



ANNUAL CONFERENCE OF THE INTERNATIONAL BAR ASSOCIATION



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Final Programme



OFFICIAL CORPORATE SUPPORTERS



Speakers

Dennis W Archer *Dickinson Wright, Detroit, Michigan, USA*
Sir Dennis Byron *Caribbean Court of Justice, Port of Spain, Republic of Trinidad and Tobago; Vice-Chair, Judges' Forum*
Russell Coleman SC *Temple Chambers, Hong Kong SAR; Co-Chair, Forum for Barristers and Advocates*
Alan Hunter *Law Society of Northern Ireland, Belfast, Northern Ireland*
Anne Ramberg *The Swedish Bar Association, Stockholm, Sweden*

ROOM 206, SECOND LEVEL**Collaborative law mediation and arbitration of family disputes**

Presented by the Family Law Committee and the Mediation Committee

Session Co-Chairs

Zenobia du Toit *Miller du Toit, Cape Town, South Africa; Vice-Chair, Family Law Committee*
Mauro Rubino-Sammartano *LawFed BRSA, Milan, Italy; Chair, Mediation Law Committee*

The session will deal with the following issues:

- Financial family law perspectives in mediation negotiation;
- hearing the voices of those who cannot speak;
- lawyering and mediation for children; and
- mediating the voice of the child in relocation matters

Speakers

Nausheen Ahmad *Habib Bank, Karachi, Pakistan*
Carol Ajie *CN Ajie & Company, Lagos, Nigeria*
Marc Bello *Edelstein & Company, Karachi, Pakistan*
Professor Marilyn Freeman *London Metropolitan University, London, England*
Cristina Gandolfi *GF Legal, Milan, Italy*
Ellie Wertheim *Family Mediation, White Plains, New York, USA*

BALLROOM A, THIRD LEVEL**Corporate counsel: challenges and opportunities**

Presented by the Corporate Counsel Forum

Session Chair

Christopher Ashworth *Knight Vinke, Monte Carlo, Monaco; Officer, Corporate Counsel Forum*

This session looks at the changing and increasingly challenging world for corporate counsel and their law firm advisers, particularly in the light of the proliferation of corporate scandal and disasters of the last few years and the increased prominence and importance of risk assessment at the corporate level with the growing intrusion of regulation into areas of corporate activity. The session will be co-chaired by Kathryn Britten of KPMG and will begin with a report on the KPMG Corporate Counsel Review, 'Beyond the Law' and a panel led discussion on the challenges and opportunities facing corporate counsel.

Speakers

Nechi Sylvia Ezeako *EL-Values Advisory, Lagos, Nigeria; Secretary and Corporate Counsel Forum Liaison Officer, African Regional Forum*
Kathryn Britten *KPMG, London, England*
Akhil Prasad *Fidelity Worldwide Investment (India) - FIL India Business Services Private Limited, Gurgaon, India*

ROOM 201, SECOND LEVEL**Corporate governance**

Presented by the Corporate and M&A Law Committee

Session Chair

Sergio Sánchez Solé *J&A Garrigues, Barcelona, Spain; Chair, Corporate Governance Subcommittee*

Careful: who wants to be a non-executive director?

The first part of this session will deal with non-executive directors. The key issues to be debated will be:

- What are the main issues and risks that a non-executive director should always bear in mind?
- What are the basic steps that a non-executive director should take to deal with such issues and to be protected against such risks?

Diversity: why is it important for a board?

The second part of the session will deal with issues surrounding diversity (gender, race) in the board of directors of public companies, including:

- What are the main initiatives around the world to promote diversity at board level?
- Are there any common trends?
- What is their current status? Are they working?

This session has been designed with the aim of encouraging attendees to actively participate and interact with the speakers.

Speakers

Corinne Ball *Jones Day, New York, USA*
Ezra Davids *Bowman Gilfillan, Johannesburg, South Africa; Vice-Chair, African Regional Forum*
Roberto Guerrero *Guerrero Olivos Novoa y Errázuriz, Santiago, Chile*
Ellisa Opstbaum Habbart *The Delaware Counsel Group, Wilmington, Delaware, USA; Secretary, Corporate Governance Subcommittee*
Birgit Spiesshofer *Dentons, Berlin, Germany; Co-Chair, Corporate Social Responsibility Committee*
Chief Justice Myron Steele *Supreme Court of Delaware, Dover, Delaware, USA*

ROOM 302, THIRD LEVEL**Develop your practice: Win more work – turn contacts into clients and referrers: Pippa's COPACABANA approach to international networking**

Pippa's session will give you relevant practical tips and ideas on how to grow your practice and how to:

- network successfully;
- build relationships internationally;
- make the most of any event you attend without feeling 'pushy' or uncomfortable;
- introduce yourself to other people and remember their names;
- extract yourself from boring people;
- follow up with any people you meet in a personal way including on social media;
- develop and strengthen relationships with referrers and intermediaries;
- read other people's body language and control your own;
- find reasons to keep in touch in different ways;
- talk about fees without embarrassment;
- conduct sales meetings with confidence; and
- win new work.

BALLROOM B, THIRD LEVEL

Serving as a Non-Executive (Independent) Director: Understanding the Risks and Issues

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- Liability -- Little risk of personal liability (other than defense costs) as long as directors fulfill their fiduciary duties.
- Under Delaware law, a director may be exculpated for breach of the duty of care, but not the duty of loyalty. *Malpiede v. Townson*, 780 A.2d 1075, 1095 (Del. 2001).
- Plaintiffs' attorneys' strategies – suit may include non-executive directors as defendants in civil litigation:
 - to increase pressure on entities to settle;
 - to obtain a “bargaining chip” for use with defendants’ counsel;
 - to ensure the availability of insurance proceeds for any settlement;
 - to drive a wedge between non-executive directors and other defendants (executives), so as to undercut a unified defense.
- The interests of executive and non-executive directors do not always align. For example, executive (inside) directors may be accused of intentional wrongdoing or fraud that may expose the non-executive directors to liability. *See Sun-Times Media Group, Inc. v. Royal & Sunalliance Ins. Co. of Canada*, 2007 Del. Super. Lexis 402, *4-5 (Del. Super. 2007).
- Executive (inside) directors can easily withhold information, leaving non-executive directors exposed.
- Non-executive directors are entitled to rely in good faith on the information provided to them, such as a fairness opinion, but conscious disregard of apparent problems (“red flags”) may result in a breach of duty.
 - Whether a director has performed in good faith is a judgment by the court. *See Lyondell Chemical Co. v. Ryan*, 970 A.2d 235 (Del. 2009) (Although Lyondell directors did nothing to prepare for merger, they did not breach their duty of loyalty by failing to act in good faith because they were generally aware of the value of corporation and its market, and followed the advice of financial and legal advisors).

- Common allegations
 - Breach of fiduciary duty – directors failed to act in the best interest of the entity, or engaged in self-dealing.
 - Disclosure – directors failed to provide material financial information, or the financial information provided by an entity was inadequate or fraudulent. *See Turner v. Bernstein*, 776 A.2d 530, 541-42 (Del. Ch. 2000) (quoting *Turner v. Bernstein I*, 1999 Del. Ch. LEXIS 18, *19-21).
- Breach of Duty – director decisions are given broad deference by courts per the business judgment rule, a presumption that directors have acted in good faith and in a rational belief that their action was taken in the best interest of the entity. *See In re MFW S'holders Litig.*, 67 A.3d 496, 500, n.1 (Del. Ch. 2013).
- Avoid liability in disclosure-related suits through:
 - appropriate and periodic consideration, review, and questioning;
 - due diligence -- attention to and understanding of the process by which disclosures are formulated, vetted, and finalized.
 - In the United States, directors are protected absent proof of their actual knowledge of misstatements or omissions.
- Costs of Defense – the costs of legal and expert representation are substantial.
- Indemnification – Non-executive directors are typically indemnified for any loss, damage or claim incurred by reason of any act or omission in connection with an entity if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the corporation. 8 *Del. C.* § 145(a).
- Alternative entities need to be careful to clearly state a good faith conduct requirement in their operating agreement if they want such a requirement to apply to indemnification. *Costantini, et al. v. Swiss Farm Stores Acquisition LLC*, 2013 WL 4758228, *1 (Del. Ch. Sept. 5, 2013).
- Indemnification is mandatory if a corporate director prevails in litigation. 8 *Del C.* §145(c). Alternative entities enjoy more flexibility. *See Costantini*, 2013 WL 4758228, *1.
- Willful misconduct and actions taken in bad faith will typically not be indemnified unless the director prevails in litigation, “on the merits or otherwise.” 8 *Del C.* §145(c).

- Directors & Officers (D&O) Insurance – protects directors and officers from damages resulting from alleged or *actual* wrongful acts. This insurance does not require success in litigation.
- D&O insurance is needed when a board of directors is assembled. Investors usually require it.
- Coverage has limits and policies can become exhausted. *See Barrett v. Am. Country Holdings, Inc.*, 951 A.2d 735, 736 (Del Ch. 2008).
- Non-executive directors can buy a D&O policy as a group to make sure they are covered.

The Delaware Counsel Group LLP (“DCG”) is a leading law firm that exclusively represents national and international clients in complex transactions with a Delaware connection, as well as advises on corporate governance issues. DCG assists lawyers around the world, using a personalized, hands-on approach to solve their Delaware legal issues. As noted in Chambers, DCG “acts only for a select number of clients, meaning it can lavish a high level of attention on them.” As a result of the specialized nature of the firm’s practice and the experience of its lawyers, clients save time and monies working with a team committed to excellence.