The future of arbitration in India

Prevailing Arbitration and Conciliation Act, 1996 ("Act"), based on UNCITRAL Model Law governing domestic and international arbitration in India, has been in force for the last 15 years. Apart from arbitration being a favoured technique for commercial disputes, also conciliation, mediation and judicial settlement are frequently adopted methods of alternative dispute resolution. Indian courts are also encouraging mediation under provisions of code of civil procedure for speedier administration of justice.

As Pallavi Shroff, senior partner at Amarchand & Mangaldas & Suresh A. Shroff & Co., said, there are issues that have an adverse effect on the use of arbitration in India. It includes conflicting views of Indian courts leading to uncertainty in applicability of the Act to the international commercial arbitration held outside India. Moreover, excessive judicial intervention for grant of interim relief and during challenge or enforcement thereof to the award also remain common problems. Despite these issues India has seen a steady growth in commercial arbitrations in recent years.

However, non-Indian parties are often concerned of being dragged before the Indian courts in proceedings ancillary to arbitration process despite clear agreement between the involved parties for exclusion of jurisdiction of Indian court. This has given a negative opinion to arbitral process in India.

In view of the practical difficulties caused by various judicial interpretations regarding applicability of Part I to international commercial arbitrations held outside India and judicial intervention in enforceability, as well as recognition and challenge of foreign awards being contrary to the public policy of India, the Indian Government has circulated a Consultation Paper on proposed amendments to the Act.

Intent of the Consultation Paper is to eradicate shortcomings and to make the Act more popular. Consequently, the aim is to portray India as the most preferred destination for international commercial arbitrations. The amendments also intend to promote institutional arbitrations in India and encourage a dedicated and specialised group of lawyers, who can act as arbitrators and exclusively handle arbitrations in India.

Tejas Karia, partner at Amarchand & Mangaldas & Suresh A. Shroff & Co., commented on the development: "The proposed amendments to the Act is a welcome step towards progression of arbitration practice in India to match the international standards and would facilitate the Indian courts to resist temptation of interference in the arbitral process beyond absolute requirement. The recent trend of the decisions of the Supreme Court of India shows clear indication that the Indian courts are geared up to accept the minimal interference in the arbitral process."

Simultaneously with the proposed amendments, the Indian Government has also introduced Commercial Division of High Court Bill and the National Litigation Policy aiming at time- and cost-efficient dispute resolutions in courts and developing India as an arbitration-friendly jurisdiction.

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Rising demand for electricity in India

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With high economic growth rates and over 17% of the world's population, India is a significant consumer of energy resources. The vast Indian electricity market offers one of the highest growth opportunities for private developers.

The demand for electricity in India is enormous and is growing steadily. Due to the fast-paced growth of India's economy, the country's energy demand has grown at an average of 3.6% per annum over the 30 years preceding 2010. The electricity requirement is projected to increase by 55% by the end of the 12th Five Year Plan, i.e. in 2017.By 2030, it is expected that the total demand for electricity in India will cross 950,000 MW.

The current Indian electricity market is marked by a determined effort to augment current resources and increased capacity addition. India has set a target of adding approximately 78,000 MW of installed generation capacity during the 11th Five Year Plan (2007-2012). The Ministry of Power has also envisaged a goal of "Power for All" by 2012 and has prepared a comprehensive Blueprint for power sector development encompassing an integrated strategy.

Emphasis is also being laid on development of non-conventional energy sources i.e. solar, wind, biomass, small-hydro and geo-thermal. Under the Jawaharlal Nehru National Solar Mission, a target of achieving 20,000 MW of solar power by 2022 has been set.

Furthermore, the introduction of mandatory competitive bidding will lead to the enhancement of the power sector and capacity addition. The Ministry of Power has issued Guidelines for such bidding aimed at reduction of the overall cost of procurement of power and facilitation of the development of power markets.

India is also focused on developing clean energy. In this effort, the Finance Minister has proposed a National Clean Energy Fund in the 2010-11 Budget. The Minister has proposed to levy a clean energy cess on coal at a nominal rate of Rs.50 per tonne. This Fund is aimed at funding research and innovative projects in clean energy technology. While it must be ensured that the Polluter Pays Principle remains the basic guiding criteria for pollution management, there should be a positive thrust for development of clean energy.

India is currently in the process of implementation of the Regulatory Information Management System (RIMS). RIMS is a computerised application tool and used primarily for information collection, regulatory analysis, compliance monitoring, decision making and other regulatory functions and management decision support. RIMS will also provide a suitable medium for exchange of information between the regulator and the regulated entities. The other important objective of RIMS is to share power sector information and send regulatory updates to stakeholders/ public and archive the same for future use. This would not only bring in transparency but would also improve the stakeholder participation.

The developments that have been outlined above show that Indian regulators and authorities are making a determined effort to ensure the country's electricity market is progressing and able to meet the overwhelming demand.

Indian aviation sector experiences dynamic expansion

The aviation market in India is expected to grow at around 10% annually to reach a level of 150 to 180 million passengers by 2020. This estimate comes as no surprise considering that the number of departures per week have almost doubled within the last five years from about 6,500 in 2006 to more than 12,000 today.

Despite its great overall performance, the prosperity of the aviation sector has been affected by the economic crisis which has led to the increase in the aviation fuel prices worldwide and consequently has put a financial dent on airline companies. However, in India the effect was significantly reduced due to high growth rate of the economy and increasing number of domestic flights passengers. In 2010-2011, a total of 142 million passengers checked in and out of airports across the country which shows the revival of the industry.

In recent years the Indian aviation sector has gone through the process of liberalisation, resulting in the entry of private players to airport development. As noted by Ravi Kini, managing attorney at M.V. Kini & Co., private developers have started taking charge of the airports, and consequently various new agreements have been proposed.

"New ground handling policies have raised some disputes between stakeholders. Many areas of discussions are unclear and thus opinions of various experts had to be provided to understand them," noted Mr Kini.

He added that the fleet and route expansion has also led to increase in aircraft lease agreements. The Airport Regulatory Authority has been inviting suggestions and comments from stakeholder regarding the issue. Moreover, a court of enquiry was set up for investigating the cause of the matter and clients of M.V. Kini & Co called upon the firm to represent them before the court.

M.V. Kini & Co. is one of the few law firms in India with vast experience in aviation, airports and aerospace laws. Work in this area includes negotiating, drafting and vetting of code-share, aircraft purchase; aircraft lease agreements, software, and in-flight entertainment systems and payment gateway facilities agreements, among others.

Commenting on the firm's work, Mr Kini said: "In the 30 years we have worked closely with airport operators and airlines, and understand the complexity of the aviation business. We have participated with our clients in accident enquiries and also been a part of their acquisition of new aircraft and setting up low cost subsidiaries."

Moreover, the firm has advised Air India Ltd. in the finalisation of agreement for the purchase of flight simulator. The assignment involved offering comments on the proposed draft, drafting supplementary documents such as bank guarantee and participating in negotiations held at Hyderabad and Delhi with Air India Ltd. and the representatives of the other party (a Canada-based company).

The firm is also advising Airports Authority of India on drafting rules for Airport Development Fee. Further, the firm regularly advises airlines on international aviation Treaties and Protocols as also on their day to day legal issues.

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European IP protection provided in Hungary

As Hungary is a member state of the European Union, the country's IP system has been greatly harmonised with EU standards. Moreover, in January this year Hungary joined the London Agreement thanks to which owners of European patents can now enjoy validating their patents in Hungary with lower costs.

A major step forward in enhancing European IP environment has been the green light provided for the unitary patent system. 25 EU member states have now embarked on enhanced co-operation with a view of creating unitary patent protection for their territories. Introduction of the system is expected in the near future.

Although Hungary is strongly affected by European legislation with regard to patents, IP prosecution and disputes have some national flavor. As Michael Lantos, European and Hungarian patent attorney and managing partner at Danubia Patent & Law Office LLC, explained, patent infringement lawsuits and nullity proceedings are separate in Hungary. First the validity issues are decided, and infringement on the merits is handled thereafter by a specialised court. Preliminary injunction can be requested.

He further added that in Hungarian trademark matters examination is limited to absolute grounds, but anyone can file an opposition based on relative grounds. Cancellation and infringement proceedings are also separate. Preliminary injunction is frequently requested and often granted.

Danubia, the oldest and largest IP law firm in Hungary has qualified European and Hungarian patent attorneys whose skills and education cover all fields of technology, and trademark lawyers experienced in all segments of IP law. The firm has been chosen as tier 1 law firm for Hungary both for patent prosecution and enforcement as well as for trademark prosecution and enforcement for 14 consecutive years since 1997.

"This achievement has been listed in the annual surveys conducted by the British magazine Managing Intellectual Property, and not a single other IP law firm can boast with such figures in any other jurisdiction," said Mr Lantos.

Danubia has excellent practice and experience with European patent prosecution, and has numerous domestic and overseas clients who have entrusted the firm with the representation of their European patent work.

The clients include, inter alia, a few domestic research-oriented scienti¬fic companies like Thales-Nano and Nangenec, 3D Histech (one of their European patents was nominated for the 2011 European Award of the EPO), MOL, the largest Hungarian oil and gas company, as well as overseas clients such as the Canadian Hibar Systems Inc. who have chosen Danubia to represent their patent portfolio worldwide.

Mr Lantos noted that recently many applicants, including small and medium entities, are more cost sensitive than before, and the amount of costs of their European prosecution, including the charges of their EP representative, plays an important role in their decisions whether to file a European patent application.

"Substantive cost-saving can be attained with maintaining the high quality representation if such cost-sensitive applicants entrust a highly qualified law firm that provides excellent services at reasonable costs. Number one of this kind of office in Central Europe is Danubia Patent & Law Office," commented Mr Lantos.

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Malta continues to attract foreign investment

Over the years Malta has invested greatly in establishing itself as a reputable jurisdiction in which investors can benefit from regulatory and fiscal policies, backed by a sound legal regime. This has resulted in a system whereby specialised mechanisms can be used by foreign companies, depending on the purpose for which they are intended.

John A. Gauci-Maistre K.M., chairman at GM Corporate & Fiduciary Services Ltd., explained that the specialisation of each structure has made Malta an extremely attractive jurisdiction for different level investors. This and the fact that Malta has established itself as a reputable EU jurisdiction whilst retaining relatively low annual costs has helped attract new business, even during the economic downturn.

Mr Gauci-Maistre K.M. noted that a few years ago all offshore companies were brought onshore so nowadays one refers to Malta companies. Both the Malta holding company and the Malta trading company are predominantly used as a vehicle for financial and tax planning.

"It is also worth mentioning that Malta has entered into Double Taxation Treaties with various countries," he added. "Therefore, with the appropriate company structure and the right double tax treaty, one can benefit from the tax refund mechanism granted to trading companies and then gaining further benefits by having a holding company."

Malta's income tax legislation provides for different tax accounts for different sources of income, which is an important feature of the Maltese tax system. It establishes which refunds can be claimed by the shareholders of Malta companies upon distribution of profits. Moreover, different forms of double taxation relief ensure that double taxation is avoided. To date Malta has entered into over 50 double taxation agreements, mostly based on the OECD Model.

As emphasised by Mr Gauci-Maistre K.M., Malta has continued to strengthen its reputation as a financial hub mainly due to close cooperation between the private industry and legislators and the active development of the financial laws. A politically stable economy, the set up of various reputable banks, a sound legal system, convenient geographical location and reliable communications systems have helped tremendously with attracting foreign investment into Malta.

The Malta Financial Services Authority has also been a pillar during the growth of this sector and although often inundated with applications they still retain a high degree of efficiency and help the local service in concluding the formation of structures in relatively shorter spans of time than overseas.

As part of the EU, Malta offers a very robust jurisdiction for stakeholders. However, Mr Gauci-Maistre K.M claimed it is imperative that both the local services providers as well as the government remain alert to the proposition of new directives that can negatively impact Malta's advantageous structures.

"Time and again we have learnt that one size does not fit all and certain regulations on harmonisation can sound the death knell for Malta's financial services sector. Whilst it has never been and should never be Malta's intention to fall foul of EU regulations it is fundamental that we voice our concerns when certain regulations can have dire consequences on our economy," concluded Mr Gauci-Maistre K.M.

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Impressive growth trajectory in South Africa

South Africa is a middle-income, emerging market with an abundant supply of natural resources, well-developed financial, legal, communications, energy, and transport sectors. In the first quarter of 2011 South African economic upturn unexpectedly accelerated to the fastest pace in a year, reaching the 4.8% growth.

Such an impressive achievement should change the attitude of critics who said that South African economy is too small to join the group of the fastest growing and largest emerging markets, so called BRIC countries. As noted by Shirley Tilana-Mabece, director and co-founder of Maseko Tilana Incorporated, which is a full service law firm based in Johannesburg, some people have criticised ambitions of South Africa saying the country is biting more than it can chew because it is the smallest in the group with a market only about a quarter of India in terms of the size. However, Ms Tilana-Mabece claimed that this argument has no reasonable grounds.

"The truth is that there is no other country on the continent that is better placed than South Africa to be in the BRIC countries group," she said.

One of the reasons for it is the strong development that the country has experienced in recent years, not just satisfying but exceeding expectations of many observers. The success is even more impressive considering the legal and political environment in the country.

Ms Tilana-Mabece explained: "One needs to understand where South Africa or rather South Africans are coming from. We have a defiance background. We defied the laws that were in power at the time. And this sometimes manifests itself in different shapes and forms within our society.

"Transformation has been a very important process for South Africa. It is about time that people begin to understand that transformation is not an option, they cannot choose if they want it or not. It is mandatory that they are compliant. We have done it and succeeded in it."

The various modifications South Africa has been and still is going through, relate to a great extent to national legislation. One of the latest developments is introduction of the new Companies Act. It is a paradigm shift from the old prescriptive act to the new flexible and transparent legislation.

Commenting on the issue Ms Tilana-Mabece said: "This is another boost in investor confidence in the South African market as this strengthens their belief that South Africa has an open regulatory environment."

International investors who decide to put their money into a foreign market often have to rely on help and advice of legal professionals equipped with local expertise. They assist investors with regard to various corporate and commercial matters, which, as Ms Tilana-Mabece noted, is a broad and complex area of law. It encompasses commercial litigation, corporate governance, agreements, shareholders' matters, and business ethics, just to mention a few.

Maseko Tilana Incorporated has a diversified portfolio and Corporate and Commercial practice is one of the firm's main areas of focus. Other practice areas include conveyancing and property law; municipal practice; labour relations; notarial and mining practice, and litigation.

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Mergers & Acquisitions – only a few survive

Mergers and acquisitions in daily news may not be major show-stoppers yet given they do not always succeed as planned. Many businesses merged together find it too difficult to adapt to mutual differences and operate under new conditions. Others struggle to get sufficient approval for the transaction.

Recently there was the announcement of a mega mobile deal concerning the marriage of two giants, AT&T and T-Mobile USA from Deutsche Telekom for $39 billion. If clearance comes through, the acquisition by At & T-T Mobile will make it a dominant player in the US giving it a total of 129 million subscribers compared to Verizon with 102 million.

This acquisition is still waiting for US federal government approval. 76 House Democrats have written to the FCC Chairman and Attorney General Eric Holder to urge them to consider the benefits of an AT&T-T Mobile merger. The Congress is expected to have a debate on the matter and it is scheduling a hearing for July before the Senate Judiciary Committee.

Naturally there will be protests from lobbyists who oppose the creation of a dominant supplier but one hopes that the acquisition will go through, albeit under some new conditions. Nevertheless, this is not the case in all M&A attempts and the pitfalls for mergers are surprisingly high.

A glaring example is the DaimlerChrysler merger which demonstrates the importance of solving cultural differences between the parties. Here one can mention the culture clash between the American and German style of management. In fact it was evident that the post-merger phase highlighted the difficulty of trying to integrate two very divergent cultures.

The parties started their union blessed with good intentions. They each vowed to remain faithful and solemnly expressed their commitment to working together and sharing work practices and product development methods. Unfortunately for a number of reasons this commitment did not materialise. It was manifest that the Daimler management's unwillingness to use Chrysler parts in Mercedes cars led to unforeseen problems.

There are many factors contributing to the fact that many mergers fail. Studies show that roughly two third of big mergers disappoint on their own terms, which means they lose value on the stock market. The motivations that drive mergers can be flawed and efficiencies from perceived economies of scale proving to be elusive.

It is true that due to the challenges of globalisation many operators across the globe seek comfort in size irrespective of internal problems that emerge. Quietly they each go through many contortions to please one another. Such sacrifices can be tolerated during recession which exacerbated the drive to achieve cost cutting, strengthen the company's market position, gain access to new markets and retain a talented workforce.

However, although mergers and acquisitions are aggressively pursued by companies, recent studies have indicated that 60-80% of all mergers are financial failures when measured by their ability to deliver superior returns. So what is the root of such a high rate of divorce among companies that walked the aisle leading to the coveted M&A altar? The main cause is definitely flawed intentions.

The mismatch evidenced in a failed merger may often have its origins with management obsession for glory-seeking rather than an altruistic business strategy. Thus we find the that dominant CEO whose ego is boosted by buying the competition is a common force in M&A, especially when combined with the influences from bankers, lawyers and other assorted advisers who can earn big fees from clients engaged in mergers. Post merger there is additional stress among executives who try to cope with new cultures and in the end spread their time too thin and neglect their core business.

Too often potential difficulties seem trivial to managers caught up in the thrill of the big deal. But what else can contribute to failure? The answer is easy when one notes that chances for success are further hampered if cultural differences are not solved head on.

Definitely it is no exaggeration to state that personnel issues are not easy to overcome. For example, employees at a target company might be accustomed to access to top management easily, have flexible work schedules or even a relaxed dress code. These aspects of a working environment may not seem significant, but if new management removes them, the result can be resentment and shrinking productivity. Certainly the lucky mergers that succeed do outweigh the effort and expense incurred to make it happen.

On the other hand, a study by McKinsey (a top consultancy agency) shows companies often focus too intently on cutting costs following mergers, while revenues, and ultimately profits, suffer in the end.

Although it is not easy to conduct a successful merge, those that have a chance to thrive are worth a try. If successful they are often amply rewarded by advantages of size and global reach together with a healthier and more efficient operation.

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SmeetsGijbels is considered a leading private client family law specialist office in the Netherlands. The firm has offices in both Amsterdam and Rotterdam, giving it coverage throughout the Netherlands. The firm's international orientated practice and reputation makes SmeetGijbels attractive to clients around the world.

SmeetsGijbels specialises in complex finance issues in relation to divorce and breakdown of relationships, such as: property divisions; prenuptial agreements; martial agreements; alimony cases; and elderly pension split.

Futhermore, the firm offers legal advice in all family related matters, such as: inheritance law/wills; adoption; all children related cases; residency and relocations; international parenting plans; international parental child abduction; same sex couples; cohabitation/ending of relationships; and grandparents.

SmeetsGijbels also takes cases that determine new developments in family law. For example: the firm was involved at the forefront of same sex marriage legislation; lanced the idea of the partner spousal alimony plan now on top of the political agenda; and recently took part in developing a Cross Border Mediation method in international child abduction cases which is now commonly practiced in the Netherlands when dealing with Hague Convention 1980 cases.

The lawyers within SmeetsGijbels are all accredited family lawyers and mediators. The firm also has collaborative lawyers working within the team.

"As a team we provide the full range of services, and in order to do so, each team member has its own specialism within the field of family law," commented Wendy Anne van der Stroom, associate.

"In that respect we find it important to offer not only the traditional legal assistance in family disputes acting for clients in court cases, but also we strongly believe and recommend Mediation and collaborative divorce by way of alternative dispute resolution."

SmeetsGijbels has a broad network of specialists with whom the firm works throughout the Netherlands, but also around the world enabling it to find the best possible solutions. The firm's lawyers join several international networks and tend to be nearby all important family law developments in the Netherlands and internationally based developments.

"We want all SmeetsGijbels lawyers not only to be outstanding in their specialism within the family law field, but also to offer our client the most creative specialists people need when involved in complicated family law matters," commented Ms van der Stroom.

"Confronted with life time events such as divorce, we try to find a good balance between dealing sensibly with the emotional side but also guiding people to the best results they can get, on the legal and financial side of it.

"In international cases we always make a comparison of law in order to find the most favourable outcome for our clients and focus on the three main issues in international cases being: jurisdiction; applicable law; execution."

Quebec faces the effects of amended civil legislation

Quebec law is unique in Canada because Quebec is the only province in Canada to have a bijuridical legal system. Whereas the other provinces have legal systems based on the common law, Quebec is the only province with a civil law system, based primarily on the Civil Code of Quebec. Subject to certain exceptions, property and civil rights in Canada are matters of provincial legislative jurisdiction. In matters of public law, Quebec, like its fellow Canadian counterparts, is subject to common law principles.

Quebec law has evolved significantly in recent years. Quebec's Code of Civil Procedure was completely revised in 2001; further amendments in 2009 have given courts increased discretionary powers to sanction the improper use of the judicial process, and the majority opinion of the Supreme Court in the class action Marcotte vs. Longueuil (City of) the same year affirmed the importance of the principle that legal proceedings be proportionate to the dispute as well as the court's role in enforcing that principle.

Additionally, in February of 2011, the previous Quebec statute governing provincial corporations, the Companies Act, was replaced by the Business Corporations Act, bringing Quebec corporate legislation in line with the statutes applicable federally and in most provinces. In particular, changes to the rights of and the remedies available to minority shareholders, and to directors' and officers' liability will have an effect on corporate litigation in the province, emphasized James A. Woods, senior partner at Woods LLP.

The downturn in the economy of recent years has also had an impact on the number of litigation cases in Quebec. As pointed out by Mr. Woods, the credit crisis, corporate bankruptcies, layoffs, and government investigations have lead to an increase in the number of lawsuits. Woods LLP has played key roles in the country's largest litigation files in the past few years, including the litigation relating to the collapse of the market for asset-backed commercial paper, as well as the ongoing litigation relating to the failed privatization of BCE Inc.

Woods LLP acts in the largest and most important litigation files in Quebec and Canada, including class actions and corporate and commercial litigation. Last year, Woods was the only firm in Quebec named on a list of the top ten litigation boutiques in Canada. Many of the lawyers at Woods have degrees in both common law and civil law, and the firm includes members of the bars of Quebec, Ontario, Alberta, British Columbia, New York, and England & Wales.

Alternative dispute resolution techniques have become more popular in recent years, although, as Mr. Woods noted, they are not appropriate in all circumstances and involve their own set of advantages and disadvantages. In many instances, litigation is a more effective and often necessary route as compared to ADR methods.

Mr. Woods explained: "In order for ADR to be successful, all of the parties involved must genuinely support the process. This scenario is often not reflective of reality. For example, litigation will be necessary in such cases where it is deemed necessary that a precedent be established; where a point of law exists upon which the parties wish to obtain a formal judicial ruling; where a court order is required to enforce a judgment; or where extraordinary court relief is sought, such as an injunction etc."

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Strong economic performance predicted for the Maltese Republic

Although Malta is located close to countries that are in great financial troubles, it has managed to fare well with the economic crisis and has remained on the growth trajectory. According to the European Commission, when compared to its analysis of Malta's economic development from Q4 of last year, it seemed the island was moving at a quick pace. Furthermore, the Commission forecasted that Maltese economy will grow this year by 2%, increasing to 2.2% in 2012. Consequently, it is expected that the jurisdiction will keep expanding its business potential.

Anton Micallef, managing partner at AVMT Advocates, foresees Malta to grow steadily over the next decade. He said: "In my opinion, following the gradual growth, Malta will become a first choice for investors as a home for holding companies, online betting companies and a domicile for funds."

Nevertheless, Malta is already closely examined by international investors looking for a favourable jurisdiction for doing business. The country is regarded as a perfect location for corporate activities, given the attractive business conditions it offers.

As Dr Micallef claimed, Malta is ideal to host international business transactions because it is a member of the EU, which enables cross-border work, it has no offshore black list status and it has a very attractive fiscal regime for non-resident shareholders doing business through a Maltese company.

Additionally, and most importantly, business in Malta is conducted in English, so companies can be registered and documents filed in English and all the local laws are also in English."This gives Malta a unique advantage over other jurisdictions within the EU/EEA zone where the official and formal business language is the local one ," said Dr Micallef.

Furthermore, foreigners wishing to do businesses in Malta can rely on incentives in a form of fiscal and industrial measures. Mr Micallef explained that the tax regime allows non-resident shareholders to operate Maltese companies (other than in local real estate) and pay an effective tax rate of 5% on net profits following a distribution of dividends in a financial year.

He pointed out that the other incentives consist of industrial, commercial, and ware- housing at subsidised rents, including a variety of amortisation and depreciation incentives for the industrial/back-office service sectors.

"The European Commission forecasted that Maltese economy will grow this year by 2%, increasing to 2.2% in 2012."

There are several international banks operating in Malta including HSBC, Akbank and Deutsch Bank. However, according to Mr Micallef, financing in Malta is very transaction specific and, as a rule, banks do not lend without proper security which may vary on a case by case basis.

This and other challenges of business transactions in Malta can be easily overcome with help of AVMT Advocates. AVMT is firm which offers foreigners a whole range of corporate, tax and administrative assistance in setting up their business in Malta, be it virtual or with a physical presence. It has more than 20 years experience in this sector and currently services exclusively foreigners doing business on the islands.

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Maltese banks remain reluctant to risky lending

The banking and finance sector in Malta has withstood the pressures of the international economic downturn pretty well, as stated by Louis de Gabriele, partner at Camilleri Preziosi. The resilience of the sector has been borne out by the stress tests undertaken on Maltese banks by the European Central Bank. However, access to credit still remains highly constrained and it is not expected to improve significantly over the coming months.

Mr de Gabriele pointed out that availability of credit in certain areas is still at the low levels, following the period of recession. "Lending appetite is better than in the early days of 2008 but still not at the levels of 2006-2007," said Mr de Gabriele.

He added: "I expect the banking sector to remain resilient, particularly in view of the highly capitalised banks in Malta. However, I do not foresee any radical changes to the current prudent approach to lending by banks. Indeed, I expect this approach to be sustained for this year."

Although bank loans are not easily available at the moment, foreign investors continue performing their business activities on the island. Mr de Gabriele noted that the momentum of international business has been sustained particularly in the funds industry. Moreover, an upward trend seems to be developing also in the M&A sector with international operators seeking to undertake cross-jurisdictional transactions using Maltese holding companies.

International transactions always involve a large number of legal challenges that have to be faced by investors. Camilleri Preziosi Advocates is one of Malta's leading law firms, ready to help with all issues related to doing a business in the country.

The firm focuses on domestic and international transactions in the field of corporate and commercial law and in the financial services sector. Now headed by partners Henri Mizzi, Louis de Gabriele, Laragh Cassar and Marisa Azzopardi, Camilleri Preziosi is at the forefront of local practitioners specialising in these areas.

Mr de Gabriele commented: "Our firm has acted for banks as well as borrowers, both locally and internationally. Our expertise in the banking and finance sector places us in a unique position to add value to our clients in undertaking and structuring transactions in or through Malta, and to assist them in surmounting those challenges as and when they arise."

Apart from banking & finance practice, the firm is renowned for its consistently high quality of service and expertise, and has continually proved itself in all major practice areas including capital markets, corporate/M&A, investment services, taxation, and many others.

Mr de Gabriele said: "We combine innovation in thought and technical excellence in the law to offer clients a quality service. Our approach is to understand our clients' key business drivers and to provide an integrated, solution-driven and business-oriented service that adds real value to our clients."

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Promising future for business activity in Malta

The island of Malta offers individuals and corporate multinationals an array of very attractive incentives to carry out commercial activities in Malta or through Malta including an advantageous tax regime, the benefits of 58 double taxation treaties as well as an effective commercial and financial legislative structure which includes EU law and practices, making it the jurisdiction of choice for a wide range of business opportunities.

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Adv. Dr. Michael Tanti-Dougall, senior partner of Tanti-Dougall & Associates, Advocates reiterates that "every foreign investor choosing Malta would indeed be able to benefit from a corporate structure that allows him or her to enjoy a good return on profits whilst at the same time, benefit from lowest taxes possible, normally capped between 0 % to 5 %."

For example, Malta has successfully established itself as a serious, well-regulated European jurisdiction for on-line betting companies attracting some of the largest operators in the world. A stable regulatory and political environment, EU membership and quality infrastructure have all contributed to the success story being enjoyed by Malta attracting some 280 registered remote gaming companies and 400 licensees making it the most successful jurisdiction in Europe with almost €50 million in tax revenue for 2010.

Malta has also excelled in the film industry, attracting many leading productions since the Maltese legislative framework provides film producers with highly attractive tax benefits which cannot be easily matched elsewhere, apart from excellent weather most of the year round as well as a unique environment rich in history.

This is the business environment which Malta has been promoting over the years through its commercial, fiscal and financial laws. Dr Tanti-Dougall emphasised that the Maltese authorities have strived to create the best package possible to attract foreign investment to the island in all possible commercial sectors.

"All the efforts of the authorities indeed have attracted, and still are attracting investment to Malta. Further, given the island's political stability and the tax advantages currently available, the investment climate in Malta for the foreseeable future remains very encouraging," commented Dr Tanti-Dougall.

He pointed out that the international economic crisis is far from over yet, especially in view of the current Libyan conflict which has indisputably rocketed the petroleum prices with an inevitable ripple effect on the global economy. Notwithstanding, Dr Tanti-Dougall is cautious but positive in his approach.

He stated: "There has been an increase in the demand for corporate restructuring which focuses more on tax benefits and tax-planning. Corporate clients have been seeking more – particularly over the past two and a half years – to maximise their cash flow availability by saving on taxes while, at the same time, minimising their costs to partake on the local and European market with their products or services at competitive prices."

Tanti-Dougall & Associates, Advocates, whose mission statement is 'Committed to our clients', can provide professional services to assist clients with all necessary commercial requirements for the establishment of a business in Malta or through Malta.

Aircraft Registration Act further advances the Maltese aviation sector

In the opinion of Adv. Dr. Jacqueline Tanti-Dougall, partner at Tanti-Dougall & Associates, Advocates, who runs the law firm with her husband Michael, also a lawyer by profession, together with their young and energetic team, Malta may be a small island however, it carries a remarkable commercial and financial reputation since it has been at the forefront of creating initiatives to attract foreign investors.

The aviation industry is no exception and indeed, since October 1, 2010, Malta has adopted a new legislation entitled the 'Aircraft Registration Act' rendering it a highly competitive jurisdiction for aircraft registration having established itself as the first Member State to accede to the 'Cape Town Convention' and 'Aircraft Protocol' following accession to the EU. However, the 'Aircraft Registration Act' cannot be taken as a comprehensive legislative framework, since interlinked therewith is a spectrum of other laws, including European regulations.

Dr. Tanti-Dougall explained that the responsibility of aircraft registration falls under the Transport Malta Authority delegating the Director General of Civil Aviation therefor. The Civil Aviation Directorate is also responsible for the safety of aircraft, aircraft and aerodrome operators, air navigation service providers, the licensing of aeronautical personnel and the conclusion of international air services agreements. The Office of the Manager Airport Security (OMAS) addresses aviation security which is distinct from safety in aviation.

"In this respect, Malta enjoys a high performance level of both aviation safety and security. Tanti-Dougall & Associates, Advocates can provide legal advice thereon and have been engaged to advise and to draft the local Airport Emergency Plan and to assist various clients, all being commercial airlines with their safety and security policies, in line with the International Civil Aviation Organisation (ICAO) and relative European rules and regulations", said Dr Tanti-Dougall, an IATA diploma graduate in aviation law, who also lectures both in Malta and abroad on the many and varied aviation legal complexities.

In brief, the Aircraft Registration Act provides for a 'National Aircraft Register' although there is no separate register for aircraft engines. However, its legal and fiscal framework is intended to attract aircraft owners as well as lessors who would want to register their commercial and private aircrafts in Malta, subject to certain restrictions, allowing them also the possibility to register an aircraft still under construction once it would be uniquely identifiable. In addition, the Malta Register caters for certain fiscal incentives such as accelerated depreciation.

A commercial aircraft may be registered by a citizen or resident of the EU or an EEA Member State, as well as Switzerland. An undertaking formed and existing in the EU or Switzerland also enjoys the capacity to register the aircraft. It is interesting to point out that an aircraft may also be registered by a citizen of the EU or Switzerland, not having a place of business in the mentioned states.

In the aviation sector, Tanti-Dougall & Associates, Advocates can provide professional services in connection with aircraft registration, dry and/or wet lease agreements, aircraft financing and advice on tax applicability as well as on health & safety, among others.

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Commercial disputes in Indonesia on the rise

In recent months dispute resolution in Indonesia has been characterised by an increase in commercial disputes and litigation due to cancellation of contracts and default in payment obligations. Moreover, it is anticipated that insolvencies will increase and consequently there will be need for debt restructuring and related disputes. The rise of current and potential disputes calls for a good and efficient judicial system.

In Indonesia in all civil litigation (except for antitrust, trademark and labour disputes) a mandatory mediation stage is applied before the initial hearing on the merits. The aim is to come to an amicable settlement and therefore avoid a formal litigation process. In most cases formal complaints before the court will only be submitted where amicable out-of-court settlement efforts have failed.

However, in the mandatory mediation stage (after a formal court complaint has been submitted) professional/licensed mediators under the supervision of the court conduct the mediation process, which re-opens the possibility of reaching an amicable settlement, even though they have failed in previous attempts.

Arbitration and other forms of alternative dispute resolution are formally regulated by Indonesian laws. In formal court litigation the parties have no control over the appointment of the judges who will hear the case or the applicable civil procedures law. In arbitration though, the parties can determine the applicable procedures and can also, to a certain extent, control the appointment of the arbitrator(s) who will handle the proceedings.

The other significant difference between arbitration and litigation is the fact that appeal proceedings are possible in case of court proceedings, whilst arbitration awards are in principle final.

In both court and arbitration proceedings only one party can win and the other one must loose. However, in mediation proceedings a win-win outcome is possible.

Dr. M. Idwan Ganie, S.H., managing partner at Lubis Ganie Surowidjojo, commented: "Mediation appears to be the quickest and most time-efficient dispute resolution mechanism. Nevertheless, it requires that the disputing parties are in principle willing to settle in the first place."

Bribery is a serious problem affecting organisations all over the world. In Indonesia, as a result of efforts made in the last four to five years, corruption has almost entirely eradicated from the court system. Consequently, the parties can be ensured that disputes are determined by the respective merits.

When preparing for a dispute in Indonesia, the client needs to look out for a most realistic analysis of the legal position and how Indonesian courts would decide the relevant legal issues. Especially foreign clients need to get a complete picture of the Indonesian litigation process, time periods, milestones and remedies available.

The clients also need to ensure that they will obtain reports on all stages and developments of the proceedings in order to issue instructions as and when needed.

Assistance with all of the above can be provided by Lubis Ganie Surowidjojo - an experienced litigation firm that can lead clients through the maze of legal complexities in Indonesia.

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Duty of recall changes the face of product liability in Germany

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Since 1993, Dr. Lenz has been an attorney with the law firm of Friedrich Graf von Westphalen in Cologne. He represents medium-sized businesses in all issues re-garding product safety law, provides legal counsel on recalls, draws up supplier contracts with a preventive focus, and institutes supplier's recourse proceedings as well as recourses against suppliers.

According to Dr. Lenz, the so-called "care bed judgement" of 16 December 2008 – the first Supreme Court decision on a manufacturer's duty of recall – has changed product liability law in Germany. The decision means that every manufacturer can be obligated to take action after placing their goods in the stream of commerce. The maker must either warn of actual danger to life and limb or initiate a recall campaign in the form of free replacement of product(s), considering each case individually.

The decision shows that in Germany a recall in the form of free replacement is not essential; in some cases a warning to those affected may be sufficient. Therefore, makers, able to claim recompense of their suppliers, must often rely on rewording their contractual supply relationships, either via individual agreements or general terms and conditions of business. If the appropriate provisions are lacking, makers may find it more difficult than hi-therto to successfully claim damages of their suppliers.

Dr. Lenz and his product liability team (Corporate Intl Global Awards Winner 2010) offer preventive advice during product development, when preparing R&D contracts and drafting contracts with suppliers, and on quality assurance. Legal activities feature primarily liability claims as well as administering and monitoring of recall campaigns. They are often within the supply chain in the automobile, mechani-cal engineering and plant construction industries.

According to Dr. Lenz, there has been a noticeable rise in disputes following the termination of supply contracts. Those affected are often industries considered economic power-houses that have suffered particularly severely from the economic crisis as well as those aforementioned. Preliminary advice and the conduct of legal proceedings have become much more important to them all.

Dr. Lenz, who is *inter alia* frequently recommended lawyer for product liability and safety (Best Lawyers 2011) and leading lawyer for product liability law (JUVE German Commercial Law Firms 2009/2010), acts on behalf of many well-known companies. These include Chartis Europe in national and international product liability; environmental damage and D&O damage cases; makers of kitchen equipment in Europe-wide recall campaigns; automobile industry suppli-ers in contesting damages claims after a recall campaign by an Italian carmaker; suppliers in contesting damages after the recall of sealing strips for freezers; German mechanical engineering companies in avoiding involvement in a major US court case, etc. Some of his major cases over the past years have involved:

- Safety switches,
- Isolated ground receptacles,
- Racing cycle tires,
- Medical devices: lunge machine, surgical lighting,
- Gas turbines,
- Wires/aeroplanes,
- Electric cars,
- Hot water generators, boilers,
- Cases of death due to faulty safety processes (e.g. engine manufacturing) or security processes (e.g. engine construction), and other areas.