

## Retirement of two icons of the firm



*Dato' Dr. Cyrus Das*



*Mr. Porres Royan*

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### EDITORIAL COMMITTEE

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*The newsletter is also available on our website.*

*The contents of this publication are of a general nature and not intended as legal advice. For any specific legal advice, please contact the partners.*

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## ANNOUNCEMENTS:

### New Managing Partner



Shook Lin & Bok is proud to announce the appointment of Ms Patricia David, the first female managing partner in its 97 year history.

Ms Patricia David graduated with an LL.B. (Honours) degree from the University of Singapore and was admitted to the Malaysian Bar in 1976. She joined the firm in 1980 as an associate and was admitted as a partner in 1988 and has been with the firm for more than 34 years.

She is currently the Head of the Corporate and Company Secretarial Departments. She has been said to have *"One of the best legal minds in Malaysia"* - *IFLR 1000*. Her practice areas include Corporate, Banking & Finance, Real Estate and Commercial Transactions.

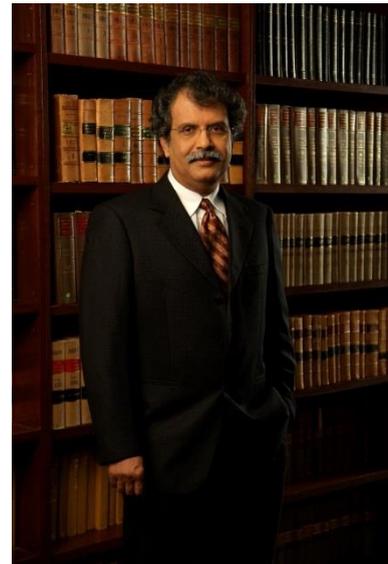
### New Deputy Managing Partner

Mr. Nagarajah Muttiah is the Deputy Managing Partner. He has been with the firm since 1980 when he joined as an associate and was admitted as a partner in 1989.

He heads the International and Domestic Arbitration Department, General & Civil Litigation Department and Insurance & Shipping Department. He has been praised for his *"quality of opinion and responsiveness"* - *Asialaw Profiles 2015* and is listed under the *Legal 500 Asia Pacific 2014* as a recommended lawyer in the area of Dispute Resolution.

Mr. Nagarajah's areas of practice include Insurance, Shipping & Aviation, Building and Construction and General & Civil Litigation. He has authored the Malaysian chapter to the 2nd Edition of William Tetley's Maritime Liens and Claims. He is the current President of the Malaysian Maritime Law Association. His other accolades include:

*"Nagarajah Muttiah is the key practitioner at Shook Lin & Bok for shipping matters, and has a solid reputation for his long-standing experience in the market. He has a broad practice with an emphasis on insurance, cargo and hull claims."* - *Chambers (Asia-Pacific) 2013*.



## ANNOUNCEMENTS:

### Partnership Promotions

This is to announce that the following Partners have been promoted to the Limited Partnership with effect from 1st January, 2015.

1. Ng Hooi Huang

Education:

- LL.B (Honours): University of Liverpool, C.L.P.

Professional:

Her areas of practice encompass company and commercial litigation including recovery work and enforcement of security, receivership, corporate insolvency or liquidation, bankruptcy, restructuring of debts and schemes of arrangements, contractual and tortious claims as well as land disputes.



Personal:

In her free time, Hooi Huang enjoys travelling and outdoor activities.

2. David Dinesh Mathew

Education:

- LL.B (Honours): University of London (1999 – 2002);
- Bar Vocational Course (Very Competent): Inns of Court School of Law, London (2002 – 2003)
- Graduate Diploma in Law: City University, London (2003)
- LL.M (Corporate and Commercial Law): University of London (2003 – 2004)
- Credits in U.S. and EU Antitrust and Banking and Finance Law: Cornell University (2004)



Professional:

The focus of his work is in the areas of General Litigation and Administrative Law. David is regularly engaged to advise on tort and contractual disputes as well as on issues relating to the personal data protection. He acts mainly for institutional clients and public utilities in claims involving breach of contract, breach of statutory duties and defamation. He has also acted for foreign clients in judicial review actions against Malaysian public authorities.

Personal:

Outside work, David has a particular interest in sports related travel. He is a veteran of two World Cups (South Africa 2010, Brazil 2014) and two European Championships (Portugal 2004, Ukraine 2012). He also attended the French Open in 2013 and the Australian Open in 2014 and 2015. In February of 2014, David took his seat at Anfield Stadium and watched Liverpool beat Arsenal 5-1 – best day of his life. Of late, he has taken up cooking and according to his mother, David makes the best fried chicken with ginger and spring onion in the world. Confidence boosted, he now has one eye on Masterchef Malaysia. When the curtains fall on his legal career, David hopes to retire to his hometown in Kluang, Johor and tend to the family fruit and vegetable garden.

### 3. Poh Choo Hoe

#### Education:

- LL.B. (Hons.) (UWE, Bristol), C.L.P.
- Advocate & Solicitor, High Court of Malaya

#### Professional:

Choo Hoe joined the firm in 2005 as an associate and was elevated to partnership in 2012. He is a partner with the Banking & Finance Litigation Department and his work comprises:

- advisory work on debt recovery matters involving banking and financial institutions
- court litigation matters (eg: enforcement of loan and security contracts, enforcement of debentures, realization of collateral given by security providers, liquidation and bankruptcy matters, defamation, housing development disputes involving financial institutions, matters concerning forfeiture of property under Dangerous Drugs and Anti-Money Laundering in Malaysia) that are either commenced or defended by the various banking and financial institutions in Malaysia.



#### Personal:

In his free time, Choo Hoe enjoys evening jogs by the lake near his residence. He has in recent times, turned to yoga and meditation for mental clarity and tranquility.

## New Partner



Shook Lin & Bok has expanded its corporate team with experienced funds lawyer, Karen Kaur, joining as a partner of the firm.

Karen, who holds a First Class Honours degree from the Law Faculty of the University of Malaya, and a Masters in Law from Harvard Law School, USA, boasts over 24 years of legal experience and has spent 11 of those years in the Hong Kong-based firm, Deacons, in its financial services practice group. While at Deacons, Karen worked with a wide range of international and local fund houses and has considerable experience in the establishment of private and retail investment products, including hedge funds, UCITs, private equity funds, equity and bond funds, as well as authorisation for public sale in Hong Kong of Hong Kong unit trusts and offshore mutual funds from a variety of jurisdictions. She also advised on all regulatory aspects of investment business, including licensing requirements,

compliance issues and review of ISDAs, side letters, distribution agreements and prime brokerage agreements. Karen was a partner at Deacons from 2007 to 2012.

ANNOUNCEMENTS:

IPAM Appointment



Partner, Yoong Sin Min has been elected as a council member into the Insolvency Practitioners of Malaysia (IPAM). IPAM is an organisation for persons with an interest in insolvency laws and practices. Amongst its objectives, IPAM lobbies for legislative reform and development of the relevant Malaysian laws, practices, education and examination in the areas of insolvency, receivership and liquidation, business restructuring and turnaround management.



Insolvency Practitioners Association of Malaysia  
(Persatuan Pengamal Insolvensi Malaysia)

Elections of the Malaysian Institute of Arbitrators (MIArb)

The Firm congratulates Mr Sudharsanan Thillainathan and associate, Ms Victoria Loi, who were elected as Deputy President and Secretary, respectively of the Malaysian Institute of Arbitrators (MIArb) on 25th June, 2015.



FPAM Appointment



Our Mr. David Dinesh Mathew has been appointed as a Member of the **Board of Governors of the Financial Planning Association of Malaysia (FPAM)** for the 2015 term. Mr. Mathew will serve as public representative from the legal fraternity to the Board.

FPAM is a non-profit organization established in 1999. It is the professional membership and standard setting body for Certified Financial Planning professionals. FPAM currently has 32 Charter, 10 Corporate and more than 8,000 Individual Members.

ANNOUNCEMENTS:

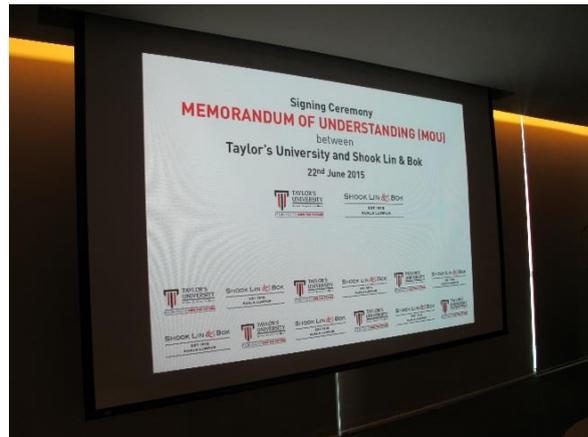
## Memorandum of Understanding Signing Ceremony between Taylor's University and Shook Lin & Bok



On 23.6.2015, Shook Lin & Bok entered into a Memorandum of Understanding (“MOU”) with Taylor’s University as part of the Firm’s continuing efforts to promote the advancement of legal education in Malaysia. The MOU Signing Ceremony was held at the University’s picturesque Lakeside Campus in Subang Jaya, Selangor.

The Firm was represented by our Managing Partner, Ms. Patricia David. Present for Taylor’s University was Professor Dato’ Dr. Hassan Said, the Vice-Chancellor and President of Taylor’s University.

It is hoped that the Memorandum of Understanding would in addition to strengthening existing ties between the Firm and Taylor’s University, also enable students of the Law School to gain practical insight into legal practice from our legal practitioners.



## IN MEMORIAM:

Former Senior Partner, Mr. Chan Siew Yoon passed away on 29<sup>th</sup> December, 2014.

He was the nephew of the firm's founding partner, Tan Teow Bok and the pupil master of former Managing Partner Dato' Dr. Cyrus Das back in 1973. Dato' Dr. Das remembers Mr. Chan as a dedicated litigation lawyer who was wholly devoted to his cases.

His notable positions in the community included holding the post of Secretary of the Perak MCA, the Honorary Secretary of the Perak Alliance. Due to his bi-lingual abilities and prowess in the Chinese language, he was entrusted with the responsibility of interpreting Tun Sir Tan Cheng Lok's political speeches live. Siew Yoon also worked with other MCA luminaries of his time which included Tun Leong Yew Koh, a lawyer with an Ipoh practice who "*served the government of China once in the post as governor of Yun Nan province*".

Mr. Chan pursued his legal studies in London. Whilst there, he was requested by the Chief of the BBC Overseas Service, to prepare and read out a speech in Mandarin on the historical day of Malaya's Independence. This is what he says of his participation of Merdeka "*I made the speech and it was there and then pre-recorded for broadcast on Independence Day. I was quite satisfied with the speech and its contents....*"

On his return, he read in the chambers of Messrs Leong Yew Koh & Co and decided consequent upon his admission to the Bar, to leave practice and became the Secretary of the Employees' Provident Fund to which he found himself to be unsuited. He decided to join the Judicial Service and advanced to the position of President of the Sessions Court. At the height of the Indonesian Confrontation when he felt it was unsafe for his family to live in Malacca, he asked for a transfer which was turned down.

He decided to enter private practice and joined Shook Lin & Bok. He handled many leading cases during his time in practice, most noteworthy of which was Choo Ah Pat vs Chow Yee Wah & Anor [1975] 1 MLJ 245 where the Bank's appeal to the Privy Council was successful. Another case which brought him "*professional and intellectual satisfaction*" was Lee Heng & Co vs. VC Melchers & Co [1963] MLJ 47.

The Firm mourns the passing and cherishes the legacy of former Senior Partner Mr. Chan Siew Yoon. Sincere condolences are extended to his family.



Ms. Chan Siew Mei, daughter of the late Mr. Chan Siew Yoon standing next to his leather briefcase.

## ACCOLADES:

We have dedicated a special part of this edition to the awards and accolades conferred on the partners of the firm by leading publications such as Legal 500 and Chambers Asia. The recognition by them is a testament to the firm's strong commitment to high quality professional services.

## Acquisition International:

Shook Lin & Bok was named "*IP Law Firm of the Year - Malaysia*" - *Acquisition International (2014)*.

## Legal 500 (2015):

### TOP-TIER FIRM in 3 practice areas:

- Dispute resolution
- Intellectual property
- Islamic finance

### Recommended in the following 6 practice areas:

- Banking and finance
- Capital markets
- Corporate and M&A
- Dispute resolution
- Industrial relations
- Real estate and construction

### 3 lawyers are listed in elite "Leading lawyers" list:

- Banking and finance - Lai Wing Yong
- Corporate and M&A - Patricia David Saini
- Intellectual property - Michael Soo

### 11 lawyers are recommended in The Asia Pacific Legal 500 2015 editorial (listed below):

Banking and finance	Corporate and M&A
- Khong Mei Lin	- Ivan Ho Yue Chan
- Lai Wing Yong	- Patricia David Saini

Capital markets	Dispute resolution
- Ng King Hoe	- Yoong Sin Min

Intellectual property	Real estate and construction
- Michael Soo	- Khong Mei Lin
- Ng Kim Poh	- Lai Wing Yong

Islamic finance  
- Jalalullail Othman

## IFLR 1000 (2015 Edition):

Leading Lawyer recommendations for:

- Patricia David Saini (Capital Markets, M&A)
- Jalalullail Othman (Banking)
- Ho Yue Chan (M&A)
- Hoh Kiat Ching (Banking)

## ACCOLADES:

### Chambers & Partners (2015):

Chambers Asia-Pacific Rankings 2015:

<u>Category</u>	<u>Ranking</u>
Banking & Finance	Band 2
Banking & Finance: Debt Capital Markets	Band 3
Corporate/M&A	Band 3
Dispute Resolution	Band 1
Employment & Industrial Relations	Band 2
Intellectual Property	Band 2

Ranked lawyers for Chambers Asia-Pacific Rankings 2015:

<u>Category</u>	<u>Name</u>	<u>Ranking</u>
Banking & Finance	Jalalullail Othman	Band 1 & Band 3
Corporate/M&A	Patricia David Saini	Senior Statesmen
Dispute Resolution	Yoong Sin Min	Band 4
Employment	Steven Thiruneelakandan	Band 2
Intellectual Property	Michael Soo	Band 1

### 2014 Asia IP Patent Survey:

Shook Lin & Bok has been ranked *Tier 1 for Contentious work* in **Malaysia**.

### Legal Media Group:

Six (6) of the firm's partners were recently included in the *Legal Media Group's Expert Guides*, a source of guidance for in-house counsel in large corporations worldwide.

<u>Category</u>	<u>Name</u>
Women in Business Law (Corporate Governance)	Patricia David Saini
Banking, Finance and Transactional Law (Corporate Governance)	Patricia David Saini
Banking, Finance and Transactional Law (Mergers and Acquisitions)	Patricia David Saini
Construction and Real Estate (Construction)	Lam Ko Luen
The Best of the Best 2013 (Islamic Finance)	Jalalullail Othman
Banking, Finance and Transactional Law (Islamic Finance)	Jalalullail Othman
Trade Mark	Michael Soo
Patent Practitioners	Michael Soo
Commercial Arbitration	Sudharsanan Thillainathan
Banking, Finance and Transactional Law (Banking)	Lai Wing Yong

## ARTICLES

## IPBA Vancouver 10.5.2014: Arbitration of Intellectual Property Disputes

*Presented by Lam Ko Luen at the Inter-Pacific Bar Association Conference,  
Vancouver Convention Centre, 1055 Canada Place, Vancouver (10 May 2014)*



### Introduction

Globally, IP disputes are on the rise. In China alone, the number of civil IP cases accepted by the local Courts in 2011 was more than 59,000 up by approximately 40% as compared to 2010<sup>1</sup>.

IP disputes can be resolved through litigation or alternative dispute resolution (ADR) avenues such as arbitration and mediation.

Companies are actively seeking expeditious, cost-effective and just avenues to resolve their IP disputes.

### Malaysia

Arbitration for intellectual property disputes in its infancy compared to other jurisdictions around Asia Pacific region.

The current body that administers IP registrations in Malaysia is the Intellectual Property Corporation of Malaysia (MyIPO) which deals with registrations and opposition proceedings involving registrations of patents, trade marks, industrial designs and geographical indications. See <http://www.myipo.gov.my/>

### Singapore

On 1 April 2013 the Government of Singapore adopted an '*Intellectual Property (IP) Hub Master Plan: Developing Singapore as a Global IP Hub in Asia*'. Source: <http://www.ipos.gov.sg/>

The strengths of ADR identified by the Master Plan at paragraph [5.3.5] include:

- (i) A single forum to resolve multi-jurisdictional disputes (especially in complex cross-border contractual arrangements);
- (ii) Avoiding the complexities of different local legal systems;
- (iii) Cross-border enforcement through the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and
- (iv) Significant cost savings where ADR is well-managed.

<sup>1</sup> '*Intellectual Property (IP) Hub Master Plan: Developing Singapore as a Global IP Hub in Asia*', April 2013 [para 5.1.1]. Source: <http://www.ipos.gov.sg/>.

The Master Plan notes that the use of ADR in respect of IP disputes (especially validity and infringement issues) is still relatively uncommon because of a number of factors (see paragraph [5.3.3]).

- (i) Uncertainty over the arbitrability of IP disputes, particularly disputes involving IP validity, and the corresponding uncertainty of the enforceability of arbitral decision of such disputes, across different jurisdictions.
- (ii) Conventional preference and familiarity of parties of using litigation to resolve IP-related disputes.
- (iii) Companies may favour going to Court depending on their international business strategies, for example to seek immediate injunctions on their competitors.
- (iv) In most jurisdictions, the finality of an arbitral award limits the scope of appeal. Parties may prefer litigation due to the ability to appeal a court judgment.
- (v) Lack of a contractual relationship between parties to IP disputes. More often than not, IP infringement disputes occur between parties without any prior contractual relationship.

### **Litigating IP Disputes in Courts - Advantages**

- In most if not all cases, there is no prior agreement between the IP owner and infringer to resolve their disputes through arbitration. Arbitration is therefore limited to disputes in IP rights arising from a contractual relationship between the contracting parties.
- Actions in Court can be filed against third parties.
- Wide area of interim remedies available to the litigant pending the final outcome of proceedings.
- In some jurisdictions, trials are expected to be resolved expeditiously and efficiently. (eg. *Malaysian position following the advent of the Rules of Court 2012*)

### **Litigating IP Disputes in Courts - Disadvantages**

- Due to lack of specialist judges in most jurisdiction, the disposal of IP cases in Courts may take longer.
- Court proceedings are formal and they are open to public.
- In common law jurisdictions, proceedings are adversarial, therefore this may not be something familiar to parties of civil jurisdiction.
- There are jurisdictional limitations to the enforceability of Court judgment.

### **Arbitrating IP Disputes – Advantages**

- Parties can choose arbitrators with specialist technical expertise, or even opt to use a specialist arbitral institution such as WIPO.
- Confidentiality is protected in arbitration. Important as IP and technology disputes commonly involve products or processes that are still in the development phase.
- Enables parties to resolve cross-border or multi-jurisdictional disputes at a single forum, and have the arbitral award enforced across multiple jurisdictions by virtue of the New York Convention. This can save parties significant time and cost.

### **Arbitrating IP Disputes – Disadvantages**

- Arbitration can only take place between parties who have an arbitration agreement. Difficulties arise where the dispute may involve a third party.
- Award is only binding upon 2 parties (or more) to the arbitration agreement.
- Where recourse is only available in Court for certain issues, duplicity of proceedings may arise.
- Arbitration is not cheap.

## **The Legislation – Malaysia**

Arbitration for intellectual property disputes in its infancy compared to other jurisdictions around Asia Pacific region.

Arbitrations in Malaysia is governed by the Arbitration Act 2005 (“AA 2005”).

The AA 2005 is based on the UNCITRAL Model Law on International Commercial Arbitration (“Model Law”).

There is no express provision pertaining to IP disputes in AA 2005.

However, Section 4 of AA 2005 provides:

*“4. Arbitrability of subject-matter*

- (1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy.*
- (2) The fact that any written law confers jurisdiction in respect of any matter on any court of law but does not refer to the determination of that matter by arbitration shall not, by itself, indicate that a dispute about that matter is not capable of determination by arbitration.”*

As the IP legislation in Malaysia such as the Patents Act 1983, the Copyright Act 1987, the Trade Marks Act 1976 and the Industrial Designs Act 1996 are silent on the arbitrability of IP disputes, it is perceived that if there is an arbitration agreement between the parties and the dispute is one that comes within Section 4 of AA 2005 as being arbitrable, parties would be free to arbitrate their disputes.

## **The Institution – Malaysia**

The Kuala Lumpur Regional Centre for Arbitration (“KLRCA”) was established in 1978 under the auspices of the Asian-African Legal Consultative Organisation (AALCO). It was the first regional centre established by AALCO in Asia to provide institutional support as a neutral and independent venue for the conduct of domestic and international arbitration proceedings in Asia. (See: <http://klrca.org.my/>)

KLRCA has developed new rules to cater to the growing demands of the global business community such as the KLRCA i-Arbitration Rules, the KLRCA Fast Track Rules as well as the Mediation and Conciliation Rules.

KLRCA also operates the Kuala Lumpur Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) (<http://www.adndrc.org>) since 2009.

Disputes handled by the ADNDRC are governed by the Uniform Domain Name Dispute Resolution Policy (UDRP) and the Uniform Domain Name Dispute Resolution Policy Rules (UDRP Rules) as well as the ADNDRC Domain Name Dispute Supplemental Rules.

## **The Legislation – Singapore**

International Arbitration in Singapore is governed by the International Arbitration Act (Cap. 143A) (“IAA”). The IAA also incorporates the Model Law.

By contrast, the IP legislation in Singapore such as the Patents Act (Cap. 221) and the Copyright Act 1987 (Cap. 63) (but not the Trade Marks Act) provide for resolution of disputes by arbitration<sup>2</sup>.

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<sup>2</sup> Article by Professor Lawrence Boo titled “*Arbitrability of Intellectual Property Disputes*” delivered at the 4th International Association for the Protection of Intellectual Property (AIPPI) Forum in Singapore, 4 - 6 October 2007.

[https://www.aippi.org/download/reports/forum/forum07/12/ForumSession12\\_Presentation\\_Lawrence\\_Boo.pdf](https://www.aippi.org/download/reports/forum/forum07/12/ForumSession12_Presentation_Lawrence_Boo.pdf)

### **The Institution - Singapore**

The Singapore International Arbitration Centre (“SIAC”) was established in 1991 to meet the demands of the international business community for a neutral, efficient and reliable dispute resolution institution in a fast-developing Asia. Its operations are overseen by a Board of Directors that comprises luminaries in the international arbitration arena. (See: <http://www.siac.org.sg/>)

### **Conclusion**

Arbitration in IP disputes is a growing area.

It remains to be seen if legislatures would take the initiative to revamp the existing legislation that governs IP rights to make way for more developments in this area.

The government would also play an important role in providing for the infrastructure to develop this area of dispute resolution, in particular towards resolving disputes concerning IP rights.

Equally important if not more, there is a need for specialist arbitrators for IP disputes.

## CASE UPDATES

*The following lawyers contributed to the preparation of various case updates in this issue: Yoong Sin Min, Steven Thiruneelakandan, Chan Kok Keong, Tharmy Ramalingam, Tan Gian Chung, Ng Kim Poh, David Dinesh Mathew.*

### Banking

*Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat (Federal Court Civil Appeal No. 01(f)-47-11/2013)*

Semenyih Jaya Sdn Bhd ("SJSB") was in the process of developing its land into an industrial park when it was compulsorily acquired by the Selangor State Government for the purpose of building Lebuhraya Kajang - Seremban. The development was SJSB's sole business and the land acquisition effectively extinguished its business.

Compensation was assessed by the Land Administrator and subsequently by the High Court with the aid of two (2) lay assessors. At both instances, the loss of SJSB's business in connection with the land development was refused to be considered.

On 7.10.2013, SJSB obtained leave from the Federal Court to appeal to the Federal Court in relation to six questions of law, in an appeal which would be the first of its kind.

The questions posed centred on, amongst others, the constitutionality of certain provisions of the Land Acquisition Act 1960 ("LAA") (namely section 40D and the proviso to section 49) in having two lay assessors sit with the High Court Judge to consider the compensation arising from the acquisition of a person's land, where such compensation once assessed and awarded would be deemed final, and the adequacy of such compensation when loss of business arising from an existing development on the acquired land was not accounted for.

The challenge to the said provisions in the LAA relate to whether there is a prohibition against vesting the judicial powers of the Judge/Court into lay persons (as the assessors would be) and whether they may sit with Judges in open court deciding on issues of compensation, which may include legal issues, as is presently permitted by the LAA.

The challenge to the provisions of the LAA which provide for the assessors' decision on the amount of compensation being final and non-appealable is premised on the basis that the lay assessors, in arriving at their decision whether to allow/reject compensation for loss of land and business, would be making a decision on mixed questions of legal principles and quantum of claim, and not just one of pure quantum of claim. That being the case, the prohibition of allowing an appeal against such a decision is unconstitutional.

The adequacy of compensation was also challenged based on whether the LAA allowed for loss of business to be claimed as being part of the "market value" of the acquired land or as one of the factors to be considered for purpose of assessing damage arising from the acquisition which would affect the aggrieved party's other property.

If the Federal Court allows SJSB's appeal, it would in effect mean that the said provisions in the Land Acquisition Act will be struck down for infringing the rights guaranteed under the Federal Constitution of Malaysia. Such rights include that a person shall not be deprived of his right to appeal and the right to adequate compensation for the loss of his land.

The Federal Court appeal has been heard in full on 21.5.2015 and is now pending delivery of decision. Our Mr Chan Kok Keong and Mr Samuel Tan Lih Yau (assisted by Mr Winnou Chung) appeared together with Dato' Dr Cyrus V. Das for the said appeal.

*Teo Cheng Hua (as Liquidator for Jotang Wires & Cables Sdn. Bhd. v. Ker Min Choo & others (Court of Appeal Civil Appeal No. 02(F)-28-05/2013(W))*

**The Court of Appeal affirms decision of the High Court to sentence a private liquidator for contempt of court, for, inter alia, making false statutory declarations and interference with the administration of justice.**

On 2 June 2015, the Court of Appeal, in the case of *Teo Cheng Hua (as Liquidator for Jotang Wires & Cables Sdn. Bhd. v. Ker Min Choo & others (Court of Appeal Civil Appeal No. 02(F)-28-05/2013(W))*, delivered the grounds of judgment on its decision to dismiss the appeal by the liquidator ("the Appellant") in respect of a committal order granted by the High Court against the Liquidator.

In this case, the Appellant, was appointed by the High Court by consent upon the winding-up of Jotang Wires & Cables Sdn. Bhd. (“the Company”) on 29 March 2011. The directors and shareholders of the Company (“the Applicants”) subsequently filed an application to remove the Appellant as the liquidator of the Company (“the Application for Removal”) on the basis that the Appellant had placed himself in a position of serious conflict of interest by acting in a biased and partial manner in favour of the minority shareholders of the Company. The Application for Removal was allowed by the High Court and the Appellant was removed as the liquidator of the Company on 26.9.2013.

The Applicants proceeded to file an application in the High Court for an order of committal against the Appellant. This was based on the earlier findings of the High Court for the Application for Removal that the Appellant’s conduct in altering the statutory Form 75 (being the liquidator’s account of receipts and payments and statement of position in the winding up accompanied with a declaration on oath attesting to the truth of the account) was considered a serious and grave misconduct and tantamount to interference with court proceedings. For the Application for Removal, the Appellant had affirmed an affidavit wherein the Appellant had exhibited a completely different Form 75 (the second Form 75) which showed significant increases in the figures on total payments and receipts compared to the original Form 75 (the first Form 75) for the same period.

The Court of Appeal held that the Form 75 is an important statutory instrument by which the liquidator is made to declare as true an account of his receipts of any money and payments that the liquidator has made, including any dividend paid to creditors as well as any amount he has invested. The Court of Appeal further emphasised that the making of a false statutory declaration is an offence punishable under the Penal Code and the Appellant, as a qualified and reputable chartered accountant and an approved liquidator, would have been fully aware of his obligation to ensure the accuracy and correctness of his verification in the first Form 75.

The Court of Appeal thus affirmed the decision of the High Court which had sentenced the Appellant to a fine of RM50,000.00 in default of 50 days imprisonment and held that the Appellant’s act in amending the first Form 75 and lodging the second Form 75 with a statutory declaration without good and credible reasons was a direct interference with the proper administration of justice and constituted contempt of court.

The sentence meted out by the High Court and affirmed by the Court of Appeal for the contempt of court by the Appellant reflects the gravity in making false statutory declarations, especially by liquidators who would be obliged to ensure the accuracy and correctness of the liquidators’ accounts.

*Malayan Banking Berhad v. Chip Lam Seng Enterprise Berhad [2014] 1 LNS 1583*

The High Court in this case had to decide on the issues concerning the power of the winding-up court to appoint a provisional liquidator (“PL”) pending the disposal of a winding-up petition when a PL had already been appointed by the respondent when its creditors’ voluntary winding-up began.

On 28.8.2014, the petitioner presented a winding-up petition against the respondent. On 2.9.2014, the petitioner’s solicitors informed the respondent’s solicitors of the filing of the winding-up petition and that the petitioner would be applying for a PL to be appointed.

The petitioner’s application to appoint a PL was filed on 5.9.2014 (“Petitioner’s PL Application”). On the same date, the respondent’s directors signed a circular directors’ resolution resolving, inter alia, that they formed the opinion that the respondent would be unable to continue its business because of its liabilities and that a certain individual be appointed as the respondent’s PL, with a meeting of the respondent’s creditors be convened.

Thereafter, the respondent applied for, inter alia, leave of the winding-up court for the respondent to be voluntarily wound up and that the petitioner’s winding-up petition be stayed in the light of the commencement of the respondent’s creditors’ voluntary winding-up (“Respondent’s Leave Application”).

The Petitioner’s PL Application and the Respondent’s Leave Application were heard together.

Six banks filed notices of intention to appear in the winding-up proceedings. The banks, which were owed an aggregate sum of RM149,153,146.36 by the respondent, supported the Petitioner’s PL Application and opposed the Respondent’s Leave Application. Our firm acted for one of the supporting creditors.

The High Court decided to allow the Petitioner’s PL Application and to dismiss the Respondent’s Leave Application. In doing so, the Court held that under section 217(2)(d) of the Companies Act 1965, a winding-up court could still proceed with a winding-up action despite there being proceedings for the company to be wound up voluntarily, if the court is satisfied that the voluntary winding-up could not be continued with due regard to the interests of the company’s creditors or contributories.

The Court also held that before it would allow the voluntary winding up to continue under section 255 of the Companies Act 1965, there should be credible evidence to show justification for the company's directors to stop carrying on the company's business and to appoint a PL under a voluntary winding up to take over the company's affairs from the directors and also justification why the company's contributories cannot expeditiously consider and pass a special resolution to commence a voluntary winding-up, instead of the directors doing so.

Further, it was held that if a winding-up petition has been presented first (on the ground that the company is unable to pay its debts), before the company's voluntary winding-up commenced, the company has to obtain leave of the winding-up court under section 276 of the Companies Act 1965 before it may pass a special resolution under section 245(1)(b) of the Companies Act 1965 to commence a voluntary winding-up.

The Court further held that if a company's directors and shareholders commenced voluntary winding up with the intention to interfere with the winding-up court's jurisdiction in respect of a winding-up petition, such an interference may amount to a contempt of court.

On the facts, the Court found that the respondent's voluntary winding-up was not bona fide and was contrived to unlawfully thwart the Petitioner's PL Application and the winding-up petition itself.

An inquiry was held before the Land Administrator on various dates but the Land Administrator did not make any order for sale in respect of the subject land. Instead, purporting to act under section 265(3A) of the NLC, the Land Administrator 'referred' the application to the High Court via his letter dated 2 January 2012 because the appellant chargor had disagreed with the reserved price proposed by the respondent chargee.

The High Court purporting to act under section 265(3A) made an order for sale and took the view that section 265(3A) of the NLC can be read independently of section 265(2) and (3) of the NLC and that the High Court may make the order for sale for a Land Office title despite there not having been two prior unsuccessful sales conducted by the Land Office. The chargor appealed to the Court of Appeal.

On 26 May 2014, the Court of Appeal allowed the chargor's appeal and set aside the Order of the High Court as well as the decision of the Land Administrator to refer the matter to the High Court. The Court of Appeal also ordered the matter to be remitted back to the Land Administrator to carry out a proper inquiry in respect of the application for order for sale and to make the appropriate decision under section 263 of the NLC.

The Court of Appeal held that section 265(3A) of the NLC should be read together with section 265(2) and (3) of the NLC and that there still must have been two prior unsuccessful sales by the Land Administrator before he can lawfully refer the matter to the High Court.

*U.R. Leisure Resorts Sdn Bhd v. Malayan Banking Berhad*  
(Court of Appeal Civil Appeal No. P-02-2233-09/2012)

The question of law that was considered by the Court of Appeal in this appeal was whether a Land Administrator has the power to refer to the High Court an application for an order for sale, made to the Land Administrator pursuant to section 260 of the NLC, without previously having carried out a sale of the subject land at the Land Office twice pursuant to section 265(1), (2) and (3) of the NLC.

The appellant was the registered proprietor of the subject land which was charged to the respondent bank as security for a loan taken by a third party. The third party defaulted on the loan. As the subject land was held under a Land Office title, the respondent proceeded to apply to the Land Administrator for the sale of the land pursuant to section 260 of the NLC.

*Ranjit Singh a/l Jarnail Singh v. Malayan Banking Berhad.*  
(Federal Court Civil Appeal No. 02(F)-28-05/2013(W))

**Federal Court considers whether a chargee bank can be made liable to a purchaser at a public auction when the Order for Sale is subsequently set aside.**

On 10 December 2014, the Federal Court, in the case of *Ranjit Singh a/l Jarnail Singh v. Malayan Banking Berhad.* (Federal Court Civil Appeal No. 02(F)-28-05/2013(W)), was invited to answer a question of law on the rights and remedies of a purchaser of land at a public auction when the Order for Sale is subsequently set aside by the chargor on the ground of non-compliance of the rules of procedure.

## General Litigation

In this case, the appellant (“the Purchaser”) on 12 September 1990 purchased a piece of land in Kuala Lumpur (“the Property”) under a public auction pursuant to an Order for Sale dated 15 February 1988 obtained by the chargee Bank (“the Bank”). The Purchaser had duly paid all sums due under the auction sale. However, the Property could not be transferred to the Purchaser as there was a private caveat lodged on the Property.

On 14 June 1997, pursuant to an application filed by the Chargor, the High Court set aside the Order for Sale and the sale of the Property by public auction. It was further ordered by the High Court that the purchase price be repaid to the Purchaser and damages to be assessed and paid by the Bank to the Chargor, as well as the Purchaser. However, upon appeal, the Court of Appeal set aside the High Court order for damages to be assessed and paid to the Chargor and the Purchaser. The Court of Appeal nevertheless found that the Order for Sale was tainted with impropriety due to the Bank’s failure in adhering to the provisions of the National Land Code and the Order 83 Rules of the High Court 1980.

The Purchaser subsequently filed a separate action against the Bank for monetary compensation for breach of contract, misrepresentation, negligence and breach of duties whether contractually, statutory, fiduciary or otherwise, in relation to the loss incurred by the Purchaser as a result of the setting aside of the auction sale. This action was dismissed by the High Court and affirmed by the Court of Appeal. On appeal, the Federal Court in considering the law with regard to the position of a chargee and a purchaser at an auction sale, held that at the auction sale, there was only a judicial contract between the Purchaser and the Bank, which emanated from the Order for Sale. The Federal Court adopted the position that upon the setting aside of the Order for Sale, the judicial contract on 12 September 1990 between the Purchaser and the Bank became null and void ie no contract was struck between the parties. Further, it was held that the Bank had not committed any breach of contract as the Property could not be transferred due to the existence of the private caveat and the setting aside of the Order for Sale. The Purchaser’s claim for damages against the Bank therefore had to fail and the Purchaser was only entitled to the refunded purchase price.

The decision above shows that Courts will not hesitate to set aside an order for sale and an auction sale where it is shown that the legal requirements have not been complied with by the chargee. It is nevertheless pertinent that the Federal Court has confirmed the position that even in such circumstances, the purchaser would only be entitled to a refund of the purchase price and not more.

*Tenaga Nasional Berhad v. Bright Rims Manufacturing [2015] 1 CLJ 521 and Tenaga Nasional Berhad v. AWP Enterprise [2015] 1 CLJ 400*

The Court of Appeal recently delivered two important decisions in the area of Malaysian energy law, in particular relating to claims for loss of revenue by Tenaga Nasional Berhad (TNB) due to meter tampering.

In both cases (*Tenaga Nasional Berhad v. Bright Rims Manufacturing [2015] 1 CLJ 521* and *Tenaga Nasional Berhad v. AWP Enterprise [2015] 1 CLJ 400*) the Court of Appeal found in favour of TNB and held that claims for back billed sums due to meter-tampering must necessarily be based upon an estimate.

The Court of Appeal dismissed the Respondents’ argument that TNB has a burden to prove its loss of revenue to an exact certainty.

In the *AWP Enterprise* case, the Court noted that “for the electricity supplier, it is impossible to turn back the clock and re-meter the consumption. The determination is necessarily by an estimate”. In its final analysis, the Court went on to make the following three crucial points:-

- (a) A consumer must pay for the electricity he consumes.
- (b) He should not be allowed to benefit from tampering of meters to pay less, as it results in the general public paying more for their electricity.
- (c) Since the clock cannot be turned back to re-measure the consumption, only estimates can be made, and if such estimate is not shown to be manifestly unreasonable, excessive or wrong, it may be accepted as proof upon a balance of probabilities of the amount estimated and claimed.

In the *Bright Rims* case, the Court of Appeal warned against requiring too high a standard of proof that would ultimately reward the consumer who tampered with the meter.

In this connection, the Court went on to observe as follows:-

## CASE UPDATES

SHOOK LIN & BOK

*“The wisdom of doing so is so questionable that justice cannot possibly require such a standard. The inequity is equally obvious, for such consumer comes not with clean hands. Justice must necessarily hold that in the balance of justice, it must be the consumer who tampered with the meter who must bear the risk of having to pay more rather than the licensee to take a loss not because it was unable to prove the tampering but because it could not meet the high standard required from the estimate.”*

The two cases marked a departure by the Court of Appeal from a series of cases which had previously held that TNB was required to prove its loss of revenue to a contractual degree of certainty.

*Partners of the firm Steven Thiru and David Mathew appeared for TNB in both appeals*

## Intellectual Property

*YTL Corporation Berhad v JacMoli Designs & Jewellers Sdn Bhd. (Court of Appeal Civil Appeal No. W – 02 – 3116 – 12/2011)*

The respondent filed an action against the appellant (vide Kuala Lumpur High Court Civil Suit D22IP-11-2010) alleging that the appellant had infringed its JacMoli & device trade mark (“the JacMoli trade mark”) and passed off its business as being associated with the respondent.

The respondent’s action was premised on the fact that the appellant had left in the archives of its websites several articles featuring the respondent, as well as the respondent’s JacMoli boutique and trade mark, dating from when the respondent was a tenant at the appellant’s Starhill Gallery Shopping Centre (“Starhill”). The appellant denied the allegations of trade mark infringement and passing-off. The appellant also filed a counterclaim against the respondent based on the following:-

- the respondent’s action was mala fide and / or was an abuse of process of court for having been filed for a collateral purpose.
- registration of the JacMoli trade mark was liable to be expunged for non-use.
- the respondent was guilty of passing-off and / or causing a false association between the respondent’s business or goods and the appellant’s business or goods associated with the appellant’s “STARHILL” or “STARHILL GALLERY” trade names and trade marks.

The High Court allowed the respondent’s claims and dismissed the appellant’s counterclaim. The High Court held, inter alia, that :-

- the unauthorised use and continued publication of the JacMoli trade mark amounted to trade mark infringement by the appellant, despite the fact that the appellant was not using the JacMoli trade mark in relation to any of the goods covered by the registration.
- use of the JacMoli trade mark was in the course of trade because the appellant’s witness had admitted that the alleged infringing articles were being used for commercial purposes.
- the trade and public would be misled into believing that the location of the respondent’s business and the appellant’s business establishment were in some way associated or connected with one another when no such association existed.
- use of the JacMoli trade mark on the appellant’s websites had the effect of luring the respondent’s potential customers to switch for jewellery at the other jewellery shops at Starhill.

The appellant appealed to the Court of Appeal against the said decision and contended, inter alia, that :-

- the alleged infringing articles on the appellant’s websites were merely part of its record of past events or were historical facts pertaining to Starhill.
- the alleged infringing articles were included on the appellant’s websites as one of the means of promoting and providing publicity to the respondent when the respondent was still a tenant at Starhill; and the respondent had benefited from such promotion and publicity.
- the respondent’s action was mala fide and / or was an abuse of process of court as the respondent did not have a genuine and / or valid claim in trade mark infringement and passing-off against the appellant. The action had been filed for a collateral purpose.
- registration of the JacMoli mark was liable to be expunged for non-use.
- the respondent was in fact guilty of passing-off and / or causing a false association between the respondent’s business or goods and the appellant’s business or goods associated with the appellant’s “STARHILL” or “STARHILL GALLERY” trade names and trade marks by changing its name to “STAR GALLERY JEWELLERY SDN BHD” without the consent, licence or approval of the appellant. This took place nearly 2 years after the respondent had ceased to be a tenant at Starhill.

The Court of Appeal allowed the appeal with costs of RM100,000.00 to be paid by the respondent to the appellant. Consequently, the Court of Appeal :-

- set aside the decision of the High Court.
- allowed the appellant's counterclaim and ordered the following :-
  - (a) the Register of Trade Marks be rectified by expunging or removing registration of the JacMoli trade mark under Section 45(1) and/or Section 46(1) of the Trade Marks Act 1976 and the Registrar of Trade Marks to expunge or remove the said registration upon being served with a copy of the order;
  - (b) a declaration that the appellant had not infringed the JacMoli trade mark registration;
  - (c) general damages to be assessed by the Senior Assistant Registrar of the Kuala Lumpur High Court;
  - (d) aggravated and/or exemplary damages to be assessed by the Senior Assistant Registrar of the Kuala Lumpur High Court; and
  - (e) interests.
- the industrial design was not new as an earlier industrial design differing from it only in immaterial details was published or disclosed to the public in Malaysia. In determining this issue, it was necessary to examine the representation or drawing of the design as appeared in the certificate of registration.

Following the Court of Appeal's decision to reverse the decision of the High Court, the respondent filed applications for leave to appeal to the Federal Court against the decision of the Court of Appeal. However, the respondent's leave applications were dismissed.

*F&N Diaries (Malaysia) Sdn. Bhd v Tropicana Products, Inc & Other Cases [2013] 1 LNS 380*

The respondent filed actions against the appellants for the alleged infringement of its industrial design and for the invalidation of one of the appellants' industrial design at the High Court. The High Court allowed the respondent's claims. The appellants appealed to the Court of Appeal.

The Court of Appeal held that the respondent's industrial design was not a valid design and hence, allowed the appellants' appeals. In invalidating the respondent's industrial design, the Court of Appeal found, inter alia, as follows:-

- registration of the respondent's industrial design was invalidated on the grounds, inter alia, that it did not satisfy the definition of an "industrial design" under the Industrial Designs Act 1996. While the design had an element of eye appeal, the features of shape or configuration of the design were dictated solely by the function which the article to which the design was applied had to perform.

## SEMINARS &amp; CONFERENCES

## International Malaysia Law Conference 2014

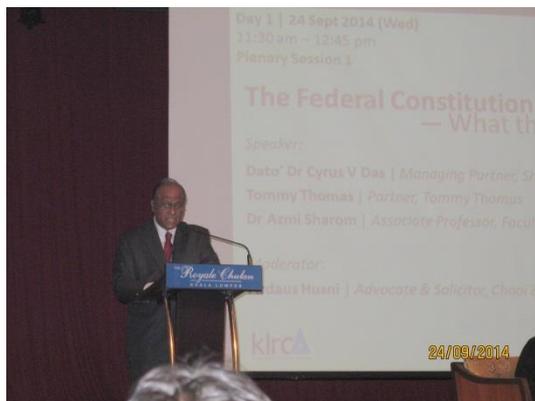


**“Reshaping the Legal Profession, Reforming the Law” 24 – 26 Sept 2014**

During the concluded International Malaysia Law Conference, our Partner Mr. Steven Thiru the current President of the Malaysian Bar, was the moderator during the Keynote Address on **"The Practice of Law: A Vocation Survives Amidst Globalisation"** delivered by the Honourable Geoffrey Ma, GBM, Chief Justice of the Hong Kong Court of Final Appeal

In the 1st Plenary Session of the Conference, former Managing Partner Dato' Dr. Cyrus V. Das was one of three eminent panelists who shared their sagacious views on **"The Federal Constitution of Malaysia after 50 Years - What the Future Holds"**.

On the final day of the three day Conference, our Partners Ivan Ho Yue Chan and Lau Kee Sern spoke at length on numerous issues arising from the proposed amendments to the Companies Act of 1965 during the well-received Corporate & Commercial Session sponsored by our firm, entitled **"What's Next in Company Law in Malaysia?"**



SEMINARS & CONFERENCES

## Arbitration of Intellectual Property Disputes



On 10<sup>th</sup> May, 2014, our partner, Lam Ko Luen presented a paper on “Arbitration of Intellectual Property Disputes” at the Inter-Pacific Bar Association Conference, Vancouver Convention Centre, 1055 Canada Place, Vancouver. His paper is reproduced in this issue.

## Asian Patent Attorney Association Meeting (“APAA”) 63<sup>rd</sup> Council Meeting in Penang, Malaysia

Our Mr Michael Soo and Mr Ng Kim Poh attended the Asian Patent Attorneys Association (“APAA”) 63<sup>rd</sup> Council Meeting held in Penang, Malaysia, from 8<sup>th</sup> to 11<sup>th</sup> November 2014.

APAA is a non-governmental organisation established in December 1969 with the objective of creating, promoting and enhancing awareness and protection of intellectual property in the Asian region, including Australia and New Zealand. It has 18 Recognized Groups and more than 2,300 members.

The Meeting in Penang was organized by the Recognized Group of APAA Malaysia. Mr Michael Soo is the President of the Recognized Group of APAA Malaysia and the Co-Chair of the Organizing Committee.

The opening ceremony of the Meeting was graced by, among others, the Right Honourable Mr Lim Guan Eng, Chief Minister of Penang; Honourable Justice Tan Sri Hasan bin Lah, Senior Federal Court Judge, representing the Right Honourable Tun Arifin Zakaria, the Chief Justice of Malaysia; and Mr Erik Wilbers, Director of World Intellectual Property Organization.



## SEMINARS &amp; CONFERENCES

## BNM's 11th Banking Supervision Course

The Firm was invited by Bank Negara Malaysia ("**BNM**") to speak at **BNM's 11th Banking Supervision Course**. The Course was organised by BNM's Human Capital Development Centre as part of the training for supervisors in the Bank Supervision Departments.



Two separate sessions were held. En. Jal Othman (Head, Islamic Finance) and Ms Hoh Kiat Ching conducted a session on 20 June 2014 in relation to collateral and security, while Mr. Lau Kee Sern spoke on 23 June 2014 on bankruptcy and foreclosure proceedings.

In the first session, Jal and Kiat Ching gave an introduction to financing and financing documentation, covering the types of financing available, and the documentation involved, including the principal instrument and the security documents. Kiat Ching elaborated on the common terms found in the principal instrument, and also on the different types of security which a financial institution may consider obtaining. The session then delved deeper into security over land, in the form of charges over land under the National Land Code 1965 and liens protected by lienholder's caveats.

In the session on bankruptcy proceedings, Kee Sern gave the participants an overview of the proceedings from act of bankruptcy to discharge and annulment. Special topics covered include the procedures involved in commencing and prosecuting a bankruptcy action, the effect and consequences of a receiving order and an adjudication order ("ROAO") made against an individual, and the circumstances in applying for and obtaining a discharge or annulment of the ROAO.



On foreclosure proceedings, Kee Sern took time to explain the fundamental differences between rights ad rem or personal rights and rights in rem or real rights. His talk also covered the procedures involved in applying for and/or conducting an auction sale at the High Court and the land office, as well as auction sale of property which has yet to be issued with any document of title.

The sessions were very interactive, with the participants from BNM asking pertinent questions and putting forward scenarios for discussion.

## Judicial Review at Bank Negara Malaysia



The firm's Steven Thiru and Gregory Das delivered a talk on judicial review at Bank Negara Malaysia on the 31<sup>st</sup> of October 2014. The event was attended by members of the legal and policy departments of the Bank, as well as representatives from the Bank's senior management. The talk focused on the law and procedure connected with judicial review applications in Malaysia, with a particular emphasis on the extent to which the exercise of the Bank's powers could be subjected to challenge in a judicial review.



SEMINARS & CONFERENCES

## Family Mediation



Our partner, Ms Goh Siu Lin was invited to deliver a lecture on "Family Mediation" for the BSK Division (Bahagian Sokongan Keluarga) Training Division, Department of Syariah Judiciary Malaysia, Institut Latihan Islam Malaysia, Bangi. Her session on 12th March, 2015 was attended by the judicial and legal officers of the BSK Division of the Syariah Courts, nationwide. In recent times, the Syariah Courts have been exploring the use of alternative dispute resolution methods such as mediation and arbitration. The aim is to speedily resolve family disputes, particularly where there has been non-compliance with the maintenance orders made by the Syariah Courts.



SEMINARS & CONFERENCES

## Taylor's Law School Moots



On 30th May 2015, partner, Kong Chia Yee, was judge for the day at Taylor's Law School internal moot.

The law students were tasked to conduct an appeal as part of their advocacy module. They had obviously worked hard and did not crack under pressure despite the gruelling questions posed by the judges.

At the end of the day, after delivering decision for the "appeal", the judges offered constructive tips to these prospective advocates and shared their experiences in legal practice. All in all, a rewarding experience for everyone!

**ANNOUNCEMENTS: Retirement of two icons of the firm**



December 2014 saw the retirement of two icons of the firm, Dato' Dr. Cyrus Das and Mr. Porres Royan.

Dato' Dr. Cyrus Das retired as Managing Partner and Mr. Porres Royan as Deputy Managing Partner, respectively, after having enjoyed illustrious legal careers with the firm.

On 23<sup>rd</sup> January, 2015, the partners hosted a special felicitation and farewell dinner for both Dato' Dr. Cyrus Das and Mr. Porres Royan at the Ritz-Carlton Hotel. Their unwavering integrity, commitment to excellence and leadership has seen the firm grow in strength whilst maintaining all its core values.

The Firm wishes Dato' Dr. Cyrus Das and Mr. Porres Royan all the best in their future endeavors.



ANNOUNCEMENTS: Retirement of two icons of the firm



ANNOUNCEMENTS: Retirement of two icons of the firm



## ANNOUNCEMENTS:

## Elections of the Malaysian Bar



The Firm congratulates Steven Thiru on his election as the President of the Malaysian Bar on 14th March 2015 after the 69th Annual General Meeting of the Malaysian Bar, and wishes him a successful tenure in office.

Steven is the third President of the Malaysian Bar that the Firm has produced, after Datuk Param Cumaraswamy (1986-1988) and Dato' Dr. Cyrus V. Das (1997-1999).

Steven has served the Malaysian Bar in various committees since the late 1990's and became a member of the Bar Council in 2006. He has chaired the Bar's Industrial Law Practice Committee, Professional Standards and Development Committee, Ad-Hoc Committee on the Common Bar Course, Finance Committee and the Committee on Orang Asli Rights.

Steven was elected as an Office Bearer of the Bar Council, first as Treasurer (2011 - 2013) and then as Vice-President (2013-2015).

Steven's main areas of practice are employment law, administrative law and general litigation. He also currently heads the Firm's Family, Probate and Trusts, Tax and Revenue, and Competition and Anti-Trust Law Departments.

## Elections of the Association of Women Lawyers (AWL)

The Firm congratulates Ms Goh Siu Lin and Ms Lee Lyn-Ni, who were elected President and Executive Committee Member, respectively, of the Association of Women Lawyers (AWL) at their Annual General Meeting held on 29th April, 2015.

The mission of the Association of Women Lawyers is to advance the professional development of women lawyers and law graduates in Malaysia. AWL advocates for legal reform for the attainment and full enjoyment of all rights for women from all walks of life based on principles of substantive equality. Its current areas of focus include family law reform, child sexual abuse, human-trafficking and violence against women. Amicus support is provided in all tiers of the Malaysian legal system on issues of concern to women.



## Montfort's Boys Town Appointment



In July 2014, our Ms Janice Anne Leo was appointed as a member of the Board of Governors of Montfort's Boys Town ("Montfort").

Montfort with its humble beginnings as a collection of attap shacks in a rubber estate, has grown exponentially, having helped more than 6000 young men to date. Montfort provides a safe and secure residence and vocational skills training to children from broken homes, orphans and juvenile delinquents with the aim of improving their employment prospects for a brighter future.

## Experiences of a pair of Australians travelling and interning in Malaysia

*By Blake Lloyd & Diarna Cuda*



Perhaps the first thing that we immediately noticed was the difference between Kuala Lumpur and Sydney. The chaos of a growing city versus the clockwork and routine of Sydney. It was amazing! Some of our favourite experiences in KL included the shopping, the food and the culture. The Pasar Malam in Cheras was a real highlight in our second week, literally kilometres of different food stalls and we wished we had time and room in our stomachs to try everything, however what we did try left us wanting more. One of our favourite places in KL was Heli Lounge Bar, just around the corner from the office, where we could relax after work and enjoy the amazing view of KL spread out in every direction. On our final day in Malaysia

we were lucky enough to be able to visit Batu Caves, which was awe inspiring and a fitting end to our time in a city that provided such a varied range of experiences in so short a time.

While the exciting hustle and bustle of KL was enough to put Sydney to shame, after a week of working and exploring, we were keen to see what else Malaysia had to offer. First stop, Langkawi. Following advice from our pupils and colleagues warning of the horrendous afternoon traffic, we opted for a ride on the, albeit equally jam-packed, monorail and the



KLIAExpress to the airport. Arriving in Langkawi late on Friday night, we had no idea what we were in for. The following morning we woke to the most amazing view that was Cenang Beach, with its crystal clear water and array of water sports. Our entire weekend was spent swimming and relaxing, soaking up the sun, cooling off with an ice-blended, and sampling some of Langkawi's best restaurants. Coming from a lifestyle in Australia that revolves around the water, Langkawi was the perfect oasis for us. We only wished we had more time to explore other parts of the island.

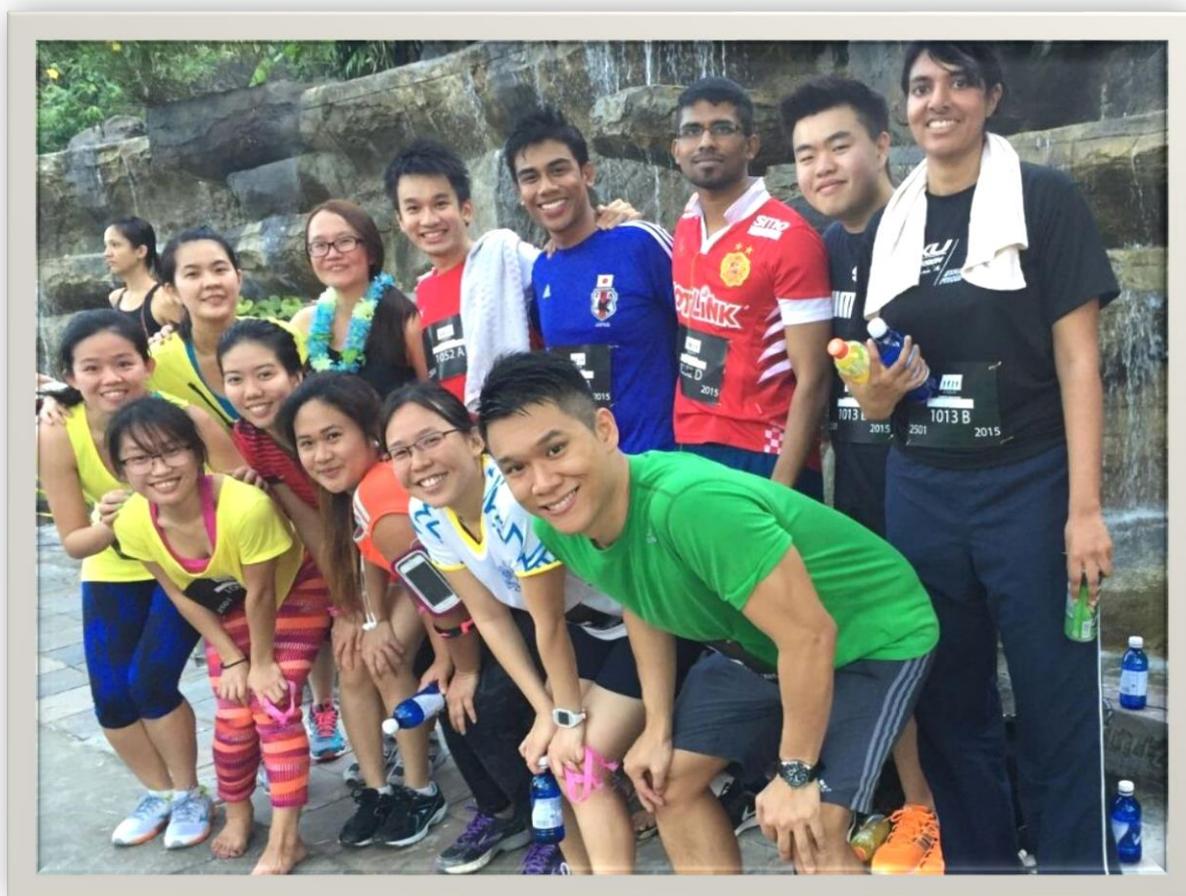
The weekend after Langkawi, we were lucky enough to be able to visit the food capital of Malaysia, Penang. There was so much food that it would be hard to say which we loved the most, and we were also lucky enough to be staying in a converted Chinese shopfront. We did discover a really nice café, Rainforest café, as a great place to relax in the morning with a coffee and some food, but coffee was not what we were in Penang to try out. Special mention would have to go to the Cendol of a certain street stall, and Tek Sen was a fantastic Chinese restaurant to eat at.

Our time at Shook Lin & Bok was on the whole, a remarkable experience that we feel very privileged to have been able to undertake. We would both like to thank Mr David Mathew and Ms Hoh Kiat Ching for taking us under their wings. We are also very grateful for the pupils in chambers for being so helpful and for being such a wonderful bunch of prospective lawyers. Thank you also to all the lawyers and staff at Shook Lin & Bok for being so welcoming and friendly to a couple of interns from Australia.



## SOCIAL &amp; SPORTS

## KL Bar Run 25 January 2015



On 25.1.2015, several teams from Shook Lin & Bok took part in the Kuala Lumpur Bar Run at the scenic Lake Gardens of Kuala Lumpur. The relay format required a team of four runners, each team was required to complete a lap of 3.1 kilometres comprising a steep slope and stairs. “The Sweeties”, led by Marianne Loh crossed the finish line in 7th place out of 63 teams. The Sweeties’ victorious experience is set out in the following interview:-

## SOCIAL & SPORTS

**E : Edward Kuruvilla (1st Runner)**  
**W : Lim Wei Lih (2nd Runner)**  
**M : Marianne Loh (3rd Runner)**  
**S : Samuel Tan (4th Runner)**

1. Why did you choose to participate in the KL Bar Run?

M: I've always been an avid runner, so when I received an e-mail from the Kuala Lumpur Bar about the KL Bar Run, I figured it would be great if I could get a team together to represent Shook Lin & Bok.

W: Prior to this, I had always wanted to take part in a long distance run. When Marianne contacted me, I thought this would be a good opportunity to give it a go.

S: To support Marianne.

E: To support Samuel. I got tricked into participating in this run!

2. How many times did your team train for the KL Bar Run?

W: The whole team, with the exception of Edward, managed to have a practice run at Lake Gardens individually but we did not practise as a team at all.

3. Tell us about the excitement leading up to the event. Was there any excitement to begin with?

S: There was no excitement on my part. To be honest with you, I was worried that we would end up finishing last !

E: I echo Samuel's comments. I was quite convinced we were going to humiliate ourselves and the firm. In fact, on the morning of the run, Samuel and myself actually considered having breakfast at the Lake Club, and leaving Wei Lih and Marianne to complete two laps each!

W: The prospect of getting up at 5.00am was absolutely dreadful.

M: Of course I was excited! Unlike my other team members, I was actually quite optimistic about our prospects of securing a good place. As for waking up early, I don't see how it's any different from getting up early for Court!

4. Could you please shed some light on how you arrived at the name "Sweeties" for your team?

M: Simple, because it's short and sweet! Like each of us!

(At this point, Samuel, Wei Lih and Edward remain silent, and when pressed to offer comment, decline repeatedly.)

5. Was there any thought put into the order of the runners?

S: A little bit. It's really important to organize the order of runners, as every runner plays a unique role. The first runner's role is to set the pace for the other runners and to study the track to inform subsequent runners of how to go about their run. The second and third runners are usually the fittest of the group. Their role is to maintain the pace that was set by the first runner. The last runner's role is to go all out and help the team secure a good place. It's safe to say the last runner runs with a huge burden on his shoulder.

(The other members of the team quickly point out that Samuel was in fact, the last runner.)

6. What would you say was the most challenging part of the whole experience?

W: Without a doubt, it was waking up at 5.00am on a Sunday morning.

S: Wei Lih is right. To get up on a Sunday morning at 5.00am was unbelievably difficult.

M: Ensuring that all my teammates arrived on time! It was really stressful.

E: For me it was finding a parking space, as I arrived 5 mins before the run was to begin. If it was not for Samuel's quick thinking in bringing me into Lake Club, I would have had a different run that morning; running away from Marianne!

7. Samuel, kindly run us through the course on that day.

S: The First Quarter was quite straightforward. Apart from the slight “distractions”, it was smooth. (Looks at Edward disappointingly). The Second Quarter was a prelude to the most challenging part of the course. Here we had to run up a hill that seemed, at that time, to be very steep. Little did we know that the Third Quarter included a steep flight of staircases! It was almost as if we were jogging up Batu Caves! What followed in the Fourth Quarter, by comparison, was a breeze! I guess you could say it was “all downhill from there”. Thankfully so, as by then, even if we had run out of energy, we could roll down to the finish line.

8. Team Captain, were there any hiccups before or during the actual run?

M: Fortunately there were no major hiccups. Everyone arrived on time, although I was not too pleased when I heard that Samuel and Edward almost abandoned us! The run itself went better than planned; I did not expect us to finish 7th place amongst 63 teams! If I were to be completely honest with you, at the end of the day it was never about the result. It was about completing the run as a team, and doing it whilst running with our brothers and sisters of the Bar. All in all, I was very pleased with the lead up to the run and the actual run itself.

9. How did all of you feel when you found out Sweeties had come out 7th out of 63 teams?

W: I was absolutely elated. Never did I expect us to do so well! I must also add that we secured the best position amongst the 4 teams that represented Shook Lin & Bok!

M: Actual disbelief, that what’s I felt. As I previously mentioned to you, I never expected us to do so well.

S: Surprised and happy.

E: It was great to know that all our hard work paid off. Deep down inside, I was quite sure we would do well, but I never thought for one second we would do THIS well!

10. Lastly, should there be another KL Bar Run, can we expect Sweeties to again fly the flag for Shook Lin & Bok?

M: Yes! Of course! (empathically)

W: No way.

S: Never getting up that early on a Sunday morning ever again just to run.

E: I believe Marianne would need to find herself new teammates.

(Afterward, the whole team agreed that they would participate in future runs. This is not the end of Team Sweeties.)



## INTERVIEWS



### Amalkan Sikap Hormat-Menghormati Di Tempat Kerja – Adinan Saibun

by Daniella Zulkifli

Shook Lin & Bok ialah salah sebuah firma guaman yang tertua dan terbesar di Malaysia. Peguam-peguam di SLB semua tahu bahawa firma ini tidak akan boleh berfungsi jika bukan kerana tenaga staf. Untuk edisi Legal Update kali ini, saya berpeluang untuk menemu bual Adinan Saibun, yang telah berkhidmat di SLB selama 41 tahun.

Menurut Adinan, beliau menyertai SLB pada tahun 1974. Beliau ketika itu berumur 18 tahun. Mr. Tan Teow Bok merupakan CEP dan SLB masih lagi terletak di Medan Pasar. Beliau menyatakan bahawa pada masa itu (tahun 70-an), bukan senang bagi seseorang untuk mendapatkan pekerjaan, dan Adinan mendapat tempat bekerja di SLB setelah disyorkan oleh salah seorang rakannya yang bekerja di MBSB.

Adinan bertugas di bahagian pentadbiran. Tugas-tugas beliau termasuklah menerima dan menghantar faks, despatch, dan menggantikan sesiapa yang tidak hadir ke pejabat (relief duty). Dahulu, beliau bertanggungjawab mengendalikan “stamping”. “Itu specialty saya. Cakaplah apa nak buat semua saya tahu,” katanya. Dato’ Ng Mann Cheong, bekas rakan kongsi di SLB kemudiannya mengesyorkan beliau dinaikkan jawatan sebagai seorang kerani pentadbiran pada kira-kira tahun 1986.

Apabila ditanya sama ada beliau seronok bekerja di SLB, Adinan tertawa kecil dan memberitahu saya “Ada time bagus, ada time tak bagus”. Kerja harian di SLB boleh mendatangkan tekanan, tetapi Adinan mengatakan bahawa ini ialah lumrah bekerja di firma guaman besar seperti SLB. “Biasalah,” katanya. Malah, beliau dulu pernah bekerja selama 24 jam berturut-turut!

Selain itu, Adinan memberitahu saya bahawa beliau seronok apabila mendapat hadiah cabutan bertuah. “Dulu selalulah dapat, masa tu kita buat Annual Dinner di Genting Highlands,” katanya. Sekarang macam mana? “Sekarang ni dah kurang sikit.” Saya rasa ini “hint” Adinan supaya SLB mengadakan banyak lagi cabutan bertuah untuk meningkatkan peluangnya memenangi sesuatu.

Beliau kemudiannya menceritakan tentang keluarga beliau dan memberitahu saya bahawa beliau mempunyai 2 orang anak, yang mana salah seorang daripada mereka bekerja di SLB – Saleha Adinan. Anaknyanya yang seorang lagi bekerja sebagai Eksekutif Akaun di sebuah syarikat multinasional. Adinan mempunyai 3 orang cucu, 2 orang lelaki dan seorang perempuan. Cucunya yang sulung berusia 7 tahun, yang kedua berumur 5 tahun manakala yang bongsu berumur 4 tahun.

Ketika ditanya mengenai hobi beliau, Adinan memberitahu saya bahawa beliau suka memasak. Apabila ditanya pula apakah masakan istimewa beliau, Adinan menyatakan bahawa beliau pakar dalam memasak kari daging! Malah, tiap-tiap tahun SLB akan menggunakan khidmat beliau dalam memasak sajian untuk parti akhir tahun SLB.

“Macam mana Adinan boleh minat memasak?”, saya tanya. Adinan hanya mula belajar memasak ketika beliau berumur kira-kira 48 tahun. Pada masa itu, keluarga beliau banyak membuat kenduri dan mereka selalu menggunakan khidmat catering. “Tapi, bila kita suruh orang masak, dia selalu minta macam-macam,” katanya. Adinan kemudiannya memutuskan untuk mula belajar memasak sendiri. “Dulu, masak nasi pun saya tak reti!”, ujarinya sambil ketawa.

Sebelum mengakhiri temu bual dengan Adinan, saya bertanyakan jika beliau mempunyai apa-apa nasihat untuk peguam-peguam di SLB. “Kita kena respect orang tua,” katanya. Beliau mengatakan bahawa setiap orang hendaklah faham bahawa sikap hormat-menghormati penting di tempat kerja, sama ada sesama peguam ataupun staf. “Jangan berlagak pandai,” nasihatnya. Dan saya bersetuju dengannya.

# SHOOK LIN & BOK

EST 1918  
KUALA LUMPUR

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