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Annual Dinner 2011

By Cilia Chong

The firm held its year end Annual Dinner & Dance 2011 at the Grand Lexis, Port Dickson.

As the shuttle bus reached the venue, staff and family members were all in a light and cheerful mood before lunch. A welcome scrumptious meal awaited at the ballroom. The sea air, bright sun and ocean water seemed to have an immediate effect on everyone.

As soon as all have settled in to their respective chalets, they headed to the beach for telematch games. Partners, Associates and staff alike were divided into four teams, namely, the Pirates of Hawaii, the Hawaiian Heat, the Hawaiian Smurfs and the Hawaii 4.0 (No points for guessing the theme was Hawaiian night). The air was tense and expectant with spirited competition and rivalry, all in good fun.

The first challenge was a tricky game which required team coordination in catching wobbly balloons filled with water catapulted with water guns from a distance to distract rival teams. This was followed by a challenge of creativity in inventing a contraption which enabled a balloon to safely be dropped from the first floor of a building. Although none of the teams were successful in this challenge, it sure brought much good-natured puns and laughter. Finally, the best saved for last, was the tug-of-war.



Needless to say, the competition was fierce. The Pirates of Hawaii emerged as the overall champions followed by Hawaii 4.0 as the runner-up. Everyone had their share of fun and laughter.

After a quick rest, it was off to dinner. We had the perfect atmosphere. Attendees were welcomed with flower garlands by ladies in Hawaiian costumes before they stepped into the dining hall decorated with flowers, burning candles and coconut leaves strewn across the room. It was beautiful, colourful and cultured. It was clear we were in Hawaii!

The room buzzed with excitement when a group of Hawaiian ladies mesmerizingly swayed their hips and arms to the light-hearted rhythms of the ukulele. As the crowd settled down, Managing Partner Too Hing Yeap took to the podium and welcomed all guests and attendees.

The delicious fare matched the entertainment provided by the teams with their performances. The performers regaled the audience with their dancing and acting. All in, it was an excellent evening of celebration that ended with gifts, drinks, music and dance.





Angry Birds Charity Christmas party at Praise Emmanuel Children's Home

We were back once again in December 2011 at the Praise Emmanuel Children's Home (PECH) in Petaling Jaya for a Christmas party organized by the firm, following a well received party in 2009.

The festivities began with a buffet dinner. The children donned in red Santa hats welcomed a group of about 30 lawyers from the firm along with family and friends.

The Angry Bird cupcakes were a hit with the children. Dinner was followed by a round of games. The highlight of the evening was Santa Claus, played by our own Jason Gopal, who played his role to the hilt, ringing his bell vigorously, filling the air with "Ho Ho Hos" and keeping all in stitches with his remarks and antics. The children loved him and he received (or solicited) many hugs and rubs on his tummy as he distributed the presents (school bags and Angry Birds stationery).

In appreciation, the children returned the efforts with a dance performance to the Wondergirls' hit "Nobody nobody like you". PECH has committed itself to taking into their care abandoned, abused, homeless and orphaned children and helping them overcome their troubled past to achieve meaningful and productive lives.

Banking & Finance Department

Head of the firm's Banking and Finance Department, Lai Wing Yong, shares with us his recollections on the history and thoughts on the objectives of the department.

Q. How has the Department evolved over the years?

A. The department started as the Conveyancing department when the firm was formed. It then handled non litigation work which included sales and purchases, leases, tenancies, probate work and all forms of agreements and contracts. During those early days, the late Tan Teow Bok, one of the founders of the firm, was renowned for his skills in drafting. Many of the precedents drafted by him were either copied or were templates adopted by many local legal practitioners. Company law work was also handled by the then conveyancing department from the 1960s. The firm was one of the leading legal firms in the country literally with a monopoly over non litigation work. As the nature of non litigation work became more complex, and syndications and offshore loans were introduced into the country, there was a demand for greater specialization from the legal profession. The firm saw the need to differentiate the traditional conveyancing work from the more intricate work involving syndicated loans, sovereign loans and offshore borrowings. Consequently, the mid 1980s saw the birth of the firm's Banking and Finance Department and the Corporate Department as offshoots of the Conveyancing Department.

Q. How has the department grown since then?

A. Since then, the Banking and Finance Department has grown and developed hand in hand with the other departments as the local banking industry became more sophisticated and saw the rise of cross border financing transactions, and new innovative banking products were introduced. Aviation and ship financing, project financing, leveraged leasing, block discounting and newer banking products soon surfaced. As oil prices went up and Middle East countries became rich, there was a demand from banks and financial institutions to tap this surplus wealth from the Muslim world which could not be invested in conventional banking products involving the charging of interest. Islamic finance which originally developed from the Middle East was introduced to our shores. We also saw capital market products and financing.

Q. What are the areas of work for the department?

A. We handle the whole spectrum of legal work associated with the banking products ranging from plain vanilla work arising from the daily retail banking needs such as housing loans, overdrafts, trade financing, to the more sophisticated project finance, capital markets and private debt securities, syndications, club deals, aviation and ship finance, debt restructuring, asset securitization, derivatives, sovereign loan transactions, offshore borrowings, share financing and all forms of banking and financing products as and when they are introduced into the country. Islamic banking also



constitutes a very important area of work. Unlike other firms, we have not formed separate departments for each of these areas as we feel that our non litigation lawyers should be conversant with all of them, both in the interest of clients and for the professional development of our lawyers.

Q. How different is banking and finance practice now compared with before?

A. It has changed by leaps and bounds. Such changes occur not only in the scope of work but also in the challenges from both local and foreign law firms and the expectations of clients. Apart from there being greater sophistication in the work handled, there was more competition from other law firms as the number of lawyers and the number of law firms in the country grew. With time came foreign practitioners who entered the country to handle the legal documentation in cross border and more innovative new banking products. Clients' demands also changed with time. Clients became more sophisticated in their dealings and many of them even ventured abroad. With this came demands for quicker turn-around time for legal documentation at very competitive costs. Gone are the days when the banking solicitor can expect legal work to drop on his/her lap. Solicitors are expected to be more pro-active and aggressive in getting legal work and in marketing themselves, within the Bar Council rules.

Q. How do you see this area of practice developing in the future?

A. At a time when the world has become borderless, more Malaysian businessmen are investing abroad. Similarly, more foreign investors are investing in Malaysia. We have to adapt to the challenges that come with these developments. With globalization, Malaysia would be opening her doors in various service sectors, to international players. To manage challenges from greater competition, lawyers must hone and enhance their skills. Malaysia also champions itself as a pioneer of new Syariah compliant banking and capital market products. Knowledge and innovation in this area would be a definite advantage. Credit goes to our partner, Jal Othman, who has contributed a lot towards building and promoting the firm's Islamic banking experience.

We recognize the importance of investing in human resources, with great emphasis in providing professional training and guidance to our young lawyers. My fellow partners, such as Patricia David, Jal Othman and Khong Mei Lin, just to name a few, have, through the years and together with the other partners in the department, invested a lot of time and effort to build up their respective strong teams. We should be entering a fast developing, extremely demanding and, at the same time, exciting era and with the department's mixed team of experienced and younger energetic partners and associates, clients can expect better quality of service from the firm.

Q. *What distinguishes the firm's practice from others?*

A. Our firm has a long history. Consequently, we have a wealth of experience which both foreign and domestic clients may tap on. The firm is well known for its professionalism, integrity and work quality. The partners are not mere door greeters but are hands on with regard to the work handled by them.

Q. *If you were to pick one thing that you are proud of, what would it be?*

A. It is difficult to single out any one particular aspect. Being innovative and able to solve problems of clients is an important aspect and we pride ourselves in that. If I am compelled to choose one aspect, I must say that it is the quality of our work. I reiterate that it is misleading to conclude that this is the only thing that the partners and lawyers are proud of. We are all proud of what we are and would rather leave it to our clients to judge us.

Case Updates

Banking

Court of Appeal upholds validity of Islamic BBA facilities

On 18 July 2008, the High Court delivered a judgment in 12 cases concerning Al-Bai Bithaman Ajil ("BBA") Islamic financing facilities granted by Bank Islam, declaring the facilities to be contrary to Islamic principles.

The decision has been reversed by the Court of Appeal in *Bank Islam Malaysia Bhd v. Lim Kok Hoe & Anor and other appeals* [2009] 6 MLJ 839.

In Malaysia, Islamic financing facilities based on Islamic law principles have been growing parallel to conventional banking loan facilities. The charging of interest for a loan, or usury or "riba" is prohibited in Islam. Islam prohibits the use of money as a commodity of exchange i.e., the lending of money and the charging of a price for its use.

However, money may legitimately be used as a medium for the exchange of an underlying commodity. On account

of this, Islamic landed property financing in Malaysia commonly takes the structure of what is now known as Al-Bai Bitaman Ajil (BBA) facility, i.e. a credit sale, whereby the customer sells the property it purchased, to the bank for a cash sum ("Bank Purchase Price") which is the facility sum, paid by the bank to the customer (or alternatively the contract by the customer to buy the property from the third party vendor is novated to the bank who becomes substituted as the purchaser). The property is immediately resold back by the bank to the customer at a higher price ("Bank Sale Price") which incorporates the bank's profit on the sale, payable by the customer to the bank by monthly instalments over a fixed period of time.

The cash flow mirrors that of a conventional banking loan with interest charged, and in that manner affords financing to the customer for the purchase. The customer charges the property to the bank by way of security for the purchase price payable by it to the bank.

A striking peculiarity of a BBA contract is that it gives the Bank the right, upon the customer's default in payment of instalments, to claim the full Bank Sale Price (which would be substantially higher than and may be more than double, the Bank Purchase Price), less the instalments already paid, from the customer. For example, if a customer defaulted in payment say 6 months into the facility, the facility sum would have mushroomed into a claim for a debt which is more than double the facility sum.

The reason obviously was the fact that the Sale Price included the bank's profit on the transaction which was envisaged to be earned over the tenure of the facility, but which was now claimed by the bank immediately upon the default by the customer a short while into the facility.

In contrast, in a conventional banking facility, the borrower upon default will be required to pay only the amount remaining outstanding on the loan together with accrued interest at the point it settles the debt, and not the unearned interest for the entire tenure of the original loan.

The BBA contract gives the bank the discretion to grant a rebate (or "ibrar") on the unearned profit, on an early termination of the contract. But the rebate is not an obligation, but is at the bank's discretion.

The claims in the cases before the court were by the bank against defaulting customers for the Sale Price less instalments paid. In the High Court, in respect of BBA contracts involving a novation to the bank as the purchaser of the property from the original vendor, the High Court in approximate effect allowed the bank's claims subject to a grant of rebate on unearned profits.

In respect of contracts where there was no novation, the Court held that the agreements were in fact loan agreements and unIslamic, and since interest is prohibited in Islam, the bank could recover only the principal advanced on restitutionary principles.

The basis of the Court's decision that the BBAs are unIslamic is that the profit earned in the BBA contract is to be equated to "riba" or interest, that the BBA contract is more onerous than conventional loans, as it

entitles the bank to claim the full Sale Price, and that the BBAs adopted in this country is not acceptable by all four mazhabs (or schools of jurisprudence) in Islam.

The Court of Appeal overturned the High Court's decision, and allowed the bank's claims for the full Sale Price less instalments paid, and held as follows:

- (1) The equation of profit under a BBA to interest is incorrect. The two are not the same, as the BBA contract is a trade transaction. Unless there is a vitiating factor such as fraud, coercion or undue influence, the court will uphold the contract.
- (2) The substitution of the obligation of the customer to pay the Sale Price, with a loan amount and earned profits, was an impermissible rewriting of the contract for the parties.
- (3) "Islamic banking business" under section 2 of the Islamic Banking Act 1983 does not mean banking business which is approved by all four mazhabs in Islam. Judges in civil courts should not take it upon themselves to decide whether a matter is in accordance with Islam. The Court will assume that the Syariah Advisory Council established under the Central Bank of Malaysia Act 1958 to advise Islamic Banks has discharged its statutory duty to ensure that the operations of Islamic banks are within the principles of Islam, including the conformity of BBAs with Islamic principles.

Lien-holders' caveats - clarification by the Court of Appeal: United Overseas Bank (M) Bhd v. UJA Sdn Bhd

In issue No. 1 2008 of the newsletter, it was reported that the Federal Court in *Hong Leong Bank Berhad v. Staghorn Sdn. Bhd.* [2008] 2 CLJ 121 has reversed the decision of the Court of Appeal in *Hong Leong Finance Berhad v. Staghorn Sdn. Bhd.* (reported in the 2nd Quarter 2005 issue of the newsletter). The Court of Appeal had earlier affirmed the High Court's decision to set aside the order for sale on the ground that the statutory lien over land created in favour of Hong Leong Finance under section 281(1) of the National Land Code (the Code) was invalid, as a lien can be created only:

- (a) to secure a loan granted to the proprietor itself, but not to a third party, and
- (b) by the deposit of title by the registered proprietor of the land itself only.

The two registered proprietors of the land in the case agreed to sell the land to Staghorn. The Court found that subsequently Teck Lay Realty Sdn. Bhd. ("TLR"), a sister company of Staghorn became substituted as the purchaser and paid the balance of the purchase price. TLR then received the title and transfer executed by the vendors but did not have the title registered in its name. Subsequently TLR deposited the title with Hong Leong

Finance to secure a loan granted by the latter to a third party borrower. It was intended that a Charge under the Code be granted by TLR to Hong Leong Finance once TLR was registered as proprietor, but the memorandum of transfer and the Charge could not be registered due to a private caveat on the land.

In the meantime, Hong Leong Finance entered a lien-holder's caveat, under the Code against the land. The borrower having defaulted, Hong Leong Finance enforced its lien-holder's caveat and obtained a court order for sale of the land. The land was sold by public auction and the certificate of sale was issued. Before the transfer to the purchaser took place, Staghorn applied to intervene in the court proceedings to set aside the order for sale and the sale itself, which application the High Court allowed. The decision was partially affirmed by the Court of Appeal.

The common ground which underpinned the decision of all three judges in the Federal Court reversing the Court of Appeal's decision, was that Staghorn did not have standing to intervene in the proceedings as it had divested itself of its rights in the land to TLR and further, it had applied too late in the day to intervene.

Of greater interest and significance is the view of one of the Federal Court judges, who in his judgment discussed the position relating to third party lien-holder's caveats.

In the Judge's view:

- (a) A lien may secure not only a loan to the proprietor, but also a loan to a third party.
- (b) The title deed need not be deposited by the proprietor itself. The act of depositing may be done by another party with the consent or authorization of the proprietor.

These views were those of only one judge, as the other two Federal Court judges did not deal with these issues. However the judge's view should carry great weight on the propositions set out above.

In *United Overseas Bank (M) Sdn. Bhd. v. UJA Sdn. Bhd.* [2009] 6 MLJ 857, the Court dealt again with the issue of whether a lien can be created to secure a loan not to the proprietor, but to a third party. The High Court, relying on the Court of Appeal decision in *Staghorn*, had struck out the bank's action to enforce a lien created to secure a loan to a third party, on the ground that the lien was invalid.

On appeal, the Court of Appeal (without having the benefit of the Federal Court's decision in *Staghorn*) read down the decision of the Court of Appeal in *Staghorn*, and expressed the view that "a more careful reading of the Court of Appeal's decision in *Staghorn* reveals that what this court was saying was that a lien cannot be created without there being in existence an issue document capable of being physically deposited. Hence the observation "It (that is to say, s.281) does not extend to a beneficial owner who is yet to become a registered proprietor".

In the upshot, the Court held that “section 281 is not limited to the creation of a security by way of a lien on title only for the benefit of a registered proprietor. It extends to third party borrowers as well”.

Further, the issue of lien holders’ caveats was also considered in *Perwira Affin Bank Bhd v. Selangor Properties Sdn Bhd* [2010] 3 MLJ 43. There, the borrower had deposited the title deeds to the land with the bank for the purpose of creating a lien, before the transfer of title from the vendor to the borrower/purchaser had been registered. The Court of Appeal upheld the validity of the lien on the ground in effect that the vendor/registered proprietor must be deemed to have impliedly given its consent to the creation of the lien by the borrower/purchaser, as the vendor was made a party to the action by the bank to enforce the lien, and did not oppose the action. Of greater significance is the further finding it seems, of the court that the borrower as the equitable or beneficial owner in his own right, had the power to deposit the title to create a lien, and that the word “proprietor” in section 281(1) of the Code should necessarily include a beneficial owner.

This is a departure from older cases which have held that only the proprietor can create a lien (but therefore not the equitable owner who has not been registered as proprietor).

Consent of developer not required for assignment by bank

In *Hong Leong Bank Berhad v. Sum Projects (Brothers) Sdn. Bhd.* [2009] 6 AMR 568, the plaintiff bank (“the Bank”) had granted a loan to the borrowers to finance their purchaser of a property from the defendant (“the Developer”). As security, the borrowers assigned their rights to the property under their sale and purchase agreement (“SPA”) with the Developer, to the Bank. Arising from the borrowers’ default in payment under the loan, the Bank sold the rights over the property assigned to it, at an auction sale, to the successful bidder. However the Developer declined to give its consent to the assignment of the rights from the Bank to the bidder, except on payment of the maintenance charges owing and outstanding for the property.

The Bank commenced legal auction against the Developer seeking declaratory relief in relation to its rights as assignee. The Developer counterclaimed for the outstanding maintenance charges.

The High Court held as follows:

- (1) Under the Assignment by the borrowers to the Bank, only the rights, but not the obligations of the borrowers, were assigned to the Bank.

The requirement under the SPA to obtain the Developer’s consent to an assignment by the borrowers, is an obligation, and was not assigned to the Bank. The Developer’s consent is therefore not required for the assignment by the Bank to the bidder.

- (2) The obligation to pay the maintenance charges remained with the borrowers. Therefore the Developer is precluded from raising its counterclaim for the charges against the Bank. The Developer’s claim may only be directed against the borrowers, and it may sue the borrowers.

Defamation

Statutory defence of qualified privilege for fair and accurate report of proceedings of public meeting

In *Datuk Harris Mohd Salleh v. Datuk Mohd Shafie Hj Apdal & Ors* [2009] 7 MLJ 371, the Plaintiff was the former Chief Minister of Sabah. The 1st Defendant, an MP and political secretary, had made certain remarks against the Plaintiff at a public meeting or event. The remarks were reported in the newspaper *Berita Harian* owned by the 2nd Defendant. The 3rd Defendant is the editor, the 4th Defendant the reporter and the 5th Defendant the printer. The Plaintiff sued the Defendants for defamation. The 1st Defendant settled the claim. At the trial the remaining defendants pleaded the statutory defence of qualified privilege under Section 12 of the Defamation Act 1957, which extends the common law defence of qualified privilege to such reports specified in the schedule thereto, which include “A fair and accurate report of the proceedings of any public meeting held in Malaysia”. In order for the report to be protected, the matter reported must be inter alia of public concern and for the public benefit.

The High Court held as follows:

- (1) The words complained of were defamatory. However the court could not agree with the Plaintiff’s contention that the statutory defence of qualified privilege did not apply to a reporting of a public meeting under Part 2 of the Schedule to the Act. In the instant case, there was indeed a public meeting. The definition of ‘public meeting’ under Section 2 of the Act is not restrictively worded.
- (2) The defendants were entitled to the statutory defence of qualified privilege. In the instant case, the defendants were news publishers. Their rights, privileges, immunities were quite different from commercial organizations or private persons. Newspapers are ordinarily expected to report contemporary events of public interest or of public concern, which is often liberally construed by the courts. It is the current judicial trend to give news organizations greater protection against libel actions.
- (3) However, in the instant case, the Defendants had not satisfied the Court that their article or report was a fair and accurate reporting as set out under Part 2 of the schedule to the Act. Thus the plaintiff would succeed and the Defendants’ defence of qualified privilege would fail. Merely reporting matters which could prima facie be seen objectively as defamatory could not be said to be fair if the accuracy of the report was not verified by the publishers. In the context of responsible journalism, even though a

statement was accurate there could be a duty to edit the report where necessary to reflect fairness. It all would depend on the facts of the case, and the nature of the allegation.

Hire Purchase

Hire purchaser entitled to terminate hire purchase contract where registration number of car has been falsified

In *Krishnasamy a/l Supramany v. Arab Malaysian Finance Bhd* [2009] 7 MLJ 455, the plaintiff bought from the defendant finance company, under a hire purchase agreement, a BMW car bearing the registration number KK 1109, and paid a deposit towards the purchase. The balance of the price was payable by 35 monthly instalments. The plaintiff later intended to settle the balance in full as he had found a purchaser for the car. However, he was told by the defendant that the transfer of the car could not be registered as the registration card had been retained by the Road Transport Department on the ground that the registration number KK 1109 in fact belonged to a motorcycle, and not the car bought by the plaintiff.

In view thereof, the plaintiff filed the action for the defendant to take back the car and to refund him the deposit.

The High Court allowed the claim and held that the defendant was unable to give a good title to the car due to its failure to deliver the proper registration card and to have the car registered. This was a breach of a fundamental term of the hire purchase contract, which entitled the plaintiff to threaten the contract as discharged and claim damages for the breach or for refund of money already paid.

Insolvency

Rebuttable presumption of insolvency

A respondent to a winding up petition may rebut the presumption of insolvency by demonstrating its ability to settle the debt.

In *Perbadanan Pengurusan Bella Vista v. CA Management Services Sdn Bhd* [2009] 2 AMR 552, the petitioner submitted a proposal to the respondent for the petitioner to be appointed a debt collector for the respondent with regard to management fees due by house owners to the respondent. By a letter dated 23 August 2004 from the respondent, the respondent agreed to the proposal subject to certain conditions, one of which was that the petitioner was to give a letter of indemnity to indemnify the respondent in the event of any dispute between the house owners and the petitioner. The petitioner did not provide the letter of indemnity.

The petitioner subsequently presented a petition to wind up the respondent alleging that it had failed to pay a sum of RM19,894.36 due under an alleged agreement for the petitioner to be appointed as debt collector.

The respondent applied to strike out the petition on the grounds that there was no debt due and payable, and that it was not insolvent. To this end, the respondent placed a sum of RM20,000.00 with its solicitors as proof of its solvency and ability to satisfy the debt.

The High Court allowed the application for striking out and dismissed the petition on the grounds that:

- (a) The presumption of insolvency under Section 218 (2)(a) of the Companies Act 1965 is rebuttable, and the respondent has demonstrated that it was not insolvent and unable to settle the sum claimed, by depositing a sum to cover the claim with its solicitors.
- (b) There was no evidence that the petitioner in fact did any collection for the respondent. The petitioner had also not shown that it had provided the letter of indemnity. The claim was disputed on the ground that the petitioner did not comply with the conditions in the respondent's letter dated 23 August 2004. The petition is an abuse of process as there is a dispute as to the petitioner's entitlement to the claim.

Interest capped at 6% per annum in insolvency

In *Connell Bros Company Limited v. Vintage Tiles Industries Sdn Bhd* [2009] 6 AMR 466, the petitioner/creditor lodged a proof of debt against the respondent company which had been wound up, for the sum of RM216,331.18, which included a sum of RM58,012.88 for interest calculated at the contractual rate of interest of 1.5% per month. The liquidator admitted interest under the proof of debt in the sum of RM19,375.96 calculated at the rate of 6% per annum, only, instead of the sum of RM58,012.88 at the contractual rate of interest claimed by the creditor. The creditor appealed to the High Court against the liquidator's decision.

The High Court held that Section 43(6) of the Bankruptcy Act 1967 (which is imported into the winding up of companies) prescribes that the rate of interest in insolvency is to be capped at not more than 6% per annum, irrespective of whether the funds for payment are provided by a third party. The amendments to section 43(6) in 2003, by which the words therein, "without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been in full" were deleted, further indicates the intention to cap the rate of interest at 6% per annum, and to disallow full contractual interest.

Secured creditor precluded from recovering interest accruing after winding up date, if security is not realized and the proceeds received within 6 months from winding up date

In *United Overseas Bank (M) Bhd v. Mok Hue Huan & Anor* [2010] 7 MLJ 293, the plaintiff bank granted a loan to the borrower, Monzo (M) Sdn Bhd, secured by a charge over two properties of the borrower, and guaranteed by the defendants.

The borrower was wound up on June 19, 2002. The bank obtained an order for sale of the properties on July 25, 2006, more than four years after the borrower was wound up.

In the bank's application for summary judgment against the defendants, the High Court held as follows:

(1) Section 8(2A) of the Bankruptcy Act 1967 (which is imported into the winding up of companies) provides:

"8(2A). Notwithstanding subsection (2), no secured creditor shall be entitled to any interest in respect of his debt after the making of a receiving order if he does not realize his security within six months from the date of the receiving order."

(2) The provision is a "statutory clamp" on secured creditors precluding them from claiming any further interest after the date of the winding up order.

(3) The parliamentary debates on the amendment to the Bankruptcy Act to include Section 8(2A) show that the intention is to discourage dilatory action by secured creditors in realizing their security, which may be unfair to unsecured creditors and the debtor, by limiting their claim for interest if security is not realized expeditiously.

(4) Prior to the enactment of Section 8(2A), the courts have taken the view that a secured creditor should not be deprived of its contractual interest. This is no longer tenable in view of Section 8(2A).

Insurance

Duty of care to prevent theft under motor insurance policy

In *AXA Affin Assurance Bhd v. Natural Avenue Sdn Bhd* [2009] 8 MLJ 517, the insurer issued a Private Car Comprehensive Policy to the insured, which included cover for theft. On August 7, 2011, the insured's driver drove the car to a school to pick up the insured's children. Upon arrival, the driver parked the car in a parking space opposite the school, left the engine running and walked across the road to fetch the children. As they were walking back to the car a few minutes later, the driver realized that the car was missing. The insurer repudiated liability on the insured's claim for the theft on the ground that

the insured had breached condition 7(c) of the Policy which provides that:

"(c) You (the insured) have to take all reasonable precautions to safeguard your vehicle from loss or damage."

The dispute was arbitrated, and the arbitrator found as follows, and made an award in favour of the insured:

(1) The duty of care is imposed on the insured personally. The negligence of the employee is not a breach of condition 7(c).

(2) There must be recklessness and not mere negligence, for there to be a breach of condition 7 (c).

The Insurer applied to the High Court to reverse the arbitrator's decision on the basis of an error of law.

The High Court allowed the application, and held that:

(1) The insured is required to exercise reasonable care to safeguard the car, and the standard of care is reasonable care, and not recklessness.

(2) Within the bounds of a comprehensive motor policy, there may well be more than one level of care required of an insured. Whereas it is axiomatic that the negligence of the insured is covered as regards injury caused to third parties, and any clause to the contrary may be repugnant to public policy, the insured may still be required to exercise reasonable care to safeguard the vehicle against theft or damage

(3) The duty of care is not personal to the insured alone but extends to his employees for whom he is vicariously responsible.

Intellectual Property

Trade marks

In *Walton International Limited v. Yong Teng Hing t/a Hong Kong Trading Co*, the Court of Appeal overturned the concurrent findings of the High Court and Registrar of Trade Marks in an opposition against an application to register the "Giordano" mark in respect of optical and sunglasses in Class 9. Walton International Limited, the proprietor of Giordano mark, filed the opposition in 1995 which was dismissed by the Registrar of Trade Marks in 2003. Walton filed an appeal to the High Court. The High Court dismissed the appeal on the grounds, inter alia, that the applicant for the Class 9 application was the first user of the Giordano mark in Class 9; Walton had no reputation or goodwill in the mark in connection with Class 9 goods; and the goods bearing the Giordano mark, mainly articles of clothing, leather goods and fashion accessories, sold by Walton's licensees are not goods of the same description as optical and sunglasses, in 2007. Walton then filed an appeal with the Court of Appeal which was allowed in May

this year. The applicant had applied for leave to appeal to the Federal Court. In the application for leave, Walton argued that the application should be dismissed without considering the merits since a decision of the Court of Appeal hearing an appeal from a decision of a High Court exercising appellate jurisdiction is not appealable to the Federal Court. This jurisdictional issue has yet been decided by the highest appellate court in this country previously. The Federal Court reserved judgment and will deliver a decision in the near future.

On the issue whether articles of clothing which falls under Class 25 and optical and sunglasses which falls under Class 9 are goods of the same description, the Court of Appeal took cognizance that both categories of goods are considered to be fashion wear and share a common practical purpose of acting as articles of adornment to portray one's sense of fashion. The Court also took into consideration that in today's business environment, both categories of goods are more often than not manufactured, distributed and sold through the same channels. The Court of Appeal referred to examples such as Giorgio Armani, Dunhill, Cartier, Nike and several others.

Although the Court of Appeal did not rule whether the Giordano mark is entitled to protection under the well-known mark provisions (Walton withdrew this ground of appeal on well-known mark protection since the provisions ratifying Article 6b of the Paris Convention and Article 16 of the TRIPS Agreement were implemented after the application date of the application under opposition), it would appear that the Court recognised that a well-known mark which is used for goods in a different class could form the basis of opposition against an application to register an identical or a confusingly similar mark in a different class.

The Court of Appeal also held for the first time that the Registrar of Trade Marks, and the Court, has to take into consideration the issue of public interest, in deciding whether to allow registration of a mark in opposition proceeding. The public interest argument was previously only recognised at the High Court level. The Court of Appeal further held for the first time that issue estoppel or res judicata did not operate against a party who had failed in an earlier opposition filed against the same mark in a different class, applying the decision of the English Court of Appeal in *Special Effects Limited v. L'Oreal S.A. & Anor* [2007] RPC 15. In *Walton*, the Court of Appeal reversed the judge's finding that Walton had accepted the fact that it could not claim monopoly over the Giordano mark because it did not appeal against the Registrar's decision in dismissing the opposition filed against an application for the same mark in Class 14 for watches, a few years prior to the filing of opposition against the Class 9 application.

Strategic Trade Act 2010

By Kelvin Loh and Joy Lim

In April 2004, the United Nations Security Council passed Resolution 1540 requiring its member States to take measures against the proliferation of weapons of mass

destruction (WMD) and related materials, their means of delivery and other activities that will or may facilitate the design and development of WMD.

As a signatory to Resolution 1540, Malaysia enacted the Strategic Trade Act 2010 (the Act). The Act was gazetted on June 10, 2010, and came into force on January 1, 2011. The following subsidiary legislation were enacted and also came into force on January 1, 2011:-

- (1) Strategic Trade (United Nations Security Council Resolutions) Regulations 2010;
- (2) Strategic Trade Regulations 2010;
- (3) Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010; and
- (4) Strategic Trade (Strategic Items) Order 2010.

The Strategic Trade (United Nations Security Council Resolutions) Regulations 2010 was passed to implement certain measures decided by the United Nations Security Council. To implement the Act, the Minister of International Trade and Industry (the Minister) has appointed a Strategic Trade Controller (the Controller) and also established a Strategic Trade Secretariat.

What is regulated/prohibited under the Act?

The Act, enforced by the Minister, primarily regulates the export, transshipment, transit and brokering of "strategic items", including arms and related materials, and other activities that will or may facilitate the design, development, production and movement of WMD.

Brokering of strategic items is prohibited unless the broker is registered under the Act. Under the Act, brokering means "the activity of a person who, either on his own behalf or acting as an agent on behalf of another person (a) negotiates, arranges or facilitate the purchasing, financing, conveying, sale or supply of items; or (b) buys, sells or supplies such items".

Items that are not categorized as strategic items but may be used in a "restricted activity" are defined as "unlisted items". Similarly, the export, transshipment and transit of such "unlisted items" are regulated by the Act.

A "restricted activity" is "(a) any activity that supports the development, production, handling, usage, maintenance, storage, inventory or proliferation of any weapons of mass destruction or its delivery systems; or (b) participation in transactions with persons engaged in such activities".

If a person is informed by the relevant authority or otherwise knows or has reason to believe that any unlisted item will or may be used for a restricted activity, that person is required to notify the relevant authority of his intention to export that unlisted item at least thirty days before any export. The relevant authority will then decide whether or not to allow the export.

The Act prohibits the export, transshipment or bringing in transit of both strategic items and unlisted items to a "prohibited end-user" and requires a special permit to be obtained when a "restricted end-user" is involved. The terms "restricted end-users" and "prohibited end-users" are defined in the Strategic Trade (Restricted End-Users

and Prohibited End-Users) Order 2010, which includes specific names of individuals, entities and countries.

The Act also prohibits any technical assistance within or outside Malaysia intended for or in connection with a restricted activity. "Technical assistance" is defined to include "instructions, skills, training, the provision of working knowledge and consulting services and may involve the transfer of technical data".

What are Strategic Items?

The Strategic Trade (Strategic Items) Order 2010 is an Order setting out items governed by the Act. This Order generally incorporates items currently controlled under the European Union's Council Regulation (EC) No 1334/2000. Strategic items set out in this Order can broadly be categorized as follows:-

- (i) nuclear materials, facilities and equipment;
- (ii) special materials and related equipment;
- (iii) materials processing;
- (iv) electronics;
- (v) computers;
- (vi) telecommunications and information security;
- (vii) sensors and lasers;
- (viii) navigation and avionics;
- (ix) marine;
- (x) aerospace and propulsion; and
- (xi) military items.

The question as to whether an item is or is not a strategic item shall be decided by the Controller.

Permits

In order to export, tranship or bring in transit strategic items, a permit issued under the Act must be obtained.

There are 4 types of permits:-

- (a) "One-Time Permit" - for one-time export, transit, transhipment or bringing into transit of items to a single destination;
- (b) "Bulk Permit" - for multiple transactions to a single destination;
- (c) "Multiple-Use Permit" - for multiple transactions involving different destinations; and
- (d) "Special Permit" - where the end-user is a restricted end-user.

Durations for these permits will be set out in the permits themselves and may be suspended or revoked by the Controller at any time. Before a permit is issued, an applicant company must be proven to have complied with the internal compliance programme prescribed by the Minister. The Strategic Trade Regulations 2010 also provides for matters relating to the enforcement and administration of the Act.

To ensure effective enforcement of the Act, the Ministry of International Trade and Industry will collaborate with the Malaysian Communications and Multimedia Commission, the Atomic Energy Licensing Board and the Pharmaceutical Services Division of the Ministry of Health

to streamline the application and issuance of permits under the Act.

What other statutes should one be concerned about?

The Act has made clear that other existing statutes are still applicable to the regulation of strategic items and related activities all of which. Therefore the following legislation must also be read together with the Act:-

1. Animals Act 1953;
2. Atomic Energy Licensing Act 1984;
3. Chemical Weapons Convention Act 2005;
4. Customs Act 1967;
5. Pesticides Act 1974;
6. Plant Quarantine Act 1976;
7. Prevention and Control of Infectious Diseases Act 1988;
8. Protection of New Plant Varieties Act 2004;
9. Poisons Act 1952; and
10. Malaysian Communications and Multimedia Commission Act 1998.

In the event of any conflict or inconsistency between the Act and any other written law, the Act shall prevail and the conflicting or inconsistent provisions of the other written law shall, to the extent of such conflict or inconsistency, be deemed to be superseded.

Does the Act have extra-territorial application?

Yes, the Act does have extra-territorial application. Where a person commits an offence under the Act outside Malaysia, he may be dealt with as if the offence was committed in Malaysia.

Enforcement and Penalty

If one deals with strategic items without a valid permit and it results in death, it will be an offence punishable with death or imprisonment for natural life. If such an offence is committed by a body corporate, a minimum fine of RM10 million may be imposed.

Where an offence against any provision of the Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was responsible for the management of the affairs of the body corporate shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge, consent or connivance and that he had exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

In light of the introduction of the Act, businesses involved in the import (e.g. of raw materials for manufacturing activities) or export (e.g. business with overseas customers) of goods falling within the purview of the Act should take appropriate measures to ensure compliance with the Act.

Tertiary Education: Challenges for Children of Divorced Parents

By Goh Siu Lin

1. The issue of the duration of orders for maintenance ceasing upon the child attaining 18 years of age has long been an issue of contention in Malaysia with many pushing for reform. This issue relates only to non-Muslim children as Muslims come under the syariah law as their personal law.
2. Prior to the 1980s, there was a dearth of locally reported cases on the issue of maintenance of children who have attained 18 years and beyond. However the educational landscape has evolved such that more and more children in Malaysia are pursuing their tertiary education in local private colleges or abroad with attendant hefty educational fees due to limited places in local government institutions of higher learning.
3. Hence, children in Malaysia face a predicament upon attaining their 18th birthday, particularly when this period of their lives heralds the beginning of an exciting new educational chapter, pre-tertiary education at college, followed by their university years which should be carefree, leaving them to focus on the richness of the experience.
4. Unfortunately, the existing law on maintenance as found in Section 95 of the Law Reform (Marriage & Divorce) Act 1975 provides:

Except where an order for custody or maintenance of a child is expressed to be for any shorter period or where any such order has been rescinded, it shall expire on the attainment by the child of the age of eighteen years or where the child is under physical or mental disability, on the ceasing of such disability, whichever is the later.
5. This provision gives an avenue for errant parents (fathers in particular) to avoid their moral responsibilities and consequently, deprives children of one of their most basic needs, the right to an education. Undue financial burden is also placed on single mothers, to find means and ways to support their children's educational needs.
6. An illustration of the application of Section 95 is the case of *Kulasingam v Rasammah* [1981] 2 MLJ 36 whereby it was held (on appeal) that the daughter who was over 20 years old was not entitled to maintenance. The Supreme Court in *Gisela Gertrud Abe v Tan Wee Kiat* [1986] 2 MLJ 29, reiterated that a child's maintenance order would expire after the child's 18th birthday.
7. The only Malaysian authority which permitted maintenance to be paid beyond the child's 18th birthday was the case of *Ching Seng Woah v Lim Shook Lin* [1997] 1 MLJ 109 but this case turned on its specific facts as the father had in the court below "undertook on oath and with the benefit of legal advice to maintain his daughters till they received their first degree, ie till they were educationally equipped to find their rightful place

on the job market. It is a fundamental doctrine of law that a person cannot be permitted to reprobate what he has approbated".

8. The applicability of Section 95 was revisited by the Malaysian apex court, in the Federal Court case of *Karunairajah a/p Rosiah v Punithambigai a/p Poniah* [2004] 2 MLJ 401. The issue for consideration was whether upon a proper construction of Section 95, the involuntary financial dependence of a child of the marriage for the purposes of pursuing and/or completing tertiary and/or vocational education comes within the exception of physical or mental disability so as to entitle the child to maintenance beyond 18 years.

The Federal Court was referred to the case of *Penner v Danbrook* 39 RFL (3rd) 286, where counsel for the respondent wife had argued that the term 'disability' in the section should be interpreted to include economic and social disability and that a person pursuing her education could be found to be disabled, and thus a child eligible for maintenance within the meaning of the section. However the Saskatchewan Court of Appeal held that the argument was untenable.

Likewise, this argument did not find favour with the Federal Court which gave a strict and literal interpretation of Section 95, holding that the word 'disability' should only cover "physical" and "mental" disability and not "financial" disability and therefore maintenance orders should cease when the child attains the age of 18. The Court indicated that it was the responsibility of Parliament to make the necessary amendments to the Act.

His Lordship, Abdul Hamid Mohamad referring to the judgment of *Ching Seng Woah v Lim Shook Lin*, had held further, "...personal views on the state of the law and moral obligations on the part of parents towards their children should be disregarded. A case has to be decided according to the law as it stands, irrespective of a judge's personal view on it and moral obligations can never take precedence over the law. What the law should be is a matter for the legislature".

9. Section 95 is read in tandem with Section 92 of the Act which provides:

Except where an agreement or order of Court otherwise provides it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the custody of any other person, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.

The cap of 18 years in Section 95 limits the applicability of Section 92 in the area of education.

10. Further, it should be highlighted that Section 95 appears to discriminate against children of divorced

parents in that the obligation to maintain ends at 18 years whereas Section 3 of the Guardianship of Infants Act 1961 stipulates that a guardian's obligation to maintain an infant (defined as one below the age of 21 years) includes being responsible for "his support, health and education.". This, coupled with Malaysian income tax provisions which permit taxpayers to claim relief for children beyond 18 years which tacitly recognizes a parent's responsibility to educate his/her children.

11. It is without doubt that Section 95 is in dire need of reform through the legislative process. Other jurisdictions such as Singapore, Australia and United Kingdom have statutorily provided for maintenance orders to continue beyond the child's age of majority if it is necessary to enable the child to complete his/her education (vocational training or apprenticeship). The Family Law Committee of the Malaysian Bar Council is spearheading the law reform efforts over the past few years and is regaining momentum in mid-2011.
12. It was recently reported in "The Star" (April 2, 2011) that the Deputy Women, Family and Community Development Minister, Senator Heng Seai Kie, had said:

The civil court is lagging far behind the Syariah court in the enforcement of maintenance orders.

...It was high time that Section 95 of the Law Reform Marriage and Divorce Act was amended to address various issues, including maintenance for children aged 18 and above.

The law must be reviewed to compel the parent to pay maintenance until the children complete their tertiary education," she said.

Heng also said the ministry would study the recommendations made by the forum organised by the Malaysia Bar Council.

13. It is hoped that Parliament will address this problem in the near future. It is a shame that the civil court is lagging behind the Syariah family law in this area and the unseen victims are the children of broken marriages who have been denied what is morally their birthright

Life as a lawyer

The firm's David Mathew penned these reminiscences of his life as a lawyer for the VOX magazine of the law faculty, University of Malaya

I was asked by a partner to put down my thoughts for the VOX regarding the practice of law and what a young lawyer should expect coming into the legal world.

I sent the partner a cartoon with a note that read "Can we not use this?"

In it, a very worried and tired looking lawyer is in a room surrounded by law books from floor to ceiling and he thinks aloud "You know, the worst of it is that I know the answer's in here somewhere."

The partner then sent the cartoon back to me with a note that said, "David, you don't need to tell them what my room looks like! Encourage them, not discourage".

So much for my failed attempt in avoiding having to write anything. I'll move on.

As a young boy I wanted to be an actor. Not any kind of actor. I specifically wanted to grow up to be Mark Hamill, the man who played Luke Skywalker in Star Wars. My father told me that there was no future in being an actor.

I suppose he was right as I'm not quite sure where Mark Hamill is now.

As a teenager, I wanted to be a writer like Ken Saro-Wiwa, the Nigerian activist who led a non-violent campaign against multinational petroleum companies that exploited the Ogoni people in Nigeria. My father told me that this was an obtuse idea as it would put my life in danger.

A year later in 1995, Saro-Wiwa was hanged by a dubious military tribunal set up by the equally dubious General Sani Abacha.

When I passed the age of 18, my father told me that I could do anything I wanted as long as it was law.

I went to law school as my father had been right thus far and he didn't give me much choice.

A number of years later I joined Shook Lin & Bok as a pupil and to date, I've been in practice for about five years. I would like to tell you that my father was right but I am not quite so sure about that yet.

I can however tell you that thus far, it has been a ride riddled with joy, exhaustion, elation, disappointment and satisfaction. I can also tell you that there is rarely a dull day in the practice of law.

I will also tell you one other thing which actually is something told to me by a senior partner of the firm early on in my pupilage.

You see, I had made a number of lady lawyer friends in the firm quite quickly and we all used to go for lunch. We went everyday and we were never late for lunch. I was the only guy.

In all the excitement of being the only guy and further not having to work for about an hour, I didn't notice that this senior partner had observed my lunch time happiness a number of times.

Two months into my pupillage, he summons me into his room to discuss a brief and towards the end he randomly asked me whether I enjoyed lunch time.

With a big smile I informed him that I thoroughly did. With no smile, he told me that the law was a jealous mistress and that she had little patience for distractions.

The tea lady now buys my lunch which I eat in my room. I'm only half joking but the advice was sound. The law is a jealous mistress and she will occupy your mind at all times whether you are driving, watching football or shaving.

She does however reward you now and then with what I would call legal excitement which comes in many different shapes.

Some of my contemporaries who are in the International Arbitration team often travel to far away locations around the world like London, Japan and Korea as part of the job. The rest of us watch in envy as we pack our bags and head to the ramshackle courts of Kota Bharu, Alor Setar and Kuala Lipis where having tea with the Judge or Magistrate in chambers is not uncommon.

And then on the way back to the airport you stop by your favourite Nasi Dagang stall while thinking about your luckier colleagues miles away having exotic puffer fish. You only halfheartedly pray that the chef is trained in the difficult art of extracting the poison from the said puffer fish.

Young lawyers who are in general litigation sometimes get to assist senior partners in cases that make headlines. These are usually the human rights cases or cases that involve larger than life individuals.

You do not of course argue these cases yourself, but you carry the most important bag. This would be the senior partner's bag.

In these headline cases you have the rare opportunity to witness sterling legal arguments that not only appear in the newspapers the next day but are also later immortalized in judgments delivered by the court.

When you go for tea a few days after the said big case, your friends will tell you "Dude, I saw you on Bernama TV the other day. You were walking out of court."

After getting over the fact that people actually do watch Bernama TV, you would smile and tell them all about your exploits inside the court which they did not see and which totally did not happen.

They would listen in awe and then inevitably burst your bubble with something unrelated to your exploits like "Yes ah, but that bag you were carrying looked very heavy man."

Those who practice employment law also have loads of legal excitement. My first ever employment law brief involved an employee terminated for sexual harassment. His case was that it was impossible to have been doing what he was alleged to have done while driving. It was then my job to show otherwise.

I would love to indulge you with more details but alas, I cannot due to client confidentiality and the plethora of rules that govern the legal profession.

As I write this a colleague of mine from the corporate department walks in. I tell her about this article and she proceeds to relate to me the story about the multi-million dollar deal that she helped seal just the last week. There was apparently champagne at the end of it all.

She also cheerily informs me that only the corporate folks walk through the corridors of power and into the big offices of the CEOs and CFOs.

Apart from drafting confusing agreements, I haven't a clue about what my corporate colleagues actually do in those corridors of power.

I am however reminded about D. Robert White Esq. who wrote *The Official Lawyer's Handbook* published in 1983. According to White, the corporate lawyer is skilled in the art of obfuscation. This is explained in a *Time* magazine report of November 1983 as follows:-

"If a layman can read a document from beginning to end without falling asleep, it needs work." Simple, direct statements should be avoided at all costs. For example, "The sky is blue" is impossibly straightforward; any associate worth his salt will quickly convert it to "The sky generally appears to be blue." His more experienced superior will render the statement "In some parts of the world, what is generally thought of as the sky sometimes appears to be blue." At which point, a senior partner will have a base to build on.

I'll leave you with one last observation. It is about time.

Time is everything in a lawyer's world. For example, the time you get called to the bar determines your place in the firm's letterhead and your seniority at the Bar. This in turn determines your hourly rate, which, along with the amount of time you spend preparing your case, determines your final bill to the client.

It can safely be said therefore that the better the time organization, the happier the lawyer.

As Abraham Lincoln once observed, "the leading rule for the lawyer, as for the man of every other calling, is diligence. Leave nothing for tomorrow which can be done today".

I wish all of you the best of luck in all your future endeavors and I hope to see some of you at the Bar or at a bar.

New partners in 2012

The firm introduced a new category of partners, namely Salaried Partners, in 2012. The inaugural additions as Salaried Partners of the firm are as follows.



Ng Hooi Huang is from Penang and graduated from the University of Liverpool in Law. She was admitted to the bar in 2007, and her practice area is Banking and Finance Litigation.

David Dinesh Mathew was born in Kluang and is a graduate in law and also has a Masters degree from the University of London. He was admitted to the bar in 2005. His areas of practice are General Litigation and Labour Law.



Poh Choo Hoe is an Ipoh native and obtained his law degree from the University of the West of England, Bristol. Admitted to practice in 2005, his specialization is Banking and Finance Litigation.

Steven Thiru's election as Treasurer of the Bar Council

The firm's Steven Thiru was elected as Treasurer of the Malaysian Bar Council at the Annual General Meeting of the Malaysian Bar in 2011. This is the first time since the term of 1997 to 1999 when the firm's Dato' Cyrus Das was the President of the Bar Council, that a partner of the firm has assumed a position on the executive committee of the Council.



Goh Siu Lin's election to Kuala Lumpur Bar Committee

The firm's Goh Siu Lin was elected as a committee member of the Kuala Lumpur Bar Committee 2012-2013 at its 20th Annual General Meeting on 23 February, 2012. Following this, she was appointed Chairperson of the Practitioners' Affairs sub-committee.

Goh Siu Lin was also elected Vice President of the Association of Women Lawyers at its Annual General Meeting on 25 April 2012 (Picture above. Goh Siu Lin is in the front row on the right).



All work and no play ...

Not! The firm organized a back-to-nature-cum-teambuilding weekend getaway at Sekeping Serendah in July, 2012.

Sekeping Serendah is a private retreat not far from Kuala Lumpur with cleverly constructed mud sheds, glass sheds, timber houses and a warehouse, set in a lush tropical rainforest with a stream running through - the perfect refuge for tired and weary souls wanting to get away from the hustle and bustle of the city.

Saturday afternoon started with a team-based game of guessing various unusual everyday items collected from around the world. Thereafter some made their way to Serendah Waterfalls nearby and the more adventurous hiked up to the hidden, more spectacular parts of Serendah Waterfalls where they did their part for the community, clearing up some of the litter left by picnickers, before splashing away. The not-so-adventurous settled for the pool in Sekeping Serendah.

All met up again for a sumptuous barbecue dinner. The theme for dinner was "Wild!" where everyone was encouraged to come dressed in animal print, faux fur or feathers befitting the occasion. After dinner, everyone sportingly participated in a game of Charades, taking turns to act out various titles of movies and songs and legal principles! The night continued with an after-party into the wee hours of the night. Come Sunday morning, it was off to the dragon walk (gentle elevated tracks which snaked through the forest within Sekeping Serendah) and exploring Sekeping Serendah, before heading home.

All-in-all, it was a memorable weekend. We got close to nature, played, splashed in the waterfalls, bonded and best of all, thoroughly enjoyed ourselves!

By Victoria Loi

Legal 500 comments on Shook Lin & Bok

The following are comments from the Legal 500 2011 (www.legal500.com) on the firm. "Published for over 20 years, the Legal 500 series provides the most comprehensive worldwide coverage currently available on legal services providers, in over 100 countries... the series is widely regarded as offering the definitive judgement of law firm capabilities." (from the website).

"Banking and finance

Within Banking and finance, Shook Lin & Bok is a second tier firm [of 3 tiers]

Shook Lin & Bok's representation of major local and international banks on sizeable facilities illustrates its standing within the sector. The firm handles conventional and Islamic structures with equal sophistication, and the broad practice encompasses a substantial flow of asset and project finance mandates. Headline recent mandates include advising a local financial institution on a RM3bn revolving credit facility to a Malaysian company. Key partners include Lai Wing Yong, Patricia David Saini, Ivan Ho, Kelvin Loh Hsien Han and Jal Othman.

Corporate and M&A

Within Corporate and M&A, Shook Lin & Bok is a second tier firm.

Shook Lin & Bok is 'extremely strong' on landmark M&A deals, particularly those of a cross border nature. The firm has 'very capable staff, is 'very good value for money', and provides 'rapid responses'. Patricia David Saini remains the key name here, but Kelvin Loh Hsien Han is commended by being 'commercial', 'pragmatic' and 'thoroughly professional'. In 2009, the firm represented a subsidiary of a Malaysia public company on its RM26m acquisition of an oil and gas storage facility company.

Dispute resolution

Within Dispute resolution, Shook Lin & Bok is a first tier firm.

Shook Lin & Bok features Cyrus Das, one of Malaysia's premier litigation and arbitration counsels. The department is also considered to be at the forefront of dispute resolution, with arbitration specialist Mohanadass Kanagasabai and litigator Porres Royan also having giant reputations. The firm has a distinct banking litigation department, which acts principally for local banks, and in this arena, Yoong Sin Min has an excellent record.

Intellectual property

Within Intellectual property, Shook Lin & Bok is a second tier firm.

Shook Lin & Bok is another of Malaysia's traditionally dominant IP players, with department head Michael Soo being one of Kuala Lumpur's foremost practitioners, particularly in the IP litigation environment. The firm recently represented Digi.COM Berhad in the High Court. The firm has an established record in copyright and trade marks, as well as domain name disputes.

Islamic finance

Within Islamic finance, Shook Lin & Bok is a first tier firm.

Shook Lin & Bok has an emerging status in Sharia financings, thanks in part to the fervent efforts of key partner Jal Othman. In 2009, the firm acted for the banks on a sizeable syndicated Murabahah Tawarruq facility and acted for several Malaysian financial institutions on a syndicated RM500m istisna and ijarah facility.

Real estate and contraction

Within Real estate and construction, Shook Lin & Bok is a first tier firm.

Shook Lin & Bok is praised for its 'excellent response times', 'accuracy' and 'depth of knowledge'. Kelvin Loh Hsien Han is 'knowledgeable', 'dedicated' and 'professional'. The firm recently advised Panasonic HA-Air Conditioning on the sale of a 99-year piece of leasehold industrial land in the State of Selangor.

Within Legal market overview

Malaysia's legal market has transformed in recent years. Malaysia's traditional elite group, known as the three S's (Shearn Delamore & Co, Shook Lin & Bok and Skrine), still have a profoundly influential position in the market with leading departments in virtually every practice area..."



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