



## Annual Dinner 2008



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### Annual Dinner 2008

In 2008 the firm celebrated the 90th Anniversary of its founding in 1918. The events to commemorate the occasion culminated in the firm's Annual Dinner 2008 on 11th October 2008 at the Hilton Kuala Lumpur.

On account of the momentous nature of the occasion, the Dinner was a rare joint event between the firm and Shook Lin & Bok Singapore. The two firms share common roots and origins dating back to the founding of the firm in 1918. Shook Lin & Bok Singapore was a branch of Shook Lin & Bok Kuala Lumpur until the former became autonomous with the separation between Malaysia and Singapore.

In a nostalgic recall of the era in which the firm was founded, the theme for the evening was "Reliving the 1920s". The guests of honour for the evening included Mdm Phyllis Yong Hamid Azmi, the daughter of the firm's founder Yong Shook Lin who was accompanied by her son Shahryn, and retired Judge of Appeal of the Supreme Court of Singapore, LP Thean, who was a partner of the firm and spear headed the establishment of the firm's Singapore branch in 1965.



In his address, the firm's Chief Executive Partner Too Hing Yeap saluted the longevity of the firm as a feat claimed by few firms, and attributed its success to the diligence, commitment, sacrifices and foresight of those who founded and sustained the firm through the years including the former partners, lawyers and clients to whom he expressed the firm's gratitude. Dr. Phillip Pillai, the Managing Partner of Shook Lin & Bok Singapore, in turn, lauded the outstanding achievement of the firm's founding partners having laid the foundations of two firms in two different countries which continue to be amongst the leading firms in each country. He toasted the three generations of lawyers who established the culture of excellence that characterize the firms. On a personal note, he noted as a manifestation of the intertwined history of the firms, the fact that he and Too Hing Yeap were classmates at the University of Singapore.

The audience was entertained by a performance by violinist Michelle Lai, performances by lawyers and staff of the two firms and ending with an appearance by the Comedy Court, the duo renowned for their unique brand of political satire.









## **Dato' Cyrus Das made Honorary Life President of Commonwealth Lawyers Association**



The firm's Dato' Cyrus Das was bestowed the highest honour of the Commonwealth Lawyers Association (CLA) by being conferred the award of Honorary Life President for his leadership of the organization as President between 1999-2003 and in recognition and appreciation of his service to the Association. The Award was conferred at the 16th Commonwealth Law Conference in Hong Kong at the Gala Dinner on 7 April 2009 at the Hong Kong International Convention Centre.

## **Elevation of Partner**

The firm is pleased to announce the elevation of Steven Thiruneelakandan from Limited Partner to General Partner for 2008.



Steven graduated in law from University of Leicester and obtain an LLM from University of Malaya. He was admitted to the bar in 1992. He is a partner in the General Litigation, Labour and Insurance departments of the firm.

Steven is currently the Co- Chair of the Professional Standards and Development Committee of the Bar Council of Malaysia and a former Chairman of the Industrial Court Practice Committee of the Bar Council. He was recently elected as a Council Member of the Commonwealth Lawyers Association ( CLA ) at the 16th Commonwealth Law Conference in Hong Kong in April 2009. He is also an Adjunct Lecturer (Faculty of Law and Government , HELP University College), a member of the Industry Advisory Panel (Law School Taylor's University College) and a member of the Editorial Advisory Board of the Malaysian Industrial Law Reports .



## Amendments to the Securities Commission Guidelines for the Issue of Structured Warrants

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Effective 8 May 2009, the Securities Commission amended its Guidelines for the Issue of Structured Warrants. The major amendments to the Guidelines include the introduction of market making which allows issuers to provide liquidity through market making in lieu of the shareholding spread requirement and allowing issuances of structured warrants where foreign and local exchange traded funds (ETFs) are the underlying instruments. The key amendments are set out below:-

- The new Guidelines now specify that parties who can be appointed to hold the underlying shares and to act in the interest of the warrant holders must either be custodians within the meaning of section 121 of the Capital Markets and Services Act 2007 or companies registered as trust companies under the Trust Companies Act 1949. For this purpose, custodians include licensed banks, licensed merchant banks and participating organizations. The previous Guidelines, however, required a trustee/custodian to be approved by the Securities Commission without specifying the categories of custodians/trustees who are automatically allowed act in such capacity.
- The new Guidelines now allow the issuance of structured warrants where the underlying financial instrument is an ETF. In that regard, a further relaxation has been made to the previous Guidelines. Now, if a newly listed corporation or ETF does not meet the criteria of having an average daily market capitalization of at least RM1 billion in the past three months, structured warrants can still be issued on such corporations/ETFs provided that their market capitalization is at least RM3 billion.
- Under the new Guidelines, the existing 20% quota for the aggregate outstanding collateralised and non-collateralised structured warrants issued at any one time by a particular issuer only applies to warrants which are settled by way of physical delivery. In other words, warrants which are cash settled will not be subject to the said 20% quota when, under the previous Guidelines, all warrants were subject to such quota.
- In terms of liquidity provision for issuers, the new Guidelines introduce market making as an alternative to issuers having to fulfill the shareholding spread requirement. If an issuer intends to provide liquidity for a structured warrant issue through market making as opposed to fulfilling the shareholding spread requirement, it has to:-
  - (a) be registered as a marketmaker under the Rules of Bursa Malaysia Securities Berhad and perform all its obligations as disclosed in the structured warrants prospectus; or
  - (b) appoint and retain at all times a market maker who must be registered under the Rules of Bursa Malaysia Securities Berhad and ensure that such market maker performs all its obligations as disclosed in the structured warrants prospectus.
- The new Guidelines also allow an issuer to issue structured warrants within an existing structured warrants issue provided that the issuer complies with the requirements set out in the new Guidelines. Such requirements include the condition that the issuer holds no more than 50% of the existing structured warrant issue at the time of the application for the further issue. Application for further issues also requires a submission of a term sheet and approval of the SC.
- The new Guidelines also introduces a minimum issue price of RM0.15 per warrant for a structured warrants issue. Previously, there was no such minimum issue price.

## Case Updates

### Contract

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#### **Housing developers cannot contract out of statutory forms of contract**

In *Sentul Raya Sdn Bhd v. Hariram a/l Jayaram* [2008] 4 MLJ 852, the defendant was a housing developer which is regulated by the Housing Development (Control and Licensing) Act 1966 (the Act). The developer sold condominiums to the plaintiff purchasers. Arising out of the late delivery of the properties, the purchasers sued for liquidated damages for late delivery. The sale and purchase agreements were in the form of the statutory contract prescribed in Schedule H of the regulations to the Act, which provided for liquidated damages for late delivery of the condominiums.

The developer contended that the purchasers had waived their rights to claim for late delivery, by accepting delivery out of time, without giving a notice pursuant to Section 56(3) of the Contracts Act 1950, that they were not waiving their rights. The Court of Appeal disagreed with the contention, and held that the contract in the present case was prescribed and regulated by statute. While in normal cases, parties have freedom of contract, a housing developer did not enjoy such freedom, and cannot contract out of the prescribed form of contract. The requirement for notice under Section 56(3) of the Contracts Act is an additional obligation to the detriment of the purchasers, which cannot be imposed on them in the light of the statutory scheme under the Housing Development Act. The Act excludes the operation of Section 56(3) of the Contracts Act. The developer was held liable for late delivery.

### Land

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#### **Title defeasible where land was transferred in breach of restriction in title**

In *Toh Huat Khay v. Lim A Chang* [2008] 4 MLJ 74, the title to the land

in question carried an endorsement which prohibited its transfer for a period of 10 years, and thereafter only with the consent of the state authority. The title was issued in 1996. In 1996 itself the owner applied to have the land transferred to the appellant. The director of lands and mines purported to approve the transfer and the land was transferred to and registered in the appellant's name. The respondent (the personal representative of the appellant's brother's estate) brought an action to set aside the transfer, which was allowed by the High Court. The Court of Appeal, affirming the decision, referred to Section 109(2) (a) of the National Land Code 1965 which provides that alienated land shall become subject to "such express conditions and restrictions in interest (if any) as are then endorsed on the document of title thereto (or referred to therein)" being conditions and restrictions imposed by the State Authority under the powers conferred by sections 120 to 112.

The power to impose conditions is vested in the State Authority which also has power to rescind any conditions.

The court held that the director of land and mines had no power to grant consent to the transfer, as the repository of the power was the State Authority. The act of the land administrator in registering the transfer was unlawful, null and void. Consequently, the appellant obtained a title that was defeasible.

### Winding-up

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#### **Substituting creditor must have had the right to present a petition at the date when the existing petition was presented**

In *Teoh Vin Sen v. True Creation Sdn Bhd* [2008] 3 AMR 269, a winding up petition was presented on 30 October 2006. The petitioner subsequently applied to withdraw the petition. The supporting creditor thereupon applied to be substituted as the petitioner in the existing petition and take over the prosecution of the petition. The supporting creditor based its claim on a judgment obtained by it against the respondent debtor on 17 January

2007, that is, after the date the existing petition was presented.

The High Court denied the application on the grounds that:

- (a) The court's power under Rule 33 (1) of the Winding Up Rules 1972 to "substitute as petitioner any person who, in the opinion of the court, would have a right to present the petition and who is desirous of proceeding with the petition", is conditioned on the substitute petitioner having the right to present the a petition at the date when the existing petition was presented. As at that date, i.e. 30 October 2006, the supporting creditor was not yet a creditor of the respondent and did not have a right to present a petition.
- (b) Further, the supporting creditor had not served a statutory demand under Section 218 (2)(a) of the Act on the debtor.

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**Leave to proceed with action against insolvent company will be granted where the claim cannot be adequately dealt with in the winding up, or where the remedy cannot be given in the winding up**

In *Shen Court Sdn Bhd v. Perumahan NCK Sdn Bhd* [2008] 3 AMR 129, the developer engaged a main contractor to construct a building. The parties subsequently entered in a settlement agreement whereby the developer was to pay the contractor for having completed part of the works. The payment was to be partly in cash and partly by way of contra units to be given to the contractor or its nominees.

Upon the failure of the developer to comply with the settlement agreement, the contractor sued the former for the payment and the contra units. The developer counter-claimed for damages for latent defects in the works done by the contractor. Subsequently, the contractor which was insolvent was wound up voluntarily.

By then, the contractor's suit was fixed for case management for trial. The

developer applied for leave under section 263(2) of the Companies Act 1965, to proceed with its counter claim against the contractor which was in liquidation. The High Court dismissed the application on the ground the developer's remedy is confined to lodging a proof of debt against the contractor.

On appeal, the Court of Appeal overturned the High Court's decision, on the principle that leave to proceed against a company that is wound up, will be granted where the plaintiff's claim cannot be adequately dealt with in the winding up of the defendant company or where the plaintiff is seeking a remedy which cannot be given in the winding up.

In this case, the developer's counter claim cannot be dealt with adequately in the winding up because:

- (a) The developer's counter claim is inter alia, for a declaratory order that the settlement agreements, including the provision of contra units, are null and void. The liquidators do not have power to grant such a declaration.
- (b) There is complexity of issues in the developer's counter claim for rectification costs for the defects, and it is unlikely that the liquidator can adequately quantify the damages suffered by the developer
- (c) The liquidator has pre-judged the counter claim and would reject the developer's proof of debt.

## Intellectual Property

### Passing off

In the case of *McDonald's Corporation v McCurry Restaurant (KL) Sdn Bhd*, in September 2006, the High Court ruled that McDonald's, the fast food giant has an exclusive right to the use of the prefix "Mc" and ordered McCurry to stop using the prefix "Mc" as part of its name.

On 29th April 2009, the Court of Appeal overturned the decision of the High Court. The Court of Appeal held



that McCurry did not misrepresent nor confuse the public when carrying out its business under the name "Restoran McCurry". The Court took the view that there were several distinguishing features between the manner in which the parties conducted their business. First, the Court pointed out that McDonald's logo consists of a distinctive "M" shaped as golden arches with the word "McDonald's" in the background. The Court noted that McCurry's signboard has the words "Restoran McCurry" in white and grey lettering against a red background with a picture of a chicken giving the thumbs up with the phrase "Malaysian Chicken Curry". Secondly, the Court pointed out that the food items sold by McDonald's carried the prefix "Mc" whereas the food items sold by McCurry did not have this prefix. Thirdly, the Court observed that McCurry served only Indian food whilst McDonald's served fast food. Fourthly, the Court found that majority of the patrons of McCurry are adults and senior citizens whilst those who patronized McDonald's were mainly children.

The Court of Appeal held that the High Court had overlooked these material facts in ruling in favour of McDonald's and this amounted to a serious misdirection which resulted in a miscarriage of justice. The Court held that on a totality of the evidence, the irresistible inference to be drawn is that reasonable people seeing McDonald's signboard would not be misled into believing that McDonald's is associated with McCurry.

The Court of Appeal said that the High Court had wrongly concluded that McDonald's had a monopoly over the use of the prefix "Mc" on a signage or in the course of the conduct of its business and that McDonald's had not established that McCurry had committed the tort of passing off.

## Legal Risk Management Tips in Joint Ventures and Mergers & Acquisitions

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*Abridged version of paper presented by Ivan Ho Yue Chan at the Conference on Legal and Tax Aspects of Joint Ventures and Mergers & Acquisitions organized by the Asia Business Forum on 28 February 2008 at JW Marriot Hotel, Kuala Lumpur*

### Concerns of purchasers

In a Joint Venture (JV) or Merger & Acquisition (M & A), the main concern of purchasers acquiring a majority stake in a company is that the company is not worth what is claimed by the vendor as there is a probability that liabilities may be downplayed by the vendor or that there are "skeletons in the closet". In addition, the acquisition may take a long time to complete due to regulatory processes and approvals, thereby incurring costs and disrupting the operations of the company.

The main concerns of minority shareholders are the extent of voting power they are accorded with, the prospect of growth of the business and the adequacy of exit/buy out mechanisms accorded to them.

It is therefore important to know the purchaser's objectives in the transaction (e.g. the acquisition of the target to obtain a material license held by the target) and ascertaining the level of risk a purchaser is willing to accept.

### Structuring and planning a JV or M&A

In structuring and planning a JV or M&A, the purchaser should first consider whether a share purchase or a business purchase will suit it best. For example, in a business purchase, the purchaser is able to "cherry-pick" "good" assets and exclude "bad" ones. Acquiring the business also allows the purchaser to not be saddled with historical problems involving the company, e.g. lawsuits, tax liabilities, etc. However, stamp duty may be higher in a business purchase. Next, the mode of consideration (e.g. cash, shares or a combination of both) and the type of investment to be made (e.g. ordinary shares, redeemable preference shares,

convertible instruments) should be determined. Any regulatory restrictions (e.g. on shareholding) relevant to the acquisition should also be noted. As such, the purchaser should assemble a balanced advisory team skilled in all key areas of the transaction.

During negotiations, it is important to research on the vendor and its negotiation team (e.g. whether they are “hard” or “reasonable” negotiators) and determine the line of negotiation to be taken so that there is a consistent stand taken by the purchaser. Also, identify potential deal breakers upfront as well as any weaknesses in the vendor’s negotiation strategy (e.g. if the vendor is in financial difficulty) and capitalize on them.

Common pitfalls include presuming that the vendor’s assurances/representation are correct without making sufficient enquiries, insufficient due diligence and undue haste in signing agreements and completing the transaction.

### Managing Risks in JV and M&A

There should first be adequate due diligence conducted in respect of the transaction to ensure that there are no “surprises” after completion.

Secondly, where possible and necessary, the purchaser should request for warranties and indemnities to protect its interest.

Thirdly, there should be proper and sufficient legal documentation. Sometimes, a memorandum of understanding is signed between the parties which normally contains exclusivity and confidentiality clauses. This is usually followed by a sale and purchase agreement which normally contains conditions precedent that need to be satisfied prior to completion, pre completion obligations and warranties, covenants and indemnities.

If there are minority shareholders involved or in a joint venture, a shareholders’ agreement should be signed to protect the rights of each shareholder. Shareholders’ agreements normally provide for the general decision making powers and major operational activities of the company such as veto powers, the raising of working capital, restrictions on business activities, dividend policy and board representation. In such a case, the articles of association of the company is also usually amended to reflect the terms of the shareholders’ agreement.

In the case of new issuances of shares, a subscription agreement is normally signed between the issuer and the subscriber to protect the subscriber’s interest.

### Exit Strategies

Possible exit strategies include a first right of refusal given to the vendor, pre-emption rights contained in the articles of association, signing a put and call option agreement upfront and incorporating a “tag-along”, “drag-along” or “next round discount” clause in the relevant documentation.

There should also be a clear dispute resolution mechanism with stipulated timelines in the event of a shareholder deadlock. In the case of minority shareholders, it may attempt to obtain relief under section 181 of the Companies Act 1965 to have the major shareholders compulsory acquire their shares to prevent minorities from being “locked-in”.

Other considerations include taxation, employment and intellectual property.

In the case of a foreign purchaser, the purchaser will need to consider additional legal considerations such as the guidelines of the Foreign Investment Committee and the Foreign Exchange Administration Rules of Bank Negara Malaysia.

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## Legal Due Diligence in Joint Ventures and Mergers & Acquisitions

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*Abridged version of paper presented by Kelvin Loh Hsien Han at the Conference on Legal and Tax Aspects of Joint Ventures and Mergers & Acquisitions organized by the Asia Business Forum on 28 February 2008 at JW Marriot Hotel, Kuala Lumpur*

There are two types of due diligence:-

- (a) transactional due diligence, which is a purely voluntary undertaking of investigations into the truth of statements contained in instruments or documents created prior to a M&A or JV; and
- (b) compliance due diligence, which is necessitated by liabilities imposed by law, e.g. under the Capital Markets and Services Act 2007 (CMSA).

### Transactional Due Diligence

Transactional due diligence is about the management of risk and how to mitigate and reduce risk. A purchaser should



not place complete reliance on representations, warranties and indemnities as they may not be adequate, are often qualified and their effectiveness will largely depend on the bargaining position of the purchaser.

The due diligence results may also improve the bargaining power of the purchaser and any potential issues or problems can be discovered upfront, as vendors may try to downplay potential problems.

#### Developing the Due Diligence Strategy

Proper planning such as preparing checklists is essential to reduce repetition of work, to allow the purchaser's advisory team to counter-check their findings and also to manage costs and time in the transaction.

Normally, it is not practical to conduct a "100%" due diligence due to time and cost constraints. Therefore, as a balance, more detailed checks are usually conducted on high risk areas while less detailed checks are usually conducted on low risk areas.

A purchaser should take into account disruption to the management and the business of the target company and also whether employee morale will be adversely affected when determining the extent of the due diligence required. Cooperation by the vendor and the amount of information available in the public domain will also determine the extent of the due diligence.

Areas which are typically covered in a legal due diligence exercise include corporate, licenses, real property, finance, contracts, litigation, contingent liabilities, capital commitments, employees, environment, insurance, information technology and related party transactions.

Having obtained the results of the due diligence, the purchaser may wish to explore the following remedies:-

- reduction in the purchase price and/or variation of the mode of payment if the due diligence reveals that the assets are worth less than the purchase price
- specific termination rights such as pre-completion termination rights
- additional representation, warranties and indemnities to cater to specific concerns
- specific covenants from the vendor to rectify problems either prior or post completion
- retention arrangements, e.g. deposit of a sum of money with stakeholders

#### Compliance Due Diligence

Compliance due diligence is conducted to avoid penalties imposed by law in connection with information contained in certain documents, e.g. submissions to the Securities Commission, offer documents in connection with a take-over offer, circulars to shareholders, prospectuses and information memoranda.

Generally: (a) there must be correct and adequate disclosure of material statements, documents and information; (b) statements of opinion in such documents must be justifiable and based on reasonable grounds; (c) extracts from public documents should be unbiased; (d) there must be no misleading or deceptive conduct involved in the preparation of these documents; and (e) any forecasts must be based on reasonable assumptions.

Non-compliance with the above could result in the imposition of various penalties including a fine of up to RM3 million or 10 years imprisonment or both and the right of an investor to recover any loss or damage resulting from false or misleading statements.

However, it will be a defence to liability if it is shown that:-

- reasonable enquiries have been made;
- there are reasonable grounds to believe in its truth; and
- the person had believed at the time of making the statement that there was no false or misleading statement, material omission or misleading or deceptive conduct involved.

The Securities Commission's Guidelines on Due Diligence Conduct issued on 1 February 2008 imposes strict obligations on the principal adviser in a transaction to undertake reasonable investigations and understand the nature of the business of its client, including highlighting any inadequacies and recommendations to the directors of the client. A higher burden is also placed on other advisors (e.g. lawyers and accountants) to be proactive and to take responsibility of their respective areas of the due diligence.

The due diligence must involve a comprehensive review and inquiry conducted to a standard expected of a reasonable person. There should be independent verification and collective decision-making by the due diligence working group as far as possible.

#### Defensive Due Diligence

Defensive due diligence is typically conducted by the vendor on the target company in a proposed sale of the target company. This may include:-

- conducting an "internal" due diligence to ascertain potential problems so as to ease negotiations, prevent delay and reduce warranties
- updating records and ensuring that intellectual property rights are updated and registered
- pre-determining data to be disclosed, disclosing documents only after having a firm commitment from the purchaser and requesting a confidentiality undertaking to be signed
- limiting access to due diligence documents to key personnel of the target company.

## Interview with staff



**Hamid with his family**

In this issue, our David Dinesh Mathew caught up with Abdul Hamid Bin Mat, a long serving administration clerk of the firm, for a tete a tete.

Q. Hamid, when did you join Shook Lin & Bok?

A. Almost 25 years ago on 1.11.1984.

Q. Wow. Congratulations. It's your silver jubilee this year. Are the partners buying you a new car or a Rolex?

A. I wait in anticipation.

Q. We will pass on the message. What made you join Shook Lin & Bok?

A. I joined as I saw that it was a growing firm with tremendous potential.

Q. Really?

A. No. I just needed the money.

Q. Where did you work prior to joining the firm?

A. I was working the night shift with the Utusan Melayu newspaper's printing division for 5 years. I quit because I got tired of working the night shift.

Q. Any spooky encounters while on night shift?

A. No. The only thing I saw were tomorrow's headlines before anyone else [laughs].

Q. What are some of the main differences between the firm at the time you joined compared to now?

A. When I joined in 1984, there were only 12 Partners and 30 Legal Assistants but now the number has doubled to 28 Partners and 60 Legal Assistants! It has grown a lot.

Q. Please tell us a funny story that happened during your time here.

A. One evening a Legal Assistant who was very tired decided to take a nap in her room. She unfortunately fell into a deep slumber and it so happened that the staff on duty that evening failed to realize that she was there when locking up the office. Luckily the next day

was not a weekend or else the poor girl would have had to spend her weekend locked up in the office. The next morning the staff opening the front door got a shock when he saw the dazed looking LA leaving the office.

Q. [laughs] Tell us a little bit about your family.

A. After working here for four years, I married my wife who was chosen for me by my parents. We got married on 13.12.1987 and now we have three children who are now teenagers and are still studying.

Q. You mean you were match made by your parents?

A. Yes. Saved quite a bit avoiding the whole dating and courting bit... [laughs] Just kidding.

Q. Tell us a joke.... please... or at least tell us the funniest joke you last heard.

A. A guy is sitting at home when he hears a knock at the door. He opens the door and sees a snail on the porch. He picks up the snail and throws it as far as he can. Three years later, there's a knock on the door. He opens it and sees the same snail. The snail says "What on earth was that all about?"

Q. [laughs] Moving on, name that one dream that you haven't achieved yet but would like to achieve someday.

A. My dream is to perform the Haj in Mecca someday.

Q. Only one more question Hamid. Name one famous person that you admire and why?

A. Can I name a few?

Q. Ok. Go for it.

A. All the Partners of Shook Lin & Bok

Q. [laughs] You are a wise man. But seriously?

A. Tun Mahathir, our former Prime Minister. Because he brought modernization to Malaysia.

Q. Thanks for your time.

A. Thank you.



## Mohanadass Kanagasabai elected President of MIArb

The firm's Mohanadass Kanagasabai was elected President of the Malaysian Institute of Arbitrators (MIArb) on 9 April 2009, for the 1999 to 2011 term. The MIArb was established in 1991 for the purpose of promoting and facilitating the recourse to arbitration as a means of dispute resolution within the commercial community. Among the functions that it has undertaken, are the provision of facilities for arbitration, channels for communication among individuals and bodies concerned with arbitration domestically and internationally, training and education relating to the law and practice of arbitration, and the formulation of the MIArb Arbitration Rules.

Mohan has wide experience as an arbitration practitioner and is a partner in the firm's Construction Engineering and Arbitration Department.



## Firm's expansion and Halloween party 2008

2008 saw a substantial expansion of the firm's premises, from approximately one and half floors to two floors of the building, including the expansion of the library. In conjunction with this, the firm held an "office warming" cum Halloween party in the newly renovated wing of the premises on the 31st October 2008.

**Shook Lin & Bok: Chambers Asia 2009 Top Ranked**

The firm has received a "Chambers Asia 2009 Top Ranked" award from Chambers and Partners, United Kingdom. On their website, Chambers describe themselves as follows:

"Since 1990, Chambers has published the world's leading guides to the legal profession and has built a reputation for in-depth objective research. We have a team of 100 highly qualified full time researchers who conduct thousands of interviews with lawyers and their clients worldwide. Working with our editors, they identify and rank the world's best lawyers (i.e those which perform best according to the criteria most valued by clients - such as technical expertise, business acumen, prompt delivery, value for money)".

Chambers rank firms in bands from 1 to 6, with Band 1 being the top. The following departments of the firm have been awarded these rankings:

Dispute Resolution:	Band 1
Banking & Finance - Capital Markets:	Band 2
Corporate/M&A:	Band 2
Intellectual Property:	Band 2
Employment:	Band 2
Banking & Finance-Islamic Finance:	Band 3
Tax:	Band 3

The firm's above-referred departments are profiled by Chambers as follows:

**Dispute Resolution**

Housing a "significant depth of talent", this practice provides comprehensive assistance on a broad spectrum of corporate and commercial disputes. Interviewers say that its key strength lies in a deep pool of "eloquent litigators who can handle on entire cross-section" of cases in admiralty, probate, commercial and banking matters. The "eminent and authoritative" Cyrus Das is a "dean of the Malaysian disputes arena," state sources. Head counsel of the practice, he led on the high-profile Metramac case: this covered several issues, spun out from an original contractual dispute related to a toll road project. The group was also involved in the headline Lina Joy appeal before the Federal Court concerning issues of apostasy and religious

freedom. Another outstanding litigator at the firm is **Porres Royan**, who is described as "an extremely effective advocate - he has the ability to win judges over by saying very little in court." He focuses on banking, insurance and complex IP suits. The group is also active in arbitrations, and it recently represented an oil and gas company in a high-value dispute over the construction of four drilling platforms.

**Banking & Finance**

This 90-year-old practice remains a steadfast fixture in the market. With a devoted core of institutional clients, the team's forte is in conventional finance matters; it has, however, made large strides in Islamic finance and capital markets work of late. On the Islamic side it advised a consortium of financiers on a MYR1.3 billion Shari'a-compliant project financing to design, construct and maintain an expressway, while on the capital markets front the firm has expertise in both debt and equity transactions, having advised AmlInvestment Bank on a MYR2 billion MTN programme by AmBank and Deutsche Trustees Malaysia to establish the MyETF Dow Jones Islamic Market Malaysia Titans 25, the first Shari'a-compliant exchange-traded fund in Asia. Overall head of the transactional practice Lai Wing Yong is lauded for his methodical approach.

**Corporate/M&A**

As on the oldest groups in the country, this firm has a strong standing amongst home-grown corporations and banks. The multi-talented lawyers in this group over the firm's three key transactional practice areas: corporate, banking and real estate. The team has had a busy year in acquisitions and disposals, having advised ANZ on its acquisitions of a 14% stake in AMMB Holdings which was valued at over MYR1 billion and acted on the MYR745 million LBO of Genting Sanyen (Malaysia)'s paper and packaging business. The lawyers also assisted with the MYR1.17 billion disposal by Resorts World of its shares in Star Cruises to CMY Capital. "One of the mainstays of the firm," **Patricia David Saini** "always gets thoroughly stuck into" the deals she handles.



An established practitioner, she is a “meticulous worker who gives prudent advice”, according to sources. Working closely with David is newly made partner **Kelvin Loh**, who is commended for his “prompt, practical and - most importantly - commercially sound assistance” on transactions.

### Intellectual Property

This “firm of choice for litigation matters” has been involved in a flurry of high-profile cases over the past twelve months. Lawyers here represented Kentucky Fried Chicken in proceedings against another fast food franchise, assisted with Quiksilver’s action against a clothes retailer for breach of trade mark and acted for DIGI Telecommunications against a computer retail and maintenance company. Interviewees also note that the team handles a “sizeable amount of advisory matters across the board”. “Standout advocate” **Michael Soo** is especially lauded for his defence work. He is assisting Boss Cigarettes with an alleged breach of trade mark action brought by Hugo Boss.

### Employment

This practice focuses on unfair dismissal claims and collective agreement disputes for banks, government-linked companies and multinational corporates, amongst other clients. Over the past twelve months it has handled several notable matters, including mutual separation schemes and probational issues involving expatriate employees. Extolled for his “outstanding track record in employment matters”, **Steven Thiruneelakandan** is also a distinguished practitioner in judicial review cases. Interviewees attribute his success to the “abundant effort and hard work he puts in for his clients”. Sources speak admiringly of **Cyrus Das**, a leading light on major litigation matters, observing that “he is most persuasive and convincing”.

### Tax

With a burgeoning advisory practice, this teams’ strength lies in the field of tax disputes. In 2006, the group represented Thruntum Theatre in a case revolving around real property gains tax. **Sudharsanan Thillainathan** supervises the practice.



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