

# Dispute Avoidance and Resolution

*Dueling with Dragons— Managing disputes wisely for business excellence*

13<sup>th</sup> & 14<sup>th</sup> October, 2008

Beijing



## Now That the World Is Flat.....

Disputes in the business world are inevitable! Despite the considerable effort that has been made in recent years to reduce disputes and to 'Achieve Excellence', enterprises continue to work in an environment where conflict is ever present and where costly and damaging litigation is never far away.

A recent study revealed that nearly one-third of in-house counsel plan on increasing their spent on dispute avoidance over the next three years. The survey identified that in-house legal departments are making dispute avoidance a top priority and carrying out some form of dispute avoidance activity under the general label of 'risk management'!

In 2006 and 2007, LexisNexis successfully organized the 1<sup>st</sup> and 2<sup>nd</sup> Annual conference on Dispute Avoidance and Resolution, respectively named of "Reducing legal risks by applying disputes management with forward planning and innovative thinking" and "Smartly using alternative resolutions to boost the bottom line of your international business"! In this year's conference, we would discuss with you about the strategic dispute avoidance and management, latest development in techniques for effective dispute resolution under the current legal framework in China's business environment.....

## How to Save Your Ship from Falling Into the Dispute Abyss?

## What you can get from the conference?

- **Bring** you up to speed on the most current techniques for effective facilitation and advocacy in mediation, arbitration, and other forms of dispute resolution
- **Help** you determine what forms of instruments or tools to use
- **Give** you a detailed overview on dispute processes, mechanisms and institutions involved
- **Learn** from practical case studies and experiences presented by professional experts
- **Understand** the role and work of the courts and arbitration bodies in dispute resolution
- **See** how good corporate governance policies and risk management strategies can help to avoid conflicts and disputes
- **Gain** a thorough understanding of front end contract drafting and how this can minimize disputes
- **Identify** how best to avoid disputes a cross-border scale
- **Assess** the benefits and pitfalls of the major dispute resolution mechanisms
- **Updated** with legal and regulation framework in China and its impact on IP, Labor & employment and competition/anti-trust disputes

## Who should attend?

- VP of Legal Affairs, Legal Director/Manager, Chief Legal Officer
- Chief Risk Officer/Risk Management Manager
- General Counsel/In-house Counsel
- General Manager, Managing Director
- VP of Intellectual Property, IP Director/Manager
- General Manager of IP & Standards,, Patent Counsel
- IP Attorney, IP Agent
- Lawyer
- Consultant

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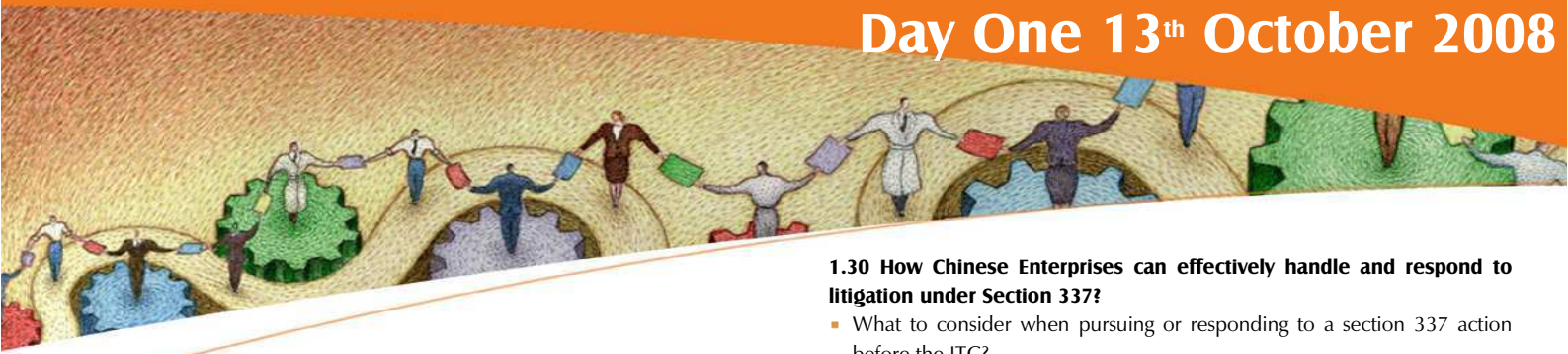


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## 8.30 Registration

### 8.50 Opening remarks from the chair

*Diaz, Reus & Targ LLP*

### Keynote Speech

#### 9.00 Dueling with Dragons --- Managing Business Disputes in Today's China

While conducting business in China, foreign companies occasionally find themselves embroiled in disputes with Chinese individuals, companies or the Chinese government. This session we will highlight you the following guidelines to assist foreign companies doing business in China.

- The Scenario: Ricepower and Its Woes
- Good planning for effective dispute avoidance
- Dispute settlement options in China: An overview
- Arbitration or court? ---- An overview towards Chinese judicial system

*Senior Official, Ministry of Commerce of PRC*

#### 9.40 Taking it off court: ADR as a cost-effective way when resolving disputes

- Making the decision----To arbitrate or litigate? Or mediate...?
- Fundamentals to consider when arbitration is your first choice
- Anti-suit injunctions in arbitrations to enforce forum selection clauses
- Hot topics in international arbitrations

*Diaz, Reus & Targ LLP*

## 10.10 Refreshment and networking break

#### 10.40 An ounce of prevention is worth a pound of cure! --- Achieving better risk control to minimize legal exposure and avoid disputes

- Conducting pre-contract reviews to ensure the contract documents are clear and precise
- Knowing your partners by effective due diligence
- Utilizing project or business structures that can lessen the risk of disputes
- Effective inter risk audit for a thorough risk analysis
- Compliance audit: Do not enter into prohibited agreements or base your business on WTO-noncompliant rules
- Early and structured negotiation as the non-escalation methods for disputes avoidance

*Kenneth Tung, Legal Affairs Director-Asia Pacific, Goodyear*

#### 11.20 Patent dispute identification in china: Harmony between the protection and restraint

- The implementation of the anti-monopoly law in china and its impact
- Review of updated disputes on patent abuse in China
- Conflicts between patent protection and antitrust in China
- Keeping a balance between restraining patent abuse and weakening local intervention
- Consistent with antitrust essentials while preserving legitimate patent claims

## 12.00 Luncheon

*Keynote speaker: Kimberley Chen Nobles, Partner, Crowell & Moring LLP*

#### 1.30 How Chinese Enterprises can effectively handle and respond to litigation under Section 337?

- What to consider when pursuing or responding to a section 337 action before the ITC?
- Advantages and disadvantages of litigation before the ITC
- Having a US IPR portfolio to use in assertion of counterclaims or in negotiating cross-licenses
- Using the ITC as a strategic weapon to protect your company's interests in the US marketplace
- Handling exclusion orders and cease and desist orders
- How to minimize the impact of Section 337 investigations?

*Kimberley Chen Nobles, Partner, Crowell & Moring LLP*

#### 2.15 Effective intellectual property protection strategy: Planning ahead to minimize intellectual property perils in China

- Taking a close look into the legal framework for IP protection in China
- Assessing IP risk by doing business in China
- Conducting an "IP audit" of internal controls, combined with an "IP survey" of external problems and issues
- Implementing appropriate security measures for operational component for IP protection strategy
- Screening potential employees, vendors and business associates for any IP theft
- Executing strong contracts for any potential future IP dispute
- Procuring and enforcing your IP rights against infringers

*Lucy Nichols, Global Director of IPR, Nokia*

## 3.00 Refreshment and networking break

#### 3.30 Managing Disputes as a Strategic business function

- Why dispute management is NOT just a legal function?
- Integrating legal operations into the business
- Holistic approach to dispute management
- From cost center to profit center? Can dispute management ever make money for the business?

*Steven Liew, Director & Legal Counsel, Government Relations SEA, eBay Inc.*

### Workshop

#### 4.10 Disputes resolution & Managing with care: Labor and employment issues

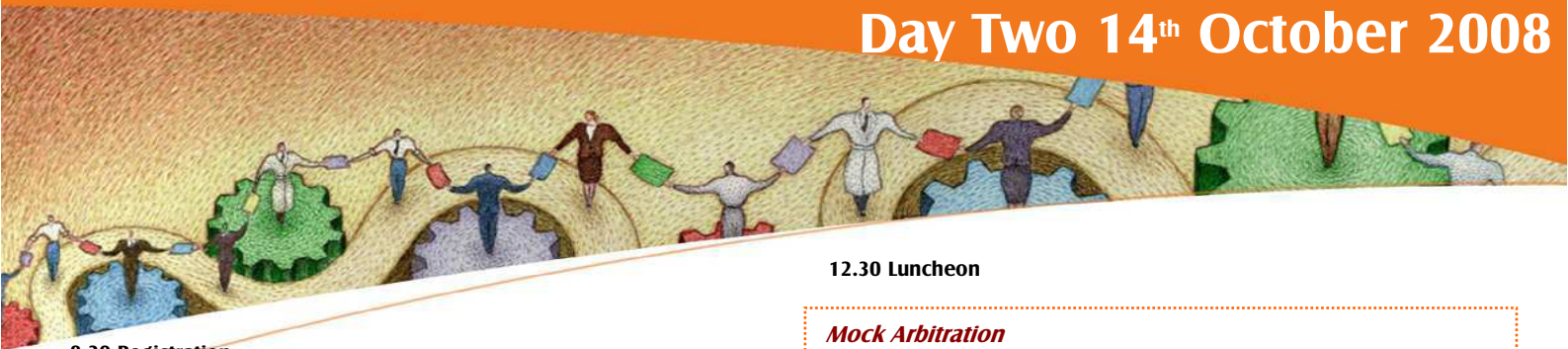
China issued the Law on Employment Dispute Mediation and Arbitration following the issuances of the Labor Contract Law and the Employment Promotion Law. Compared with the currently effective Regulations on the Resolution of Employment Disputes in Enterprises (the Regulations), the LDMA is expected to bring greater protection to employees and make dispute resolution channels more accessible.

- Different handling patterns for labor dispute between the old and new law
- Basic scope of the labor disputes cases
- Analysis on various types of disputes between the corporations and their employees
- The rules of evidence and the distribution of onus probandi in the labor dispute cases

## 5.10 Remarks from the chair and the end of day one

## 5.30 - 7.00 Cocktail Party





## 8.30 Registration

### 8.50 Opening remarks from the chair

*Diaz, Reus & Targ LLP*

### 9.00 Arbitration inside China: The outlook for the arbitration system in China and its development

- Amendment of the Financial Disputes Arbitration Rules of CIETAC - How is it changing for arbitrations in China?
- Conducting arbitration in China: What are your concerns?
- Choice of the arbitrators

*Yu Jianlong, Secretary General, China International Economic and Trade Arbitration Commission (CIETAC)*

### Panel Discussion

#### 9.40 Arbitration outside China: What's your choice when your Chinese-foreign business encounters disputes?

- Which arbitration law should be used?
- Where to hold arbitration proceedings? ---- Factors to be considered
- Arbitration enforcement
- Assessing the impact of New York Convention on arbitration in China

*Participants: Michael Moser, Chairman, Hong Kong International Arbitration Center (HKIAC) & Vice President, Asia Pacific Regional Arbitration Group (APRAG)*

## 10.40 Refreshment and networking break

### 11.10 The answer, not the devil, is in the details! --- Mitigating risks of post-transaction disputes in cross-border M&A deals by careful agreement drafting

As companies continue to expand their presence around the globe, the number of completed cross-border M&As has soared. Any merger or acquisition activity presents the possibility of a post-transaction dispute. This session will explore common causes for post-transaction disputes and ways that the participants and counsel involved in the transaction can mitigate those risks before problems have a chance to develop, especially regarding commonly disputed matters in the terms of the purchase agreement.

- Outlining the mechanisms for constructing a closing balance sheet that complies with generally accepted accounting principles (GAAP)
- Specifying the price adjustment mechanism for earn-outs
- Preventing disputes by eliminating a common culprit ---- generic language ---- from the purchase agreement
- Conducting extensive due diligence in advance of an acquisition and using contract language that fully and accurately reflect the finding
- Including provisions on how to settle disputes in the event they arise in the purchase agreement

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### 11.50 Creative solutions to cross-border dispute resolution

This session examines the options available and what you should consider when faced with a cross-border dispute and how to resolve it. The pros and cons of various options will be discussed, for example:

- Do you choose litigation, and if so, where?
- Alternatively, do you choose arbitration or mediation, and if so, where?
- What are the pros and cons of each option?
- How do you proceed if arbitration is your choice?
- Before you get to that stage, and as a "lesson learned" what do you want to consider in drafting or negotiating arbitration and mediation clauses?
- How does the choice of litigation, arbitration or mediation affect the business interests and legal rights of your client?
- How do you effectively respond to litigation and arbitration actions?

*Kimberley Chen Nobles, Partner*

*Michael Martinez, Partner*

*Crowell & Moring LLP*

## 12.30 Luncheon

### Mock Arbitration

#### 2.00 Strategies for improving your presentation's content and style

When asked how the arguments could be better, arbitrators in the past have made comments such as:

- "More examples of objections from [witnesses]."
- "Add structure to it. While it was there, may be good to put on a [visual]."
- "Having been a defense attorney, all of my previous objections have been overcome."

We have learned that there isn't one "right" way to present an argument. Each panel member finds different arguments, examples and evidence to be the most persuasive part of a presentation. Through the course of a mock arbitration, you will gain insight into the arbitration process and how actual arbitrators will perceive your case.

*Diaz, Reus & Targ LLP*



#### 3.00 Building an early warning culture about disputes into your business practice

- Examining how the business goals affect a dispute and how the eventual dispute may impact on the business
- Identify a dispute-wise business management organization: Who is the leader or owner?
- Selecting and implementing leading practices, approaches, and metrics that fit in your context
- Measuring, learning and following up to assure continuous improvement
- Implementing an early dispute resolution program

## 3.40 Refreshment and networking break

#### 4.00 Arbitration, Expert Determination, Mediation... --- Assessing the alternative possibilities for dispute settlement in M&A transactions

Every merger or acquisition contains the seeds of a dozen lawsuits, unless the partners take steps to prevent them. Even minor disputes can entangle buyers and sellers in years of litigation. In recent years, a trend has emerged of subjecting M&A contracts to arbitration instead of litigation. In addition, mediation and expert determination are playing an increasingly important role in the resolution of M&A disputes. This session looks at the reasons for the trend towards arbitration and alternative dispute resolution methods and explains the various possibilities that the parties have for resolving their M&A disputes.

- Possible M&A disputes: Pre-closing disputes, disputes regarding representations and warranties and disputes regarding price adjustment and price determination clauses
- Reasons to choose arbitration or alternative dispute resolution methods in M&A transactions
- Assessing various dispute resolution methods: Advantages and disadvantages
- Tips for drafting a dispute resolution clauses

#### 5.00 Remarks from the chair and close of the conference

*Diaz, Reus & Targ LLP*