meeting or participated in the various activities during the conference including the Practice Group and Committee meetings, and other programme events:

Ali Budiardjo Nugroho Reksodiputro
Ricky Nazir

Allende & Brea, Argentina
Osvaldo Jorge Marzorati

Asahi Koma Law Offices, Japan
Takemi Hiramatsu, Masafumi Oshino, Testuro Toriumi, Hiromi Shiraishi

Brigard & Urrutia
Carlos Urrutia

Carey y Cia
Jorge Carey, Jaime Carey, Pablo Iacobelli

Clayton Utz, Australia
John Shirbin

Davis Wright Tremaine LLP, U.S.A.
Peter Parsons, Bruce Johnson, Joseph Weinstein

Fraser Milner Casgrain, Canada
John Elder, Jeff Barnes, Susan Iannetta

Goodsill Anderson Quinn and Stifel, USA
Greg Kim

Hale and Dorr LLP, USA
Ken Slade, Henry Wixon (Washington)

Hogan & Hartson LLP, U.S.A
Warren Gorrell, Jr., Ray Batla, Jr, Wendy Whitney Taylor

Hoet Pelaez Castillo & Duque
Luis Bottaro

Kim, Chang & Lee, South Korea
Eui Jae Kim

King & Wood PRC Lawyers
Xuanfeng (Susan) Ning, Kalley Chen (California)

Kochhar & Co., India
Amitabh Lal Das, Manjula Chawla, KV Ramesh

Lovells, Hong Kong
Raymond Lau, Tim Fletcher, Patrick Sherrington (London)

Lee and Li, Taiwan
Joyce Fan

Luce, Forward, Hamilton & Scripps LLP, U.S.A.
Peter Hahn, John Brooks, Elizabeth Foster, Phil Jelsma, John McNeece, Rob Steiner

Mulla Mulla & Craigie Blunt & Caroe, India
Shardul Thacker

Muniz Forsyth Ramirez Perez-Taiman & Luna Victoria, Peru
Jorge Perez-Taiman, Marcelo Torres and Mario Larrea (Quito); Cesar Luna-Victoria, Carmen Gutierrez

Nauta Dutilh, The Netherlands
J. Willem Sodderland, Chris Warner (New York), Japp Stoop

Richards Buell Sutton, Canada
Jeffrey Lowe, Jay Munsie, Georg Reuter, Scott Lamb, Scott MacDonald, Mark Baron, Michael Leroux, Sandra Wright, Jas Basra, Mark Davies, Sharon White, Michael Shane, Michael Sawyer, Richard Stobbe, Bruce Fraser

Rodyk & Davidson, Singapore
Pathma Selvaurai, S. Sivanesan

Santamarina y Steta, Mexico
Agustin Gutierrez

Simpson Grierson, New Zealand
Denis McNamara, Jock Irvine

Skrine, Malaysia
K. Anantham, Theresa Chong, Chen Kah Leng, Wei-Ling Liew, Kumar Kanasgasabi, Vinayaga Rajaratnam, Phua Pao Yi

Sycip Salazar Hernandez & Gatmaitan, Philippines
Andres Gatmaitan, Andy Sta Maria, Ben Caguioa, Rocky Reyes, Lilia Yang

Tilleke & Gibbins International Ltd
David Lyman, John King, Thanes Periera

Tozzini Freire Teixeira e Silva, Brazil
Jose Emilio Nunes Pinto, Marcio Baptista

Werksmans, South Africa
Wildu du Plessis

Absent: All firms represented

II. Approval of Agenda. The Chairman sought approval of the agenda for the meeting. Upon motion duly made, seconded, and unanimously carried, the agenda set forth in the conference materials was approved.

III. Approval of Minutes of New Zealand Conference

Upon motion duly made, seconded and unanimously carried, the Minutes of the New Zealand 2003 meeting of the Board of Directors as set forth in the conference materials was approved.

IV. Chairman's Report

The Chairman commented generally on the strengths of PRAC, of its attractive membership size and relative intimacy of the membership and the high level of participation by delegates in the conference proceedings.

1. King and Wood

The Chairman commented on the travel difficulties caused by the recent outbreak of SARS in certain regions of the world, as well as the war in Iraq. Therefore, many delegates were forced to cancel travel plans to New Zealand and were unable to attend the New Zealand Conference, among them, KING & WOOD. Although inducted in New Zealand, the Chairman formally welcomed them in Vancouver.

2. Tilleke & Gibbins International Ltd.

The Chairman expressed its formal welcome to PRAC's newest member from Thailand.

WHEREAS the law firm **TILLEKE & GIBBINS INTERNATIONAL LTD** of Bangkok, Thailand, joined The Pacific Rim Advisory Council effective June 1, 2003; and

WHEREAS, TILLEKE & GIBBINS INTERNATIONAL LTD is one of the most prestigious law firms in Thailand, with its main offices in the City of Bangkok; and

TILLEKE & GIBBINS INTERNATIONAL LTD supports a full service local and international practice, with a high degree of specialisation;

RESOLVED, that the Pacific Rim Advisory Council and the 30 member law firms of the Council extend to **TILLEKE & GIBBINS INTERNATIONAL LTD** their warmest welcome and their expectation that the firm's membership will result in a long and mutually beneficial association; and

FURTHER RESOLVED that the original of this resolution be presented to **TILLEKE & GIBBINS INTERNATIONAL LTD** and that a copy of this resolution be maintained in the archives of the Pacific Rim Advisory Council.

3. Richards Buell Sutton

The Chairman reported on the many favorable comments he had received with respect to the Vancouver Conference. In particular, this conference will stand out for the largest turnout of delegates and guests and the personal and professional contributions by the Host Firm to every aspect of the Conference.

Following discussion and upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

WHEREAS the law firm **RICHARDS BUELL SUTTON** is a founding member of the Pacific Rim Advisory Council; and

WHEREAS, the success of the 34th International Conference of the Pacific Rim Advisory Council has been specifically due to the efforts and enthusiasm of the entire **RICHARDS BUELL SUTTON firm** who have dealt patiently with the countless details and complexities of hosting an International Conference and, in particular the Host Committee Members:

Melissa Heywood
Jeffrey J. Lowe

Jay M. Munsie
Georg D. Reuter

RESOLVED that the Pacific Rim Advisory Council extends **RICHARDS BUELL SUTTON** its deepest gratitude for planning and hosting the 34th International Conference in Vancouver;

RESOLVED that the Pacific Rim Advisory Council extends to **RICHARDS BUELL SUTTON** its best wishes for continued success; and that the original of this resolution be presented to **RICHARDS BUELL SUTTON** with commendation and honours; and that a copy of this resolution be maintained in the archives of the Pacific Rim Advisory Council.

Directory. The 2003 Directory was published earlier in the year and is available at the PRAC web site. Send changes to Susan Iannetta.

Notification of Change/Current listings. The Chairman asked the members to review the E-Mail list, Primary and Practice Group Matrix and listings and to advise Susan Iannetta of any changes.

E-Bulletin. The e-Bulletin continues to be published month and electronically distributed to all Primary, Practice Group and Marketing contacts at each member firm. Available also at the PRAC web site Public Library portion. Send contributions to Susan Iannetta.

V. Practice Group Recommendations.

1. **Banking & Workouts** – (See attachment A to follow)
2. **Business Investment & Trade** – (See attachment B to follow)
3. **Projects/Energy** (See Attachment C to follow)
4. **Employment & Labor - not meeting.**
5. **Intellectual Property & Licensing** (See Attachment D to follow)
6. **Litigation – not meeting**
6. **Tax - not meeting**
7. **Marketing.** (See Attachment E - to follow)
8. **Practice Management** (See Attachment F - to follow)

Practice Group Co-Chairs were reminded to contact the Peru host firm to confirm meeting schedule and cautioned that due to time constraints not all practice groups would be meeting.

VI. Financial

The Financial Chair reported on the status of the estimated 4th quarter financial report 2003 and proposed Budget for 2004. The Financial Chair commented that with the loss of member firm Brobeck Phleger & Harrison and in all likelihood Brobeck's 2003 assessments would not be forthcoming pending the outcome of Brobeck's liquidation. As a result, the shortfall to the 2003 Revenue Budget, which would be covered by the contingency carryover built up from previous years and/or offset by potential new membership fees. The proposed 2004 Budget seeks to rebuild the contingency carryover in future budgets resulting in slightly increased assessments over 2003.

Upon motion duly made, seconded and unanimously carried, it was:

RESOLVED that the Board of Directors approve the 2003 Estimated 4th Quarter Budget and Proposed 2004 Budget annexed hereto as Attachment G.

VII. Policy & Planning Committee

Committee Chair John Elder reported on the following items:

1. Members were advised that no additional comments were received to the draft from of suggested framework for joint billing (available at Private Libraries link at PRAC web site. Due to minimal interest the draft framework will be set aside but will remain at the web site for future reference.
2. Vancouver Conference. John Elder reported on the consensus view that the Vancouver Conference was well presented and with the highest attendance, successful on all accounts. The agenda was representative of a well attended and balanced program with sufficient business and social activities intermingled, and a high level of participation by the Host Firm. Vancouver social events were well planned and executed, blending a high energy setting in a relaxed and culturally sensitive setting. Saturday's Stanley Park excursion for early arrivals was met with enthusiasm.

High praise and entirely positive comments were given for the much welcomed and honoured tradition of Partner home hosted dinners. The hotel environment was helpful, with a good collecting point in the central Lobby. The business meeting layout (classic board room or u-shape) for record high attendance proved a bit unwieldy and future hosts should look to adjusting set up pending attendance numbers.

3. Statement of Objectives. John Elder reported that for general updating and with the changes affecting many firms (such as globalisation), in the future, that the Committee would be looking at the PRAC Statement of Objectives with a view to proposing amendments as necessary, including a review of the assessment calculation and the basis for which fees are calculated.

VIII. Membership Committee (as reported by Patrick Sherrington)

San Francisco, California.

Following a review of the Membership Report regarding California and discussions with the Policy & Planning Committee the Membership Committee sought and received approval from the Board in New Zealand to seek a replacement for Brobeck, beginning with the San Francisco jurisdiction, with a view to securing a separate recommendation for Los Angeles following Vancouver. Discussions were held among the Delegates over the course of the Vancouver conference with a view to gaining a consensus as to a San Francisco replacement.

Following further discussions, it was unanimously agreed that Morgan Lewis & Bockius LLP would be asked to join PRAC for the San Francisco jurisdiction.

Further, Patrick Sherrington will distribute a shortlist of potential Los Angeles, California candidates to the membership post Vancouver conference, along with a request for member views and recommendations on same, post conference.

Patrick Sherrington thanked the membership at large, the members of the California due diligence team and in particular the US member firms Davis Wright Tremaine, Hale and Dorr, Hogan & Hartson and Luce Forward Hamilton & Scripps for their work and support in securing a consensus view for the San Francisco jurisdiction.

3. Other. Spain and Italy were raised as possible new member jurisdiction. Members were reminded to consider the process to be undertaken for new jurisdictions which included a Stage 1 report to be prepared by

the proposing member. Jorge Carey offered to prepare a Stage 1 report on Spain to support the recommendation to the membership.

IX. Conference Committee

2004 Peru May 15-21

Jorge Perez Taiman reported that the hotel venues had been selected and the major planning was well underway. The Peru conference will start in Lima, move to Cusco, and have an optional follow on tour to Machu Picchu which will include a business seminar. Programme guides were distributed and early on line registration was now available.

2004 India New Delhi - October 30-November 5

New Delhi firm Kochhar & Co. expressed its delight at being the host firm for India 2004. Additional details would be forthcoming post conference. Initial plans are to be in New Delhi October 30-November 3 at the Oberoi New Delhi, and move to Agra for a follow on tour and business seminar November 4-5.

X. Turnover Chair

Chairman Sodderland reported on the results of the Nominating Committee for the incoming PRAC Chair for the term commencing January 1, 2004 and that the new Chair would consist of Osvaldo Marzorati (Allende & Brea - Argentina), Chairman and Sivi Sivanesan (Rodyk & Davidson - Singapore), Vice Chair. Further, Susan Iannetta has agreed to continue as Director.

John Shirbin, immediate past Chairman, on behalf of all PRAC members, thanked Willem Sodderland for his commitment and guidance during his two year term as Chairman. He commented on Willem's expert and gentle guidance which led PRAC through difficult obstacles during his term and set a clearer path for the incoming Chair.

Chairman Willem Sodderland thanked the membership at large for their support during his term and asked for their future support of the incoming Chair. He expressed thanks to his Vice Chairs (Osvaldo Marzorati and Sivi Sivanesan) and to PRAC Director, Susan Iannetta.

XI. Adjournment.

There being no further business to discuss the Board Meeting then adjourned and the Vancouver 2003 Conference closed. .

Attest:

Jan Willem Sodderland
PRAC Chairman
NautaDutilh - The Netherlands

Susan Iannetta
PRAC Director
Fraser Milner Casgrain - Toronto

Attachment "B"

MINUTES OF BUSINESS INVESTMENT TRADE PRACTICE GROUP MEETING –
PRAC Vancouver Conference - Tuesday, 23 September 2003

1. The topic for this session was "MAD COWS AND DISASTERS – coping with Natural Biological Crisis".
2. The speakers were Scott Lamb of Richards Buell Sutton, Joyce Fan of Lee and Li and Tim Fletcher of Lovells CHF.
3. Scott gave an insight into the medical details of the MAD COW disease. He proceeded to cover the economic repercussions of the disease and in particular how it effected Canada's beef exports to the USA, its largest market. He also commented on the crisis response in other jurisdictions like Europe and Britain. Finally he covered the interesting aspect of Japan's treatment of US beef products which are not being approved for export to Japan because of the possibility that "US" beef may have originated from Canada.
4. Joyce gave a clear and succinct presentation on the SARS outbreak in Taiwan. She covered the government's response, private sector response and the various economic incentives. The crisis also gave rise to new opportunities in Taiwan such as e-commerce, sanitation and health products. She gave her views on how the crisis had an impact on Taiwan's relations with its neighbouring countries in Asia. Finally she covered pertinent legal issues associated with the SARS crisis.
5. Tim explained Hong Kong's reaction and response to the SARS crisis. There was a feeling that Hong Kong was a bit slow in responding to the crisis but once the reality set in, the authorities moved swiftly and effectively.
6. Other participants shared their experiences as well. Susan Ning of King and Wood explained China's reaction to and handling of the SARS crisis and the world's reaction to China's reaction. John Brooks of Luce Forward asked the panel to comment on the issue of Force Majeure in a SARS situation.
7. The session thanked the panel for the presentations. The Co-chairs also sought suggestions from members for possible topics for the next session in Peru.

Peterr Parsons & S. Sivanesan
Co-Chairman

Attachment "D"

MINUTES OF INTELLECTUAL PROPERTY & LICENSING PRACTICE GROUP
PRAC Vancouver Conference
September 23, 2003

CO-CHAIRS: Takemi Hiramatsu, Asahi Koma Law Office
Ken Slade, Hale and Dorr LLP

A. Survey on Cross-Border Use of Non-Disclosure Agreements

The Practice Group focused on the need to adjust non-disclosure agreements (NDA's) for cross-border use. Prior to the conference, a model mutual NDA for a potential business deal was circulated to the member firms for comment. Two questions were posed:

- (1) Assuming the blank for choice of law is filled in with the law of SOME COUNTRY OTHER THAN YOUR OWN COUNTRY under which the provisions of the NDA are to be governed, what parts of the NDA might be difficult to enforce in your country?
- (2) Assuming the blank for choice of law is filled in with the law of YOUR OWN COUNTRY, what changes would you recommend making to the NDA?

23 PRAC member firms responded to these questions, representing 20 different countries. Those responses focused on 10 distinct issues:

- (1) Is the NDA's choice of law enforceable?
- (2) Is the NDA's choice of jurisdiction to resolve disputes enforceable?
- (3) Should confidential information be marked as "confidential"?
- (4) If and when can information which is "in the public domain" still be subject to protection under an NDA?
- (5) Residuals Clause (information in unaided memory)
- (6) Should the disclosing party be asked to give a warranty on its authority to disclose Confidential Information?
- (7) As a practice, is it a good idea for the receiving party to retain one copy of Confidential Information in its counsel's files, in order to prove that it otherwise stopped using the disclosed information?
- (8) should the NDA contain a clause acknowledging that each party is entitled to injunctive relief without the necessity of proving damages and posting any bond, and attorneys' fees when pursuing violations of the NDA?
- (9) Should one designate an exclusive jurisdiction to resolve disputes?
- (10) For what period of time can confidentiality obligations be imposed on the receiving party?

The Co-Chairs and Georg Reuter of the host firm prepared a PowerPoint presentation summarizing the responses on each of these issues, as well as some miscellaneous responses of interest across jurisdictions. Each delegate to the Vancouver conference received a CD-ROM which contained that PowerPoint presentation and the underlying responses. The contents of the CD-ROM have also been posted on the PRAC website.

The Co-Chairs and Georg led a very spirited discussion of these issues during the actual Practice Group session. They flagrantly violated the 40-20 speeches-audience participation rule, allowing far more than 20 minutes of audience participation. As a result, they covered only the first 4 of the 10 issues identified above.

There was a unanimous consensus among the participants in the Practice Group session that the discussion of the remaining issues 5-10 should be resumed at the upcoming Peru Conference. Prior to that conference, firms which did not respond to this survey were encouraged to respond. Likewise, some firms which had already responded indicated that they wanted to supplement or amend their responses, in light of the responses from other firms and the discussion at the Vancouver session. The Co-Chairs will revise the PowerPoint presentation and re-issue the CD-ROM, in order to reflect any new or revised responses which they receive prior to the Peru Conference.

B. Survey of PRAC Member Firms Intellectual Property/Licensing Capabilities

As a separate survey, the Co-Chairs had surveyed the various PRAC member firms (through a detailed written questionnaire) to determine (i) whether they each had capabilities in various specified sub-areas of IP and licensing, (ii) the number of attorneys/paralegals/specialists in each sub-area, and (iii) who are the relevant contact attorneys in each of those areas for each member firm.

The Co-Chairs initiated this survey because they believed that having some readily available information on each PRAC firm regarding (i) through (iii) above would allow the other PRAC firms (1) to increase referrals and (2) to ensure that the initial contacts were in fact with the attorneys best qualified to handle those referrals. These contacts were intended to be in addition to, and not in lieu of, communications to the Primary Contact(s) in each member firm.

The Co-Chairs were please to report that 18 of the 30 member firms responded prior to the Vancouver conference. Those responses will be posted as a new tool in the Private Libraries section of the PRAC website in early November. Firms which did not respond were asked to submit their responses to Ken Slade by November 1 in order to be included in that posting.