

ABA Section of International Law

2017 Europe Forum



- International Ethics
- Cybersecurity in M&A Deals
- Real Estate Development
- Investor-State Disputes
- Free Trade Agreements
- Gender Diversity in Arbitration
- International Corruption
- Third-Party Funding
- Cross-Border Data Transfer
- Directors' and Officers' Liability

June 11-13, 2017

Barcelona, Spain



ABA Section of
International Law
Your Gateway to International Practice

Wi-Fi Information

Network Name: ABA FORUM

Password: barcelona17

Meeting Space

All meeting rooms will be located on the Mezzanine Level

Program Rooms: Mare Nostrum B & Salon Terral

Networking Break & Exhibit Hall: Mare Nostrum A

Welcome Reception & Luncheon: Salon Azul

CLE Information

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, PR, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 9.0 CLE credit hours including 1.5 ethics hours in 60-minute states, and 9.0 credit hours including 1.5 ethics hours in 50-minute states. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit [our meeting website](#) or contact Thomas.Happell@americanbar.org.

Forum Brochure

Forum Steering Committee

SECTION CHAIR 2016-17

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Business Law Section

Schedule of Events

SUNDAY, JUNE 11, 2017

5:00 PM-6:00 PM

HAPPY HOUR FOR FIRST TIME ATTENDEES - B24

6:00 PM – 7:00 PM

WELCOME RECEPTION – SALON AZUL

MONDAY, JUNE 12, 2017

8:00 AM – 9:00 AM

REGISTRATION & BREAKFAST - MARE NOSTRUM A

8:55 AM-9:00 AM

OPENING REMARKS - MARE NOSTRUM B

9:00 AM – 10:30 AM

PLENARY SESSION

ETHICS AND PROFESSIONAL LIABILITY: CURRENT ISSUES

MARE NOSTRUM B

The increased cross-border activity of lawyers within and outside of the European Union raises serious questions of compliance with professional ethics activities, particularly in the case of transnational transactions. Choice of law issues affect questions of client confidentiality and privileges, resolution of conflicts of interest, as well as varying levels of responsibility concerning advising clients on corporate social responsibility. With a recent decision in the United States raising questions as to the continued vitality of the "Verein" structure of international law firms, the growing import of corporate social responsibility issues in supply chains, and recent decisions weakening the privilege regarding in-house counsel, traditional understandings of the ethics environment may no longer be valid. Through a moderated round table format, this program highlights these issues with anticipated audience participation throughout. **(ETHICS CLE)**

Committee Sponsor: Europe

Committee Co-Sponsors: International Ethics; Transnational Practice Management

Panel Co-Chairs:

Hermann J. Knott, Andersen Tax & Legal, Cologne, Germany

Steven Richman, Clark Hill PLC, Princeton, NJ

Moderator:

Luigi Pavanello, PLLC – Diritto & Finanza, Vicenza, Italy

Speakers:

Steven Richman, Clark Hill, Princeton, NJ

Sara Sandford, Garvey Schubert Barer, Seattle, WA

Marco Torsello, University of Verona, Verona, Italy

Stephen Denyer, Law Society of England & Wales, London, UK

10:30 AM – 11:00 AM

NETWORKING BREAK - MARE NOSTRUM A

11:00 AM – 12:30 PM

CONCURRENT SESSIONS

IS THERE A FUTURE FOR FREE TRADE AFTER THE U.S. ELECTIONS, BREXIT AND A FAILED WORLD TRADE ORGANIZATION (WTO) DOHA ROUND?

MARE NOSTRUM B

Proudly Sponsored By: Mintz Levin

Free Trade expanded substantially from the 1960s to the 1990s with the Kennedy and Tokyo rounds of trade agreements. But since the turn of the 21st Century, there have been many changes. After 15 years, the negotiators for the first time failed to conclude a successful round of trade agreements. The 2016 U.S. presidential elections were characterized by anti-trade agreement sentiment, and Great Britain is set to withdraw from the EU. The Trump Administration has now announced its intent to enter a bilateral trade agreement with the UK.

CYBER SECURITY: THE NEW HIDDEN RISKS OF M&A DEALS

TERRAL

Legal and regulatory cybersecurity risks are critical in due diligence inquiries and responses. In M&A deals, cybersecurity should be an autonomous risk category during due diligence processes, as security weaknesses or lax compliance may affect the value of the target company. Acquirers should request all information on past breaches and compliance with local security laws and regulations. Dire economic consequences may ensue if this information is not fully disclosed, as shown by the Yahoo breach and its impact on its proposed acquisition by Verizon. Failure to meet information security's legal or regulatory provisions may indicate risk of government action or litigation.

Legal expertise in assessing data-driven risks should be embedded on the front end of any M&A transaction and tracked throughout the deal, so that deal terms, its value,

<p>What is the future of free trade as we have known it? This panel of experts from different countries will discuss the path forward.</p> <p>Committee Sponsors: International M&A and Joint Venture; Customs Law</p> <p>Committee Co-Sponsors: Europe; International Trade</p> <p>Panel Chair: Leslie Glick, Butzel Long, Washington, DC</p> <p>Panel Chair and Moderator: Hermann J. Knott, Andersen Tax & Legal, Cologne, Germany</p> <p>Speakers: Szymon Gostynski, Gostynski i Wspolnicy, Krakow, Poland Gloria Bofill, KWS Services West S.L.U, Barcelona, Spain Leslie Glick, Butzel Long, Washington, DC Susan J Cohen, Mintz Levin, Boston, MA</p>	<p>and post-closing opportunities to strengthen security are considered properly. Differences in cultural attitudes and perceptions of cyber risk in cross-border deals may be reflective of the varying levels of cyber exposure and post-closing litigation in any single jurisdiction and can be indicators of additional risk.</p> <p>A panel of internationally-recognized M&A, IT and Litigation lawyers will address questions concerning the management of cyber security risks, with a focus on identifying solutions to emerging threats when addressing a merger or acquisition process.</p> <p>Committee Sponsor: International M&A and Joint Venture</p> <p>Committee Co-Sponsors: International Litigation; Privacy, E-Commerce, and Data Security</p> <p>Panel Chair: Alessandra Tarissi De Jacobis, De Berti Jacchia Law Firm, Milan, Italy</p> <p>Moderator: Malcolm McNeil Arent Fox LLP, Los Angeles, CA</p> <p>Speakers: Renata Antiquera, David Aniceto, São Paulo, Brazil Saverio Lembo, Bär & Karrer, Geneva, Switzerland Micael Montinari, Portolano Cavallo, Roma, Italy Kenneth N. Rashbaum, Barton LLP, New York, NY Alessandra Tarissi De Jacobis, De Berti Jacchia Studio Legale, Milano, Italy</p>
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12:30 PM – 2:00 PM NETWORKING LUNCHEON – SALON AZUL
Proudly Sponsored By: Juasas

2:00 PM – 3:30 PM CONCURRENT SESSIONS

<p>AND JUSTICE FOR ALL? CHALLENGES AND DEVELOPMENTS IN THIRD PARTY FUNDING IN ARBITRATION MARE NOSTRUM B</p> <p>Arbitration in complex cases can be very expensive. Costs may well exceed the financial capacity of one or both parties, thus in effect denying access to justice. Access to financial means for commencing or defending against a proceeding is, therefore, of the essence. "Third-party funding" (i.e., the participation of non-parties to a dispute to finance the proceeding) can, under certain circumstances, resolve this problem.</p> <p>How does third-party funding affect the natural balance of a dispute? To what extent can the third party funder influence the conduct of the proceeding, access to justice or an incentive to litigate? These are just a few of the issues raised by the involvement of non-parties in an arbitration. Other related issues include: (i) need for regulation, (ii) allocation of costs, (iii) potential conflict of interests, and (iv) breach of confidentiality.</p> <p>Speakers from various jurisdictions will join a roundtable to debate these and related topics.</p> <p>Committee Sponsor: International Arbitration</p>	<p>LOOK OUT FOR FALLING BRICKS: HOW TO DEVELOP YOUR HISTORIC HOTEL IN EUROPE TERRAL</p> <p>Foreign real estate development investment is of great importance in Europe. The main issues in international investment in the hospitality industry consist of acquiring, refurbishing and managing historic site hotels. The panel will cover how these issues are handled in four different European cities.</p> <p>The speakers will address the legal requirements, practical concerns, and the differences and similarities among the four jurisdictions from a tax and corporate structural point of view, including compliance with the target country's laws on foreign investment structures and tax considerations in forming a chain of subsidiary companies. Where do you form the intermediary subsidiary? Do you need a local entity or joint venture partner to develop the project? Are there restrictions in repatriating profits or the initial capital investment? These are just some of the issues to be discussed.</p> <p>Committee Sponsor: Cross Border Real Estate Practice</p> <p>Committee Co- Sponsors: International M&A and Joint Venture; International Tax</p>
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<p>Panel Chair and Moderator: Sergio André Laclau, Veirano Advogados, São Paul, Brazil</p> <p>Speakers: Amy Roebuck Frey, King & Spalding, Paris, France Francisco Málaga, Linklaters, Madrid, Spain Steven Friel, Woodsford Litigation Funding, London, UK Ramona Schardt, Siemens AG, Munich, Germany</p>	<p>Panel Chair and Moderator: Gerard Hernandez-Colet, Cuatrecasas, Barcelona, Spain</p> <p>Speakers: Anthea Bamford, Berwin Leighton Paisner, London, UK Umberto Borzi, Chiomenti Studio Legale, Rome, Italy Anders Forkman, Advokatfirman Vinge KB, Malmo, Sweden</p>
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3:30 PM-4:00 PM NETWORKING BREAK - MARE NOSTRUM A

4:00 PM – 5:30 PM CONCURRENT SESSIONS

<p>THE PROPOSED EU INVESTMENT COURT MARE NOSTRUM B</p>	<p>MANAGING A CROSS-BORDER CORRUPTION INCIDENT TERRAL</p>
<p>The EU has proposed a seismic shift in the way investment treaty disputes are resolved. The EU DG Trade has announced that the EU will no longer agree to investment protection treaties with ad-hoc investor-state arbitration tribunals. Instead, the EU has proposed a new Investment Court with the power to resolve all investment disputes. In 2016, the ABA’s Investment Treaty Working Group (ITWG) reviewed the EU’s proposal, issuing a 137-page discussion paper analyzing the detailed structure and operations of the Investment Court.</p> <p>This distinguished panel will discuss the present and future of Investor-State Dispute Settlement. Guided by the ITWG’s analysis, the panel will discuss the issues raised by the ITWG’s Report, addressing whether the EU proposal actually effectively remedies the criticisms of the Investor-State system, focusing on the Rule of Law, transparency, and diversity, while providing updates on the Investment Court proposal.</p> <p>Committee Sponsor: International Arbitration</p> <p>Committee Co-Sponsors: International Litigation; International Courts; Intellectual Property Rights; Canada</p> <p>Panel Chair and Moderator: Barry Appleton, Appleton & Associates International Lawyers, Toronto, Canada</p> <p>Speakers: Hélène Ruiz Fabri, Max Planck Institute for Procedural Law, Luxembourg Jennifer Younan, Sherman & Sterling, Paris, France Colin Brown, Trade Negotiation Unit, DG-Trade, European Union Commission, Brussels, Belgium Barry Appleton, Appleton & Associates International Lawyers, Toronto, Canada</p>	<p>Even though great strides have been made, the fight against international corruption has not been won. Corruption exists, and companies must pro-actively deal with it. Prevention is key; but once corruption rears its head in an organization, it is important to aggressively follow a well thought-out plan to minimize the damage.</p> <p>This panel is made up of current and former in-house counsel, compliance heads and seasoned outside counsel from jurisdictions across Europe who have advised diverse clients on international corruption investigations, including in the oil and gas, financial services, media and telecommunications industry. The panelists will share their experiences with a view to helping companies create response plans to manage even the toughest corruption incidents, with a special focus on developing a plan and then executing on that plan in the uncertainty of a corruption incident. This interactive panel will elicit new ideas and approaches, while discussing best practices in this ever-changing area.</p> <p>Committee Sponsor: Latin America and the Caribbean</p> <p>Panel Chair: Daniel Alonso, Exiger, New York, NY</p> <p>Moderator: Lisa Osofsky, Exiger, London, UK</p> <p>Speaker: Robert Calo, Nokia, London, UK Joanna Harris, Berwin Leighton Paisner, London, UK Sam Tate, Exiger, London, UK Patrick Dunaud, Dunaud, Clarenc, Combles & Accociè, Paris, France Ezekiel Ward, Yara International ASA, Oslo, Norway</p>

**7:00 PM – 9:00 PM RECEPTION – BARCELONA BAR ASSOCIATION (IL·LUSTRE COL·LEGI DE L’ADVOCACIA DE BARCELONA)
Carrer de Mallorca, 283, 08037 Barcelona, Spain**

TUESDAY, JUNE 13, 2017

8:00 AM – 9:00 AM

REGISTRATION & BREAKFAST - MARE NOSTRUM A

9:00 AM – 10:30 AM

CONCURRENT SESSIONS

GENDER DIVERSITY IN INTERNATIONAL ARBITRATION: THE DEMISE OF THE "OLD BOYS' CLUB"?

MARE NOSTRUM B

For decades, international arbitration has been dominated by white males. Yet change is in the air. Growing numbers of women are swelling the elite ranks of arbitrators and practitioners alike. Thanks to pioneering scholars, a new and growing body of empirical research documents the value and significance of diversity in decision makers, as well as the impact of implicit gender bias in arbitration. Major international arbitration institutions, such as the ICC International Court of Arbitration, are increasingly transparent about arbitrators' demographic traits, and are touting their own initiatives to promote gender diversity. Hundreds of individuals and organizations (including top arbitral institutions, and leading arbitrators and practitioners worldwide) already have taken the "Equal Representation in Arbitration" ("ERA") Pledge, voicing their commitment to take concrete action to improve the profile and representation of women in international arbitration.

Using (anonymous) hand-held polling technology, test your knowledge of the existing environment for women in arbitration, cast your "vote" on a wide range of diversity policy proposals, and compare your views to those of other audience members in this informative, entertaining, and provocative presentation conducted in an innovative "quiz show" format!

Committee Sponsor: International Arbitration

Committee Co-Sponsors: International Litigation; International Mediation; Women's Interest Network (WIN)

Panel Chair:

Hon. Delissa Ridgway, US Court of International Trade, New York, NY

Moderator:

Kirstin Dodge, Homburger AG, Zurich, Switzerland

Speakers:

Cynthia Galvez, Wiley Rein LLP, Washington, DC

Ziva Filipic, ICC International Court of Arbitration, Paris, France

Kate Birmingham Bontekoe, Lalive, Geneva, Switzerland

Philippa Charles, Stewarts Law LLP, London, UK

CROSS-BORDER TRANSFER OF PERSONAL DATA
TERRAL

"Data localization" is the requirement that the personal data of an individual be retained in a server or data storage facility physically located in the originating jurisdiction, and that such data may not be transferred outside of that country. Economic researchers such as the European Centre for International Political Economy (ECIPE) have estimated that such requirements would lead to a decrease in GDP in the affected countries of close to 1%, and increase costs of local computer service companies by more than 30%. These studies suggest that such restrictions are not economically efficient. But economic efficiency is not the sole criterion for establishing such policies. In fact, the trust and confidence in the data handling practices in other jurisdictions, and the strength of available data protection laws in such jurisdictions, may override economic considerations alone.

This panel will analyze the pros and cons of "data localization" from various viewpoints and discuss possible solutions to the problem.

Committee Sponsor: International Intellectual Property Rights

Committee Co-Sponsors: Privacy, E- Commerce, and Data Security; Russia/Eurasia

Panel Chair and Moderator:

Daniel McGlynn, Sol Aero Tech, Albuquerque, NM

Speakers:

Maria Ostashenko, ALRUD Law Firm, Moscow, Russia

Edward Bekeschenko, Baker & McKenzie, Moscow, Russia

Albert Agustinoy Guilayn, Cuatrecasas, Goncalves, Pereira, Barcelona, Spain

Miguel Peguera, Universit Oberta de Catalunya, Barcelona, Spain

10:30 AM – 11:00 AM

NETWORKING BREAK - MARE NOSTRUM A

11:00 AM – 12:30 PM

PLENARY SESSION

DIRECTORS' AND OFFICERS' LIABILITY: THE SWORD OF DAMOCLES ON THE EXECUTIVE FLOOR
MARE NOSTRUM B

Leadership means responsibility, and responsibility means liability. When corporations are shaken by incidents like tax fraud, embezzlement of funds or breach of trust, the call for personal liability becomes loud. Affected business organizations are not only facing huge challenges as their resources get tied up with expensive internal investigations. Shareholders and supervisory boards also need to timely ask the question, from which point in time the managing directors may no longer be well-placed to be in the driver seat cleaning up the mess. The so-called "Yates Memo," issued by the U.S. Justice Department in 2015, is only one reason why the pressure for companies to turn in their directors and officers is higher than ever now in U.S. corporate investigations. Another important issue is the role of D&O insurers, one of the key sources for compensation, once the money is definitely gone.

High profile practitioners specializing in internal investigations, directors' and officers' liability, and white collar crime will address some of the most pressing questions a company must answer when hell on earth is unleashed within its own four walls.

Committee Sponsor: International Criminal Law

Committee Co-Sponsor: International Litigation

Panel Chair and Moderator:

Holger Bielez, Wolf Theiss, Vienna, Austria

Speakers:

Rais Amils, Clifford Chance, Barcelona, Spain

Silvanne Helle, Oppenhoff & Partner, Frankfurt, Germany

Mia Wellfare, Control Risks, London, UK

Jonathan Tickner, Peters & Peters Solicitors LLP, London, UK

Alexander S. Vesselinovitch, Freeborn & Peters LLP, Chicago, IL

12:30 PM – 12:35 PM

CLOSING REMARKS - MARE NOSTRUM B

Upcoming Section Events

2017

August 11-13

ABA Annual Meeting
New York, NY

October 24-28

Section Fall Conference
Miami, FL

2018

February 2-4

ABA Section Midyear Meeting
Vancouver, Canada

April 17-21

Section Spring Conference
New York, NY

June 10-12

Europe Forum
Copenhagen, Denmark