



**British Institute of  
International and  
Comparative Law**

## **BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW**

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**October 2006**

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### ***NEWSLETTER***

#### **RECENT ACTIVITIES**

#### **Annual General Meeting Notice**

Institute members are reminded that the Annual General Meeting of the Institute will be held on Thursday 26 October 2006 at 18.30 at Clifford Chance, 10 Upper Bank Street, London, E14 5JJ.

#### **Judge Ronald St John Macdonald CC QC LLM LLD**

The Institute is sorry to note the passing of Judge Ronald St John Macdonald. Judge Macdonald passed away peacefully on 7 September 2006, in Halifax, Nova Scotia. He was the only non-European judge of the European Court of Human Rights, where he served from 1980–1998, and Senior Scholar in Residence at the Faculty of Law, University of Toronto.

#### **Institute Launches Seminar Series on Private International Law in the UK**

The Institute is pleased to announce the launch of its seminar series on Private International Law in the United Kingdom, which places the Institute's activities in the field of private international law in a central position within its international law programme. The series has been kindly sponsored by [Herbert Smith](#).

The series follows up on the successful seminars held at the Institute on 26 April 2006 on the [European Commission's Rome I Proposal](#), and on 26 June 2006 on [the Future of Legalisation of Public Documents in the EU](#). In 2006 the Institute has also completed an important study for the European Commission on [the application in England and Wales of the Brussels I Regulation](#).

The series consists of evening seminars led by leading academics and practitioners which explore developments of topical importance for current legal practice and study in the field of Private International Law. The seminars will address current topics discussed in recent English cases such as *Harding v Wealands*, *Jones v Saudi Arabia*, *Republic of Ecuador v Occidental Exploration and Production Co*, and *AY Bank Ltd v Bosnia & Herzegovina & Ors*, as well as the

recent case law of the European Court of Justice (in particular *Case C-4/03 GAT* and *Case C-539/03 Roche Nederland*).

More generally, the series will be dedicated to an important (re)evaluation of the British landscape in the field of private international law which is subject to increasing processes of cultivation at the European Community level, and important developments at the international level, for example with the establishment of several important Conventions at the Hague Conference for Private International Law.

Appropriately the series will start with a seminar chaired by Lord Mance, on the *Future of Private International law in England and Wales* on 24 October.

2006 Seminars:

24 October

[The Future of Private International Law in England and Wales](#)

(Chair: The Rt Hon Lord Mance)

21 November

[Substance and Procedure in the Law Applicable to Torts: \*Harding v Wealands\* and the Rome II Regulation](#)

(Chair: Mr Justice Lawrence Collins)

18 December

[Civil Remedies for Torture in the UK Courts: \*Jones v Saudi Arabia\*](#)

(Chair: Professor Gillian Triggs)

2007 Seminars:

January

*Non-justiciability: Reappraisal of *Buttes Gas* in the Light of recent Decisions*

(Chair: The Rt Hon Lord Bingham)

22 January (Afternoon)

Cross-border IP Disputes: Current Directions - Seminar I

*Intellectual Property Problems: Jurisdiction in IP Disputes*

22 January (Evening)

Cross-border IP Disputes: Current Directions - Seminar II

*The Future of International Patent Litigation in Europe*

(Chair: Professor Gerrit Betlem)

February

*Resolving Family Conflicts in the EU: The Changing Landscape*

March

*The Road to Rome: Update on the Law Applicable to Contractual Obligations*

If you have any questions on the private international law series, please do not hesitate to contact Jacob van de Velden at [j.vandevelden@biicl.org](mailto:j.vandevelden@biicl.org). In order to receive updates on developments at the Institute in future, please [sign up](#) to the Institute website, specifying your areas of interest.

## Other News

Other recent news is available via the Institute website by clicking on the links below:

- [Difficulties Using Public Documents in the EU: Online Survey](#)
- [New Institute Discussion Programmes: Extraterritoriality and Private International Law](#)
- [China Workshop on Links between Competition and Liberalisation of Regulated Sectors](#)
- [Henri Texier Prize Awarded to Dr Duncan Fairgrieve for Franco-British Study on Rights and Freedoms](#)
- [European Parliament Project on Supervision of Life Assurance Undertakings](#)
- [58th Session of the International Law Commission](#)
- [Morphine Exports from Afghanistan: International Trade Law Aspects](#)
- [Launch of Advocates for International Development](#)

## INSTITUTE PUBLICATIONS

The Institute is delighted to announce the recent publication of the following new titles:

### **Independence, Accountability and the Judiciary**

*Guy Canivet, Mads Andenas and Duncan Fairgrieve (eds)*

This new book explores the important and topical subject of judicial independence and judicial accountability. The tension between judicial independence and accountability leads to frequent controversy and even constitutional crises. Judicial independence and accountability are live issues in most countries. Modern constitutions (and international treaties establishing international courts) will have provisions about the independence of courts and judges. International law and principles are becoming increasingly important sources for the application of the independence principle. The different national solutions, and also those found for international courts, vary considerably. Presently, anti-terrorist measures adopted by national executives and legislatures continue to test judicial independence. The constitutional bases for judicial review, and on several levels, the court systems too, are in a process of change.

The tension between judicial independence and accountability has become stronger for a number of reasons. The development of individual civil and human rights in national constitutional law and in European and international law has been accompanied by remedies requiring ever closer judicial review of legislation and executive action. Internationalization requires courts to mediate between the national legal order and European and international law, also outside the field of human rights protection. A situation where courts adjudicate on the balancing of rights and the public interest, requires a stronger protection of judicial independence at the same time as it leads to calls for higher accountability.

This book meets the need for comparative law material and analysis. Contributions from distinguished practitioners and academics place judicial independence and accountability within a comparative law perspective, showing how legal systems across the world have adapted to recent developments in this field.

### **Representational Fairness in WTO Rule-Making: Negotiating, Implementing and Disputing the TRIPS Pharmaceutical-Related Provisions**

*Mohamed Omar Gad*

This book examines representational fairness in WTO rule-making. The context of examination is the pharmaceutical-related provisions of the TRIPS Agreement and the interests of developing countries and pharmaceutical multinational enterprises therein. The book analyses the negotiation and implementation periods of the specified TRIPS provisions and the legal disputes

that arose, covering the period from the mid-1980s, until the adoption of the Doha Declaration on the TRIPS Agreement and Public Health in November 2001.

An imbalance reflected in the negotiated text in favour of pharmaceutical MNEs' interests during the negotiation process is characterized as 'top-down' rule-making. Reacting to this, developing countries exerted pressure from the 'bottom-up' hindering the implementation of these TRIPS provisions. This retorting action, while instilling a degree of balance, congests the TRIPS regime and the larger WTO system with additional dispute proceedings leading to strains in North-South relations. The volume concludes with selective suggestions focusing on the rule-making process of the WTO and proposes measures to reduce the likelihood of a deficiency in representational fairness occurring in future negotiations.

## PAST EVENTS

The Following events have recently taken place at the Institute; further details are available via the website by clicking on each event title. Members may access papers and presentations from these events by following the *event papers* link:

### INVESTMENT TREATY FORUM

[The 2006 Amendments to the ICSID Arbitration Rules](#) (13 July 2006)

[7th Investment Treaty Forum Public Conference: Procedural Aspects of Investment Treaty Arbitration](#) (8 September 2006)

[Event papers](#)

### REGULATION FORUM

[Regulation Forum meeting—Dispute Resolution in Telecoms \(European Commission's Communication on the Review of the Regulatory Framework for Electronic Communications\)](#) (10 October 2006)

### COMPETITION LAW FORUM

[Conceptual and Empirical Issues in the Analysis of Local Competition: Boots/Alliance Unichem and Other Recent Mergers](#) (11 October 2006)

[Event papers](#)

[CLF Meeting: Market Investigations](#) (18 October 2006)

### PRODUCT LIABILITY FORUM

[How is the Product Safety Regime Working in Practice?](#) (12 October 2006)

[Event papers](#)

# FORTHCOMING EVENTS 2006

The majority of Institute events are CPD accredited. Please call +44 (0) 20 7862 5151 for further information.

**Please note that the cancellation date for refunds is five working days prior to each event, and that payment is required prior to attendance or at the entrance to the event.**

Spaces for some events are limited and Members will receive priority on bookings.

To register please [see](http://www.biicl.org/events) [www.biicl.org/events](http://www.biicl.org/events)

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## October 2006

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Tuesday 24  
Charles Clore House,  
17 Russell Square,  
London  
WC1B 5JP  
17:00–19:00

### [The Future of Private International Law in England and Wales](#)

This seminar is part of the British Institute's Evening Seminar Series on Private International Law which will run throughout the Autumn of 2006 and well into 2007 titled [Private International Law in the UK: Current Topics and Changing Landscapes](#)

*The series explores issues which are of topical importance for current legal practice and study in the field of Private International Law. Led by leading experts in the field, they will evaluate, in particular, the growing impact of the establishment of a European Civil Justice Area on the future of Private International Law in the UK.*

**Chair:** The Rt Hon Lord Mance

**Speakers:** Professor Jonathan Harris, Birmingham University

Adeline Chong, Nottingham University

Adam Johnson, Herbert Smith

The Series is kindly sponsored by [Herbert Smith](#).

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Thursday 26  
Clifford Chance, 10  
Upper Bank Street,  
London, E14 5JJ  
18:30–19:00

### [Annual General Meeting](#)

A member entitled to attend and vote at the meeting or is entitled to appoint a proxy to attend and vote for him or her. The instrument appointing the proxy must be in writing and must be deposited at the office of the Institute, at Charles Clore House, 17 Russell Square, London WC1B 5JP, not less than forty-eight hours before the time of the meeting. A proxy need not also be a member of the Institute.

[Please click here to view Agenda](#)

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Monday 30  
Charles Clore House,  
17 Russell Square,  
London  
WC1B 5JP  
18:00–19:00

### [Recovering Stolen State Assets and the Proceeds of Grand Corruption](#)

In October 2006, the Institute is launching a lecture series entitled [State Jurisdiction in a Global Environment: Rethinking Extraterritoriality](#). The series aims to shed a modern light on this age-old discussion about States' prerogative to regulate conduct taking place outside their territory and the constraints imposed by international law. Focusing on recent developments in areas such as competition law, human rights, criminal law, financial and corporate law, investment law, internet law, each lecture will address one specific instance of extraterritorial application and enforcement of laws, the challenges that such application/enforcement raise and the possible mechanisms that may be put in place to meet such challenges. The series will continue throughout 2007.

**Chair:** Martin Polaine Commonwealth Secretariat

**Speakers:** Monty Raphael, Peters & Peters

**Commentator:** Jeremy Carver CBE Clifford Chance LLP & Transparency International

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## November 2006

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Monday 6  
The Old Hall, The  
Honourable Society of  
Lincoln's Inn, London  
WC2A 3TL  
17:00–18:00

### [30th Annual FA Mann Lecture: Collective Security and Non-Aggression: The Contemporary State of the Law](#)

This is the 30th in a series of annual lectures in honour of the late Dr F A Mann QC, one of the founders of the Institute.

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This event has been kindly arranged by the partners of [Herbert Smith](#).

**Chair:** Professor James Crawford, University of Cambridge and Matrix Chambers  
**Speaker:** Professor Thomas Franck, Murray and Ida Becker Professor of Law Emeritus, New York University School of Law

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Wednesday 8  
Charles Clore House,  
17 Russell Square,  
London  
WC1B 5JP  
, 17:00–19:30

**[Annual Joint Symposium between the British Institute of International and Comparative Law and Competition Law Association: Competition Law Developments in Member States](#)**

**Chair:** Peter Roth QC, Monckton Chambers, UK  
**Speakers include:** Antonio Guerra, Tribunal for the Defence of Competition, Spain  
Rene Jansen, Netherland Competition Authority, Holland  
Konrad Ost, Bundeskartellamt, Germany  
Simon Priddis, Office of Fair Trading, UK  
Francois Souty, Conseil de la Concurrence, France

Registration will start at 17.00, and the workshop will be followed by a wine reception

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Monday 13  
Charles Clore House,  
17 Russell Square,  
London  
WC1B 5JP  
09:30–17:30

**[Lamfalussy – Is it Working? The Impact of the Lamfalussy Procedures on the Market Abuse Directive and The Market in Financial Instruments Directive](#)**

**Chairs:** Sir Nigel Wicks, Deputy Chairman Euroclear  
Mark Harding, Barclays Bank, London  
**Speakers:** Arthur Docters van Leeuwen, Netherlands Authority for the Financial Markets, CESR  
Natalie de Basaldua, European Commission  
Ingrid Bonde, Swedish Financial Services Authority  
Carlo Comporti, CESR  
Margaret Chamberlain, Travers Smith, London  
David Mayhew, Herbert Smith, London  
Professor Niamh Moloney, University of Nottingham  
Paul Nelson, Linklaters, London  
Michael Raffan, Freshfields, London  
Alastair Sutton, White & Case, Brussels  
Jonathan Taylor, LIBA

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Wednesday 15  
Charles Clore House,  
17 Russell Square,  
London  
WC1B 5JP  
18:00–20:00

**[The Arbitration Act 1996 10 Years On: What the Users Say - Preliminary Observations on a Major Survey of Users' Views on the Act](#)**

As the tenth anniversary of the Arbitration Act 1996 approached, a number of bodies, in particular the Commercial Court Users' Committee, the British Maritime Law Association and the London Shipping Law Centre, thought it would be appropriate to review the Act's workings to see whether, in the light of experience, any revisions might usefully be proposed. At their request, Bruce Harris agreed to set up and chair a committee to organize a comprehensive survey into how the Act has worked in practice. That has now taken place, with over 700 responses having been received. The resulting report (which it is hoped will be published before the end of November 2006) will describe the work done and set out the committee's conclusions.

This event is kindly sponsored by [Herbert Smith](#).

**Chair:** The Rt Hon Lord Mance  
**Speakers:** Bruce Harris, London Maritime Arbitrators Association  
Khawar Qureshi QC, Serle Court Chambers.

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Tuesday 21  
Charles Clore House,  
17 Russell Square,  
London  
WC1B 5JP

**[Substance and Procedure in the Law Applicable to Torts – Harding v Wealands and the Rome II Regulation](#)**

This seminar is part of the British Institute's seminar series on private international law which will run throughout the Autumn of 2006 and well into 2007 entitled [Private International Law in the UK](#).

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17:30–19:30

[Current Topics and Changing Landscapes.](#)

The British Institute's Series on Private International Law is kindly sponsored by [Herbert Smith](#)

**Chair: Sir Lawrence Collins**

**Speakers: Charles Dougherty**, 2 Temple Gardens; George Panagopoulos, Richards Butler

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Wednesday 22  
Charles Clore House,  
17 Russell Square,  
London  
WC1B 5JP  
17:30–19:30

[Treaty Invalidation and the Powers of the Security Council](#)

Lecture by **Professor Don Greig**, Australian National University; Honorary Fellow, British Institute of International and Comparative Law.

This lecture will be followed by a book launch for Don Greig's latest publication [Invalidity and the Law of Treaties](#)

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Friday 24  
London House,  
Mecklenburgh Square

[The 5th Annual Merger Conference](#)

**Keynote speaker: Nadia Calviño**, Deputy Director for Mergers, DG-Competition, European Commission

**Speakers: George Addy**, Davis Ward Phillips & Vineberg LLP; **Adrian Majumdar**, RBB Economics; **Simon Pritchard**, Director of Mergers, Office of Fair Trading; **Chris Bright**, Shearman & Sterling LLP; **Gabriel Bleser**, Rapporteur général, Competition Inspection, Luxembourg; **Benoit Durande**, Competition Commission; Simon Bishop, RBB Economics; **Frederic Depoortere**, Skadden Arps; **Matthew Readings**, Shearman & Sterling LLP; **MJ Moltenbrey**, Freshfields Bruckhaus Deringer; **Adrian Payne**, Office of Fair Trading; **Goetz Drauz**, Howrey

The 5th Annual Merger Conference is kindly sponsored by [Shearman & Sterling LLP](#) and [RBB Economics](#).

**Topics:**

National v European Interests  
Unilateral effects, reductions in quality  
Influencing and Predicting agency behaviour  
Competition reviews of hostile takeovers

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Monday 27  
The Honourable Society of  
the Inner Temple, Crown  
Office Row, London EC4Y  
7HL  
18:00–20:00

[Nuclear Weapons, Energy and the Environment - The 10th Anniversary of the ICJ's Advisory Opinion on Nuclear Weapons](#)

**Chair: The Rt Hon Lord Bingham of Cornhill**, Chairman, British Institute of International and Comparative Law

**Keynote Speaker: Dr Hans Blix**, Chairman, Weapons of Mass Destruction Commission

This is a public lecture sponsored by Linklaters, on the occasion of the 10th Anniversary of the Advisory Opinion by the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons.

10 years after the International Court of Justice's advisory opinion, the lawfulness of nuclear weapons still attracts considerable political and scholarly attention. In the context of the 'war on terrorism' there are growing concerns over the acquisition, testing and use of nuclear weapons both by 'maverick' States and non-State actors. These recent concerns raise questions about the adequacy of international law concerning nuclear weapons in this new environment. A number of competing solutions and options have been proposed ranging from increased use of the IAEA procedures to the asserted pre-emptive right of self-defence, each of which is likely significantly to reshape the current international régime bearing on nuclear weapons.

**The lecture will be followed by a reception for all those attending.**

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Wednesday 6  
Charles Clore House,  
17 Russell Square,  
London  
WC1B 5JP  
14:00–18:00

### [Competition Issues in the Media Sector](#)

**Speaker:** John Wotton, Allen & Overy

This is a closed meeting of the Institute's [Competition Law Forum](#). If you would like more information on how to join the Competition Law Forum, please contact [Peter Whelan](#).

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Monday 11  
London House,  
Mecklenburgh Square,  
London WC1N 2AB  
18:00–20:00

### [Annual Grotius Lecture: The ICJ in the Twenty-First Century - What Lies Ahead?](#)

**Speaker:** HE Judge Pieter Kooijmans, International Court of Justice

Pieter Hendrik Kooijmans (born July 6, 1933) is a Dutch jurist and diplomat. He has served as a Judge on the International Court of Justice since 1997. Judge Kooijmans was born in Heemstede, the Netherlands. He earned his law degrees from the Free University of Amsterdam. Following graduation, he joined the University's faculty as Professor of Public International Law and European Law, serving from 1965 to 1973. He joined the Dutch Foreign Ministry, as State Secretary for Foreign Affairs from 1973 to 1977. In 1976 and again in 1991, he served as a Lecturer at the Hague Academy of International Law. From 1978 to 1992, he served as a Professor of Public International Law at the University of Leiden. From 1993 to 1994, he served as Foreign Minister of the Netherlands, succeeding Hans van den Broek. In 1995, he returned to his former position as Professor of Public International Law at the University of Leiden, serving until his appointment to the International Court of Justice.

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Monday 18  
Charles Clore House,  
17 Russell Square,  
London  
WC1B 5JP  
17:30–19:30

### [Civil Remedies for Torture in the UK Courts: Jones v Saudi Arabia](#)

**Chair:** Professor Gillian Triggs, Director British Institute of International and Comparative Law

**Speakers:** Professor Craig Barker, University of Sussex

Richard Hermer, Doughty Street Chambers

Dapo Akande, St Peter's College, Oxford

This seminar is part of the British Institute's seminar series on private international law which will run throughout the Autumn of 2006 and well into 2007 entitled [Private International Law in the UK: Current Topics and Changing Landscapes](#).

The British Institute's Series on Private International Law is kindly sponsored by [Herbert Smith](#).

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## January 2007

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Wednesday 31  
The Honourable Society of  
Lincoln's Inn, Lincoln's Inn,  
London WC2A 3TL  
09:00–17:00

### [The Tenth Annual Review of the Arbitration Act](#)

Every year since its enactment, the Institute has held an immensely successful annual review of the 1996 Arbitration Act. This has involved members of the judiciary, academics and practitioners, providing comparison with other arbitration regimes where appropriate.

This conference is being held by the Institute to mark the 10th anniversary of the Act's entering into force.

More details will be published shortly. Should you have any queries on this event please do not hesitate to contact [Hugo Warner](#).

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**British Institute of  
International and  
Comparative Law**

## **Highlight Event**

# **Nuclear Weapons, Energy and the Environment - The 10th Anniversary of the ICJ's Advisory Opinion on Nuclear Weapons**

**Monday 27th November 2006, 18:00 to 20:00**

**Location:** The Honourable Society of the Inner Temple, Crown Office Row,  
London EC4Y 7HL

**Chair: The Rt Hon Lord Bingham of Cornhill, Chairman,  
British Institute of International and Comparative Law**

**Keynote Speaker: Dr Hans Blix, Chairman,  
Weapons of Mass Destruction Commission (WMDC)**

This is a public lecture sponsored by Linklaters, on the occasion of the 10th Anniversary of the Advisory Opinion by the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons.

10 years after the International Court of Justice's advisory opinion, the lawfulness of nuclear weapons still attracts considerable political and scholarly attention. In the context of the 'war on terrorism' there are growing concerns over the acquisition, testing and use of nuclear weapons both by 'maverick' States and non-State actors. These recent concerns raise questions about the adequacy of international law concerning nuclear weapons in this new environment. A number of competing solutions and options have been proposed ranging from increased use of the IAEA procedures to the asserted pre-emptive right of self-defence, each of which is likely significantly to reshape the current international régime bearing on nuclear weapons.

**The lecture will be followed by a reception for all those attending.**

**This event is free to members.**

We ask both members and non-members to register for this event to avoid disappointment. If you are not a member of the  
British Institute of International and Comparative Law,

The cost to attend this event is:

*Individual rate* £110 *Full-time academic rate* £75 *Full-time student rate* £25

Fees include a year's membership to the Institute starting from the day you join.

This event is kindly sponsored by:

**Linklaters**

Please register for this event on the [event webpage](#).

## **Featured External Event**

Optional **one** or **one and a half day** conference

# **State Aid Reform**

**Monday 6th** (afternoon) & **Tuesday 7th** November 2006, The Radisson SAS Hotel, Brussels

Chairman **Tom Ottervanger**, Partner, Allen & Overy, Amsterdam and Brussels

**Day One:** Foundations in State Aid Law (half Day Seminar)

**Day Two:** State Aid Reform: Advanced Review of Recent Developments

Conference Highlights

**Day One** (Half Day) *Optional:*

### **Foundations in State Aid Law**

- Article 87: What is and what is not a State aid?
- Article 88: What are the procedures? What are the consequences of not following them?
  - Challenging decisions before the European Courts
  - Review of recent decisions of the Commission
    - Review of recent decisions of the Courts
    - State Aid Action Plan

### **Day Two**

#### **State Aid Reform: Advanced Review of Recent Developments**

- Where do we stand? Status of the State Aid Action Plan
  - What constitutes State Aid?
- The New Exemption Regulation for National Regional Investment Aid
  - Rescue and Restructuring
  - Privatisation and State Aid
- Application of State Aid in the Media Sector
  - State Aid and General Taxation
- Recent case law on application of Article 88(3)
  - Enforcement

#### **Supporting Associations**



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or post to: IBC Legal Conferences, Informa House, 30-32 Mortimer Street, London W1W 7RE, England.  
Please quote ref: **AISA017A** (State Aid Reform LE1226)

- Conference @ £649 + TVA (after 23rd October £699 + TVA)**
- Seminar and conference @ £875 + TVA (after 23rd October £925 + TVA)**

Title\_\_\_\_\_Forename\_\_\_\_\_ Address\_\_\_\_\_

Surname\_\_\_\_\_

Job Title\_\_\_\_\_ Postcode\_\_\_\_\_

Email\_\_\_\_\_ Tel\_\_\_\_\_

Company\_\_\_\_\_ Fax\_\_\_\_\_