SHOOK LIN & BOK EST 1918 KUALA LUMPUR

LEGAL UPDATE

Vol 3 No 3 PP13906/8/2008 Issue No 3 2007

Shook Lin & Bok sponsors Exchange Traded Funds Conference

Two years into the launch of Exchange Trade Funds (ETFs) in Malaysia in 2005, and with the rising star of ETFs being a worldwide phenomenon and in tandem with the Prime Minister's call for government linked investment companies to convert a portion of their portfolios to investments in ETFs, Bursa Malaysia (the Malaysian Stock Exchange) organized an international conference on Exchange Traded Funds on 6th to 8"' June 2007 at the JW Marriot, Kuala Lumpur. The firm was a sponsor of the conference. Speakers from around the world shared insights on the development and growth of ETFs from international and local perspectives. The topics presented included: "The growing role of ETFs in managed investment portfolios", "Regulatory framework for domestic and international ETFs" and "Islamic ETFs: the challenges in structuring".

(continued next page)

IN THIS ISSUE

The firm's partner, Patricia David, was a speaker in the panel session on Regulatory Framework for ETFs. The other speakers on the panel were Wong Sau Ngan of the Securities Commission, Selvarany Rasiah of Bursa Malaysia and Kathleen Moriarty of Katten Muchin Rosenman LLP (known as "Spyderwoman", as she advised on the SPDR (or "Spyder") which was the first ETF in the world), who spoke from the USA via videoconferencing.

The firm was the legal adviser for the first ETF in Malaysia, the ABF Malaysia Bond Index Fund launched by AmInvestment Services Berhad in 2005 which was also the first bond ETF to be launched in South East Asia. The firm also advised on the launch of the FBM30etf in mid 2007. This was the second ETF as well as the first equity ETF in Malaysia.

Investors are familiar with shares and unit trusts. ETFs have characteristics of both shares and unit trusts, offering a similar benefit to unit trusts i.e. diversification with the purchase of a single security, and a similar benefit to shares i.e. ability to trade on the stock exchange in real time like shares. ETFs therefore combine the best of both worlds, which would not be possible by investing in unit trusts or shares, and which accounts for the exponential growth and popularity of ETFs in many major financial centres worldwide. One of the speakers pointed out that ETFs in Asia have lagged behind the growth in the U.S.A and Europe, where ETFs grew by 35.9% and 63.3% respectively, in 2006. Among the reasons for this are, that most ETFs in Asia are single market in nature, fragmented markets and incompatible regulatory regimes limit regional product development opportunities and lack of investor education. However some markets are renewing efforts to boost new launches and cross-trading or cross-listing of ETFs.

Regional Arbitration Conference

As trade and economic ties among countries within the Asian economic region go from strength to strength, there is an accompanying need for an effective and efficient dispute resolution mechanism with uniform or common characteristics, in countries across the region, to facilitate the booming intra Asian commerce. Arbitration has emerged as the key answer to fulfill that need.

It was in that context that the Regional Arbitration Conference under the auspices of the Malaysian Institute of Arbitrators (MIArb) was held on 22 and 23 June 2007 at the Hotel Renaissance, Kuala Lumpur, with a busy programme helmed by over fifty international speakers and moderators, providing a forum for the sharing of ideas on advancing arbitration in the region, and drawing over 200 local and overseas participants. The Conference concluded with the Inaugural Annual Dinner for MIArb in the evening of 23 June 2007.

The firm's Mohanadass Kanagasabai, who sits in the Council of MIArb, chaired the organizing committee for the conference and together with the firm's Nagarajah Muttiah, Michael Soo and Lam Ko Luen, who is also the Honorary Secretary of MIArb, presented papers or chaired sessions at the conference.

(continued next page)

Among the stimulating topics in the programme, two speakers, one from Malaysia and one from India, highlighted the evolving judicial attitudes to arbitration across the globe, and the general trend from judicial interventionism in arbitration proceedings towards judicial circumspection. This is a recognition of the practical reality of the increasingly widespread choice in the international business community, of arbitration as the preferred method of resolving commercial disputes, over court litigation, on account of the advantages of privacy, informality and speediness of arbitration, and the easier enforceability of arbitration awards across international boundaries; and also a recognition of the desirability of fostering the growth of arbitration.

This shift in judicial attitude was driven by the international community, tracing its origins to the New York Convention of 1958 made in the wake of the post war growth of international trade, with a major impetus being the recommendation by the UN General Assembly that member nations adopt the UNCITRAL Model Law on Arbitration 1985, to bring about uniformity in arbitral procedures and law, with non-intervention being a hallmark of the Model Law.

Over 52 countries have adopted the Model Law as the basis for their domestic legislation, with varying degrees of adherence to the provisions thereof.

Another speaker pointed out the fact that of the new arbitration cases heard world wide every year, around 40% emanate from Asia, underscoring the fact the region is a fertile ground for the growth of arbitration.

Landmark sale of Non Performing Loans of Malaysian Bank to non-financial institution investors: Shook Lin & Bok acts in the first sale in the country

Earlier this year, Malayan Banking Bhd (Maybank) carried out a landmark sale of two tranches of its outstanding corporate non-performing loans (NPLs) to two special purpose vehicles, Gale Force Sdn Bhd (which is a part of the Standard Bank of South Africa Group) and Popular Ambience Sdn Bhd.

As reported in The Star newspaper, the sale was the first ever sale of NPLs of a local bank to non-financial institution investors in the country pursuant to the "Guidelines on the Disposal/Purchase of Non-Performing Loans (NPLs) by Banking Institutions" issued by the Central Bank of Malaysia (Bank Negara). The sale was also the first ever in the country via a competitive open auction. The auction drew significant interest in the market, with 26 potential investors at the initial stage. There was a two-stage bidding process, with potential investors submitting indicative non-binding bids for the NPLs based on limited data and eventually two bidders were successful.

The Bank Negara guidelines were issued in 2005 to allow and regulate the sale of NPLs by local banking institutions to domestic and foreign non-financial institution investors. The policy motive underlying this new development is to provide an avenue for local banks to rationalize their assets and dispose of their delinquent loans, freeing them to focus on innovation and developing their business, away from managing distressed assets, which will benefit the entire banking industry. This pioneering sale is set to blaze the trail for more such sales to follow.

Shook Lin & Bok is pleased to have acted for Gale Force Sdn Bhd in the purchase of one of the two tranches of NPLs. The firm's team was led by its partners, Yoong Sin Min, Khong Mei Lin and Tan Gian Chung.

Labuan IOFC: The Investment Route to Asia

The Labuan Offshore Financial Services Authority (LOFSA) organized a one day conference at Shangri La Hotel Kuala Lumpur on 12th December 2006 to promote the viability of Labuan as an International Offshore Financial Centre (IOFC). The Director General of LOFSA, Dato' Azizan Abdul Rahman delivered the opening remarks and the Governor of Bank Negara Malaysia, Tan Sri Dato' Sri Dr Zeti Akhtar Aziz officiated the opening of the conference.

The firm was one of two law firms invited to speak at this prestigious conference. The firm's partner Jal Othman, delivered a paper entitled "Raising Capital Through the Labuan IOFC". The firm is honoured to have been given the opportunity to share its experience in its Labuan deals with over 700 delegates.

Some of the issues raised and discussed in the paper are as follows:

- the legislative framework governing Labuan and LOFSA.
- introduction to the various offshore entities
- the circumstances where approval of LOFSA is required for corporate exercises
- the distinction between dealings with residents and non residents
- the need to deal in foreign currency
- the duty of confidentiality
- lodgment and registration of prospectus
- advertisements
- the concept of the restricted circle of persons and its relevance in any issuance of debentures and shares to the public
- Foreign Investment Guidelines and its role in Labuan
- Change in control of Offshore Insurance Companies.

The firm has on many occasions advised on cross border capital raising exercises and corporate restructuring exercises out of Labuan. These include both debt and equity raising exercises.

11th Equity Trust International Conference

Equity Trust, one of the world's leading trust companies, held its annual international conference in Labuan on 16th -18th May 2007. The firm's partner in the Islamic Finance practice, Jal Othman, presented a paper on the challenges facing the Islamic finance industry.

The participants included financial consultants, lawyers, accountants and other intermediaries specializing in offshore and tax haven business. The two day conference saw delegates coming from Switzerland, Netherlands, Taiwan, United States of America, British Virgin Islands, Jersey, Hong Kong and Thailand.

The theme of the conference was on structuring opportunities in a seamless world. Jal's paper discussed the role that Islamic finance played in structuring such opportunities. Some of the other topics that were discussed include offshore business, entry and exit strategies for China, India, the European Union, Taiwan and Thailand, captive insurance and re insurance.

Some of the issues that Jal had alluded to in his paper are as follows:

- the facilitative legal landscape in Malaysia for Islamic finance;
- the competitive edge of the sukuk;
- branding and re branding Islamic finance;
- correcting the misconceptions;
- meeting the scarcity of human capital.

Cross border advisory work represents a significant area of practice for the firm and the firm's participation in the conference provided the opportunity for the firm to share its experience and knowledge with other cross border practitioners. It was also an occasion for the firm to renew its relationship and contacts with some of its counterparts from the other parts of the world.

Budget 2008: "Together building the nation and sharing prosperity"

Introduction

On September 7, 2007 the Honorable Prime Minister, Datuk Seri Abdullah Ahmad Badawi, who is also Minister of Finance, presented the 2008 Budget Speech at the Dewan Rakyat with the theme "Together Building the Nation and Sharing Prosperity". Budget 2008 embodies three main strategies – enhancing the nation's competitiveness, strengthening human capital development, and ensuring the well-being of all Malaysians. The focus of this write-up is on some notable tax and non-tax measures contained within Budget 2008.

Corporate tax rate cuts

In line with the announcement in the 2007 Budget Speech, the corporate income tax rate for 2008 will be reduced to 26%. Further, in a move that was unanticipated, the Prime Minister has committed the Government to another 1% reduction in 2009 to 25%. The proposed corporate tax rate cuts have been well received, as it is seen as a step in the right direction. It should serve to maintain, if not, enhance the competitiveness of the nation's economy, foster a business climate that is attractive to foreign investment and also encourage companies to pay higher dividends. Further, it also follows the global trend in recent times, which is one of declining corporate income tax rates. Thus, the records will show that over the last two or three decades, the average international income tax rate has declined sharply from a high of 48% to 28%. Looked at in this context, Malaysia's corporate income tax rate of 26% for the 2008 year of assessment compares favorably. However, it is notable that in this region both Singapore and Hong Kong have substantially lower corporate income tax rates of 18% and 17.5% respectively. It is thus entirely foreseeable that there will be further gradual corporate tax rate cuts in the years to come, as the nation strives to maintain, if not strengthen its competitive position and attract more foreign investment.

Implementation of the single-tier corporate tax system

The big news emerging from Budget 2008 is the proposed implementation of the single-tier corporate tax system (STS) in place of the current dividend imputation system (IS) and its implications for the treatment of corporate dividends. There will be a transitional period of six years (between January 1, 2008 and December 31, 2013) to ensure smooth implementation of the STS. The new system will be adopted by existing companies at different times, for example, newly incorporated companies and companies with no dividend franking credits as at January 1, 2008 will automatically move to the STS, whilst companies with dividend franking credit balances will have the option of moving to the new system during the transition period, when their dividend franking credits are exhausted, unless they elect (irrevocably) to move to the new system sooner although dividend franking credit balances still remain. From January 1, 2014 all companies will automatically switch to the STS even if they still have dividend franking credit balances. The transitional provisions apply only to dividends distributed on ordinary and not preference shares.

Under the IS, income earned by the company is taxed both at the company level, and the shareholder level when received as dividends. Tax is paid by the company on its taxable income at the applicable corporate tax rate. Tax is also paid by the shareholder at the shareholder's personal or marginal tax rate on the gross (and not net) dividend received. However, to counter the incidence of double taxation, the shareholder receives a tax credit corresponding to the amount of tax paid by the company, which is then offset against the tax payable by the shareholder on the dividend received. In this way, where the personal or marginal tax rate of an ordinary shareholder is less than the prevailing corporate tax rate, the shareholder would be entitled to a tax refund, being the excess tax paid by the company, from the government. However, double taxation does arise under the IS in the case of non-residents who, unlike resident investors, are not entitled to claim a tax credit on the dividends received. This then is an important weakness of the IS as it discriminates against the non-resident investor, and could serve as an important disincentive to the investment of foreign funds in the local equity market.

By contrast, under the STS, income earned by the company is taxed once only at the company level. Thus, dividends received by the shareholder from that income will be exempted from tax and tax credits will be done away with under this system.

The move from the IS to the STS will undoubtedly have broad and far reaching implications some of which are discussed below.

It is said that the objective behind the move is to simplify the tax system, and specifically to ease the administration of corporate tax and cut administrative costs of the government. In this regard, an important benefit of the single-tier system is that it will enable the government to take up, as its income, the revenue from corporate taxes without the need for a refund to shareholders. Looked at in this way, the move may also be seen as a measure to enhance government revenue since no refunds will be made to shareholders under any circumstances. Indeed, some tax experts estimate that the government could save about RM3 billion to RM4 billion in tax refunds annually following the implementation of the STS. On the other

hand, it is estimated that the loss to the government from a 1% tax cut would be about RM900 million.

Another benefit that should accrue under the STS is an increase in the payout of dividends to shareholders. To begin with companies are likely to pay out more dividends in order not to waste their dividend franking credit balances, which would expire at the end of the six year transition period. Quite apart from the above, under the STS, dividends may be distributed more easily than under the IS. The requirement under the IS, for a company to have dividend franking credits to frank dividend payments, has curtailed or restricted the amount of dividend payments which can be made, by companies that lack tax credits, but are otherwise profitable. Under the STS, dividends are paid out of corporate profits without the need to frank dividends out of franking credits. Further, under the new system, dividends may be paid out of the company's entire gains and profits, including capital gains, which is not permissible under the current system. Thus, in this connection, the move is seen as a good one for the distribution of higher dividends.

The losers under the new system will be tax-exempt bodies such as the Employees Provident Fund (EPF) (and by extension its members), and ordinary shareholders who have marginal tax rates that are lower than the prevailing corporate tax rate, such as pensioners, as they will be unable to claim tax refunds. As noted above, under the IS, the excess tax paid by the company, which is passed on to shareholders in the form of a tax credit is refunded to shareholders whose marginal tax rates are below the prevailing corporate tax rate. However, under the STS, the tax credit system will be abolished and there will be no tax refunds. By contrast, ordinary shareholders who are taxed at a marginal tax rate higher than the prevailing corporate tax rate will benefit as they no longer have to pay the additional tax that is represented by the difference between personal and corporate tax rates. There could also be a disincentive under the STS to borrow to finance equity investments because income is tax-exempt and hence, interest expense paid on borrowings made to acquire these shares would not be deductible.

However on balance, the STS is seen by many as a positive and natural step to simplify the tax system following the implementation of self assessment and aligns the Malaysian tax system with countries such as Hong Kong and Singapore and the more general global trend. It is also perceived that with the impending implementation of the Goods and Services Tax and the likely cuts in personal and corporate tax rates in the event thereof, some of the disadvantages under the STS are likely to be gradually swept aside.

Malaysia as a leading international financial centre

Budget 2008 contains several measures intended to strengthen Malaysia's position as a leading international Islamic financial centre. The proposed measures include:-

(a) allowing Islamic fund management companies to be wholly owned by foreigners;
(b) funds amounting to RM7 billion to be channeled from EPF to be managed by Islamic fund management companies;
(c) allowing Islamic fund management companies to invest all their assets abroad;
(d) income tax exemption on all fees received in respect of Islamic fund management activities until year of assessment 2016. The Islamic fund must be approved by the Securities Commission (SC);
(e) income tax exemption for non-resident consultants with the required expertise in Islamic finance until December 31, 2016. The experts have to be certified by the Malaysia International Islamic Financial Centre;
(f) tax deduction on the share of distributed profits for Takaful industry.

In addition to the above, Budget 2008 also contains the following proposals to promote Malaysia as a leading international financial centre:-

(a) allowing foreign ownership of fund management companies up to 70% - minimum bumiputera ownership requirements stays at 30%. It is anticipated that this will attract greater foreign participation in the industry promoting the growth thereof and also widen the range of products and services offered to investors;
(b) securities commission to facilitate the licensing process and all dealings with other government agencies to expedite the approval process for the establishment of fund management business;
(c) issuance of three new stock broking licenses to leading stock broking companies that are able to source and intermediate business and order flows from the Middle East;
(d) improvements in the tax treatment for Takaful business; and
(e) giving the option to Labuan offshore companies to be taxed under the Income Tax Act 1967, in addition to the existing options under the Labuan Offshore Business Activity Act 1990. This new option is however final and irrevocable.

Real estate sector & Real Estate Investment Trusts

The Real Estate sector is another beneficiary of Budget 2008. During the past year, several measures to help the property market were announced including:-

(a) the relaxation of Foreign Investment Committee (FIC) regulations on foreign purchases of residential property priced above RM250,000; and
(b) the exemption of real property gains tax (RPGT) from April 1, 2007.

To further stimulate the real estate sector and the growth of real estate investment trusts (REITs), Budget 2008 proposes the following measures:-

(a) EPF contributors will be allowed to make monthly withdrawals for financing of one house from the balance in Account 2. It is estimated that this move will benefit five million EPF contributors and free up to RM9.6billion annually for the purpose of purchasing houses;

(b) 50% stamp duty exemption on documents of transfer in respect of property transactions not exceeding RM250,000. This is expected to reduce the cost of purchasing a house by up to RM2000; and
(c) the disposal of buildings from companies to REITs is not subject to a balancing charge. As such, REITs are eligible to claim the balance of unclaimed industrial building allowances of the disposer; and
(d) allowing up to 70% foreign ownership for REIT management companies – minimum bumiputera ownership requirement stays at 30%. It is anticipated that this should make the REITs sector more vibrant and introduce better management practices.

Small and medium size enterprises

The Government has been supportive of the small and medium enterprises (SMEs) by granting special two-tier tax rates of which the first RM500,000 of chargeable income is taxed at a lower rate of 20%.

Currently all companies already in operation including SMEs are required to submit their estimates of tax payable not later than 30 days before the beginning of the basis period. Estimates of the tax payable should not be less than 85% of the tax payable in the preceding year and should be paid on a monthly installment by the due date beginning from the second month of the basis period.

Budget 2008 offers SMEs commencing operations an exemption from submitting their tax estimates of tax payable as well as installment payments. The full income tax payment needs to be made only at the point of submission of the income tax returns, which is within seven months from the date of the closing of the accounts. This exemption is given effective from year of assessment 2008 for two years of assessment beginning from the date of commencement of operation. This is a welcome move as it is normal for businesses to face cash flow constraints during the initial stages of their operations.

Measures to encourage conservation of energy, the generation of renewable energy and the reduction of greenhouse gas emissions

Budget 2008 contains tax incentives to encourage conservation of energy, reduction of greenhouse gas emissions and the development of renewable energy resources. The proposed measures include:-

(a) to encourage companies to invest in greenhouse gas emission reduction projects, income derived from trading of certified emission reductions (CERs) will have tax exemption, effective from assessment year 2008 until 2010;
(b) companies providing energy conservation services will get an additional 10-year pioneer status;
(c) investment tax allowance on expenditure on equipment to generate energy will be increased to 100% of qualifying capital expenditure incurred within five years. The allowance will be set off against 100% of statutory income for each year of assessment; and
(d) companies which incur capital expenditure for energy conservation for own consumption will have their investment tax allowance increased to 100% of the qualifying capital expenditure incurred within five years. The allowance will be set off against 100% statutory income for each year of assessment.

Service Tax

Currently, professional, consultancy and management service providers that have reached the threshold i.e. sales turnover of RM150,000 within a period of 12 months or part thereof are required to be licensed under the Service Tax Act 1975 and collect 5% service tax. Professional services that are subject to service tax are accounting, legal, engineering, architecture, survey, valuation, appraisal and real estate agency.

Budget 2008 abolishes the previous licensing threshold of RM150,000 per annum. Thus, consultancy, management and professional service providers will be liable to pay 5% service tax without exemption.

Mergers and Acquisitions Stamp Duties

Budget 2008 proposes the extension of the stamp duty exemption on all instruments related to mergers and acquisitions of public listed companies approved by the SC before January 1, 2011. This should encourage more public listed companies to undertake mergers and acquisitions and consequently enhance the quality of public companies whose shares are listed on the Bursa Malaysia Stock Exchange.

Conclusion

In the context of the matters discussed above, it may be said that Budget 2008 is a good budget as it focuses on the need to create an economy and tax regime that is competitive and an investment climate that is conducive to private sector investment in order to grow the wealth of the nation to benefit all Malaysians. This is important because private sector investment has been and will undoubtedly continue to be the main driving force behind the nation's economic growth. Further, it is a prudent budget – although the Budget remains in deficit, the deficit continues to decline progressively, as has been the case since 1998. In 2000, the fiscal deficit was 5.5% of Gross Domestic Product (GDP); it was reduced to 3.3% of GDP in 2006 and to 3.2% in 2007. It is expected to fall to 3.1% of GDP in 2008.

Sudhar Thillainathan

Intellectual Property News

Long-awaited specialized Intellectual Property Courts set up

The establishment of the long-awaited specialized Intellectual Property (IP) courts, which were officially launched on 17th July 2007, is a major step by the Malaysian government, in particular the Ministry of Domestic Trade and Consumer Affairs, towards combating the increasing piracy of copyrighted materials and counterfeiting of trademarked goods in Malaysia.

The idea of IP courts has long been mooted by the ministry and IP lawyers. Since 2005 the ministry, together with the Intellectual Property Corporation of Malaysia (MyIPO), has been working to prepare a concept paper, as well as studying the viability of setting up IP courts. In April 2007 the National Intellectual Property Policy was initiated by the Prime Minister under which a fund of RM5 billion was allocated specifically for the protection of IP rights in Malaysia. The policy reaffirms the government's commitment to strengthening the protection of IP rights in Malaysia.

On 6th June 2007, the Cabinet approved the establishment of 15 sessions courts, known as the Sessions Courts (Intellectual Property), which have criminal jurisdiction. There is one in each state, including one in the administrative capital of Putrajaya. It also approved the establishment of 6 high courts with both civil and appellate jurisdiction in Kuala Lumpur, Selangor, Johor, Perak, Sabah and Sarawak. These are known as the High Court of Malaya (Intellectual Property) and the High Court of Borneo (Intellectual Property) respectively. These specialized courts will hear cases involving various IP-related matters, including offences and disputes arising under the Trade Descriptions Act 1972, the Patents Act 1983, the Copyright Act 1987, the Optical Disc Act 2000 and the Trademarks Act 1976.

The establishment of IP courts in Malaysia will not only speed up prosecution for IP rights violations; it is also hoped that it will also help expedite resolution of IP disputes to facilitate businesses to continue operations. Aggrieved IP rights holders should also obtain compensation more quickly. If the IP courts are able to ensure the speedy resolution of disputes, this will encourage more companies to invest and register their IP rights, creating a better business environment in Malaysia.

In addition, the specialized IP courts will allow judges to specialize in a highly technical and specialized area. As expertise and knowledge increase over time, efficiency will be enhanced.

Canine detectives sniff out IP pirates

In an anti-piracy raid conducted by the Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs in Johor earlier in the year, 1 million copies of pirated video games and DVDs intended for Singapore, Hong Kong, Japan and the United Kingdom with a street value of approximately RM10 million were seized from an office building. Six people were detained in the raid.

The distinguishing feature of the raid was the use of two specially trained Labradors which sniffed out the hidden DVDs, as well as CD-replicating machines and tools.

This is the first major success for the dogs, which belong to the Motion Picture Association of America (MPAA). They arrived in Malaysia in mid-March 2007 on a one-month loan to the Ministry to help it in its anti-piracy operations. The dogs are trained to detect polycarbonate, a chemical used in the manufacture of optical discs. It is the first time anywhere in the world that authorities have commissioned trained dogs to detect counterfeit discs. After the month-long loan, the Malaysian authorities will evaluate and assess the effectiveness of deploying trained dogs to assist in detecting counterfeit discs. If this method proves to be cost effective and faster than human detection, the Ministry will consider adopting the method permanently and training its own canine detectives.

(The dogs, named Lucky and Flo, have acquired something of a celebrity status.)

According to the MPAA, whose members includes top Hollywood studios such as Warner Brothers, 20th Century Fox, Universal and Paramount Pictures, in 2006 it lost $1.2 billion to film piracy in the Asia-Pacific region. This latest success shows Malaysia's commitment to tackling piracy in the country.

Elevating Intellectual Property Rights to a higher level

In April 2007, Malaysia officially launched the National Intellectual Property Policy (NIPP). The main purpose of the NIPP is to

harness intellectual property (IP) as a new engine of growth for the enhancement of economic and social prosperity in Malaysia. More importantly, its ultimate aim is to develop Malaysia into a leading IP hub, thus becoming a net exporter of IP. With this end in view, the Malaysian Government is committed to creating an environment that encourages continuous creation of IP, provides an IP protection system of a high standard, promotes exploitation of IP with commercial potential, fosters development of the supporting industries and builds human resource capability to successfully implement this policy.

The rationale behind this policy is that the Malaysian Government is to use the NIPP as a principal guide in enacting laws and regulations relating to IP and other economic or social policies, and also in implementing all IP-related activities of both the public and private sectors. In addition, this policy is needed to promote and instill the IP culture among the business community and the public alike. In view of the fact that the highest standard of IP protection will ultimately encourage greater foreign investment and technology transfer, this policy has as its main objective to provide the highest standard of IP protection by developing an efficient and effective IP protection system to ensure the fast and easy acquisition of protection and rights as well as a competent and practical enforcement mechanism.

In conclusion, the effective and successful implementation of the NIPP is one of the critical steps to spur Malaysia's national competitiveness and to enable Malaysia to become a developed nation.

Establishment of Joint Management Body for properties under strata titles

The Building and Common Property (Maintenance and Management) Act 2007 came into force on 12th April 2007. The Act provides for the establishment of a Joint Management Body under the joint control of the developer and the purchasers, to manage and maintain the common areas or common property (in property developments such as condominiums where the purchasers will obtain strata titles i.e. subdivided parcels in the units purchased, with common areas maintained for the benefit of all purchasers), in the interim period between the delivery of the units to the purchasers, and the establishment of a Management Corporation to manage the common property. Under the Strata Titles Act 1985, the Management Corporation which is under the control of the purchasers, will be established once the strata titles to the units are issued.

Prior to the enactment of the Building and Common Property (Maintenance and Management) Act 2007, the management of the common property in the interim period between delivery to the purchasers and the setting up of the Management Corporation, was in the hands of developers, a situation which has given rise to instances of complaints about shortcomings in the task performed by developers.

The passing of the new legislation seeks to rectify the deficiency by vesting joint control in the hands of purchasers themselves. This was accompanied by amendments to the Strata Titles Act 1985 increasing the fines against developers who delay in applying for the issuance of strata titles, which has been another source of complaint against developers.

Case Updates

Banking

Whether vesting order from one High Court effective throughout Malaysia

Coming on the heels of the decision of the High Court of Sabah and Sarawak in Lee Hui Jian v. Public Bank Berhad (please refer to the report in Issue 2 2007 of the newsletter), is another decision of the High Court of Sabah and Sarawak in Southern Bank Bhd v. Pantai Bayu Emas Sdn Bhd & 3 Ors, which diverges from the decision in Lee Hui Jian.

In Lee Hui Jian, the court held that a vesting order made by the High Court of Malaya under Section 50 of the Banking and Financial Institutions Act 1989 (BAFIA) to implement the acquisition by Public Bank Berhad of the assets and liabilities of its subsidiary, Public Finance Berhad, under a merger exercise, was not effective to vest the debt of the defendant owed to a Public Finance branch in Sarawak on a loan obtained in Sarawak, in Public Bank, on the following grounds:

(a) the High Court of Malaya had no jurisdiction to make the vesting order in respect of the defendant's debt as

the cause of action or the subject matter of the claim by the bank against the defendant on the debt, occurred in Sarawak, outside the territorial jurisdiction of the High Court of Malaya, and

(b) the order of the High Court of Malaya has no effect in Sarawak, as the latter was outside the territorial jurisdiction of the High Court of Malaya.

In Pantai Bayu Emas, a Vesting Order was obtained in the High Court of Malaya to implement the acquisition by CIMB Bank Berhad of the assets and liabilities of Southern Bank Berhad, including the debt owed by the first defendant on a loan obtained from a Southern Bank branch in Sarawak. Southern Bank filed the suit in the High Court of Sabah and Sarawak for recovery of the debt, before the Vesting Order took effect.

After the Vesting Order took effect, CIMB Bank applied to be substituted as the Plaintiff in the suit, but the Defendants applied to strike out the suit claiming (relying on Lee Hui Jian) that the Vesting Order was not effective to vest the debt of the Defendants in CIMB Bank, and CIMB Bank has no standing to continue the suit.

The Court in Pantai Bayu Emas disagreed with the decision in Lee Hui Jian and decided as follows:

(a) In making the Vesting Order, the High Court of Malaya was not adjudicating on a matter or dispute between the Bank and the Defendants that was within the sole territorial jurisdiction of the High Court of Sabah and Sarawak, over which the High Court of Malaya had no jurisdiction.

The High Court of Malaya was not trying the claim by the Bank for recovery of the debt, but was merely giving effect to the agreement made between Southern Bank and CIMB Bank, to transfer or assign rights to the latter, pursuant to the provisions of BAFIA. There is no issue of the Vesting Order being beyond the jurisdiction of the High Court.

(b) As for the provisions of BAFIA for Vesting Orders to give effect to transfers of assets and liabilities between financial institutions, on the construction of the provisions, it was not contemplated that more than one application to one High Court shall be necessary, having regard for instance, to :

(i) Section 50(3) of BAFIA which envisages that a single order of a single High Court is sufficient

(ii) Section 50(6) of BAFIA which provides for the High Court to serve a copy of the Vesting Order, on the Registrar of Titles in Peninsular Malaysia, or the Registrar of Titles in Sabah or in Sarawak, where the vesting order relates to land situated in each of the territories respectively. Therefore, the provision contemplates only one vesting order which will have effect throughout the country.

(iii) By Article 121(3) of the Constitution and Section 7(2) of the Courts of Judicature Act 1964, an order of any High Court will have effect throughout the country.

Bankruptcy

Bankrupt's land does not vest in Official Assignee until it is registered in its name

In Besharapan Sdn Bhd & Ors v Agroco Plantation Sdn Bhd & Anor [2007] 1 MLJ 101, receiving and adjudication orders (bankruptcy orders) were made in 1978 against the 2nd Defendant. On 1 February 1989, while the bankruptcy orders were subsisting, the 2nd and 3rd Defendants agreed to sell their land in Sabah to the 2nd Plaintiff who in turn agreed to sell the land to the 1st Plaintiff.

On 21 July 1993, the 2nd Defendant's bankruptcy orders were rescinded and annulled. On 23 August 1995, the 2nd and 3rd Defendant further agreed to sell the land to the 1st Defendant. Meanwhile on 15 May 97, the transfer of the land to the 1st Plaintiff was registered.

The 1st and 2nd Plaintiffs filed the action seeking a declaration that the sale of the land to the 2nd Plaintiff and to the 1st Plaintiff was valid.

The Defendants contended that the sale to the 2nd Plaintiff was invalid because at the material time (1 February 1989), the 2nd Defendant had no legal capacity to sell the land as he was at the time an undischarged bankrupt. The contention was premised on Section 24(4) of the Bankruptcy Act 1967 which provides that the property of a person vests in the Official Assignee when the person

is adjudged a bankrupt. Only the Official Assignee had the power to deal with the bankrupt's property.

The High Court allowed the Plaintiffs' action.

On appeal to the Court of Appeal, the Court of Appeal upheld the High Court's decision on the ground that Section 24(4) of the Bankruptcy Act 1967 is subject to the provisions in the Sabah Land Ordinance, that the title to a bankrupt's land will vest in the Official Assignee only when the title is registered in the Official Assignee's name. As the 2nd Defendant had transferred his interest in the land to the 2nd Plaintiff who had registered the transfer, before any vesting in the Official Assignee was registered, the 2nd Defendant's interest would, notwithstanding the fact that he was a bankrupt, have passed to the 2nd Plaintiff.

Contract

Agreement with the object of committing a wrong unenforceable

In Hasmah bte Abdul Rahman v Kenny Chua Kien Lam [2006] 5 MLJ 236, the issue before the court was whether a trust arising out of a transfer of shares by the plaintiff to the defendant was enforceable, where the plaintiff had misled the Securities Commission and Kuala Lumpur Stock Exchange with a representation that he will comply with the letter and spirit of the New Development Policy.

The plaintiff, a non-bumiputra (non-native of Malaysia), was the managing director and shareholder of a logging company. In 1994, he attempted to float the company on the Second Board of the Kuala Lumpur Stock Exchange (KLSE) with the assistance of the defendant, a bumiputra (native of Malaysia). To list on the KLSE, the plaintiff was required to comply with several requirements by the Securities Commission (SC), the KLSE and statutory provisions. The plaintiff therefore made statutory declarations to the SC and KLSE, inter alia that he would comply with the spirit and objectives of the government's New Development Policy (NDP), in particular with regard to the minimum 30% Bumiputra equity participation in Malaysian incorporated companies, and will not merely appoint a bumiputra nominee in respect of the requirements under the NDP.

In purported compliance with the NDP, the plaintiff transferred 120,000 shares in the company to the defendant ostensibly by way of a sale, but in fact with an agreement between them that the shares were to be held by the defendant on trust for the plaintiff, contrary to the plaintiff's declarations to the SC and KLSE. The company was listed on the KLSE. Subsequently a dispute arose between the plaintiff and defendant, and the plaintiff sued the latter for return of the shares.

The Court of Appeal, finding that the agreement was in furtherance of an unlawful object, and that the plaintiff practised deception on the SC and KLSE in order to obtain approval for the listing, declined to enforce the trust, and upheld the striking out of the plaintiff's claim by the defendant.

Labour

Resolution imposing retirement age on executive directors

In See Teow Chuan & Anor v. YAM Tunku Nadzaruddin Ibni Tuanku Jaafar & 4 Ors [2007] 2 AMR 300, the 1st and 2nd Plaintiffs were the managing director and executive director respectively of the 5th Defendant company (the company). There was no written contract of service between the Plaintiffs and the company. In 1999, the board of directors of the company made a decision resolving that all executive directors must retire at age 55. The Plaintiffs brought an action challenging the applicability of the retirement age to them and seeking an injunction to restrain the company from retiring them. The claims were dismissed by the High Court. On appeal to the Court of Appeal, the Court, allowing the appeal and granting the injunction, held that there being no written employment contract, there was no express term, nor implied term, imposing a retirement age on the Plaintiffs. The Court found that it was a term of the 1st Plaintiff's contract that he shall continue to serve until the age of 70. The Court found similarly for the 2nd Plaintiff. The Court was also of the view that the board resolution imposing a retirement age was not valid in so far as the imposition of retirement age was concerned.

The Court further held that an injunction to restrain the company from enforcing the resolution and retiring the Plaintiffs did not amount to specific performance or enforcement of an employment contract.

There is presently, pending in the Federal Court, an application for leave to appeal against the decision of the Court of Appeal. The application raises issues pertaining to the tenure of executive directors in public listed companies and issues pertaining to the provisions of the Specific Relief Act, 1950, particularly with regard to injunctions to enforce contracts of service of executive directors.

Intellectual Property

High Court allows parallel-import

In Kenwood Electronics (M) Sdn Bhd & Anor v Profile Spec (M) Sdn Bhd & Ors [2007] 2 CLJ 732, the first plaintiff was a company incorporated in Malaysia and carrying on business as the exclusive distributors of Kenwood car and home audio-video equipment in Malaysia for the second plaintiff, Kenwood Corporation, a company incorporated in Japan. The second plaintiff was the registered proprietor of the Kenwood trademark. The plaintiffs alleged that the defendants in their normal course of trading had deceived members of the public by passing off their products as if they were the same Kenwood products with the same benefits as sold by the plaintiffs in Malaysia.

The first plaintiff contended that the it had widely advertised and promoted its Kenwood audio-video products in Malaysia, and therefore had acquired valuable goodwill in the name "Kenwood" in Malaysia when used in connection with audio-video equipment. The first plaintiff also contended that the defendants by sourcing, selling and importing audio-video equipment from the second plaintiff's distributor or distributors elsewhere had affected or would probably affect the first plaintiff's goodwill. The second plaintiff contended that the defendants had infringed its rights as the registered proprietor of the trademark in Malaysia, by selling equipment bearing the trade name "Kenwood" contrary to the wishes of the second plaintiff. Therefore, the plaintiffs sought an order to stop the defendants from importing and selling in Malaysia without the consent of the plaintiffs Kenwood audio-video equipment bearing the Kenwood brand name, and for monetary compensation.

In dismissing the plaintiffs' claims, the High Court held that the Kenwood audio-video equipment sold by the defendants were genuine Kenwood products, and therefore the complaint of breach of trademark was unfounded. The High Court further held that the mere fact the activities of the defendants caused the plaintiffs to lose potential profits did not make a cause of action.

No reputation or goodwill in the Giordano mark in optical products

In Walton International Ltd v Yong Teng Hing t/a Hong Kong Trading Co [2007] 4 MLJ 133 Walton International Limited was an associate company of Giordano Limited, both were part of the group of companies owned by Giordano International Limited of Bermuda, a public-listed company on the Hong Kong Stock Exchange. The appellant was the registered proprietor of the Giordano trade mark for various goods in Malaysia and many countries throughout the world. The first respondent was the sole proprietor of Hong Kong Trading Co and had also applied to register the Giordano mark in respect of glasses and sunglasses in Class 9. The Registrar of Trade Marks accepted the application. The appellant filed opposition against the registration of the mark. The Registrar dismissed the opposition. The appellant appealed to the High Court contending that it was the originator of the Giordano trade mark and that the first respondent had copied that mark, thereby misappropriating the reputation, goodwill and commercial advantage in the appellant's mark. The first respondent argued that it was the first user of the mark in respect of Class 9 goods in Malaysia as it had been selling glasses and sunglasses under the Giordano mark since 1992.

In dismissing the appeal, the High Court held that the first respondent was the first person to use the Giordano mark in respect of goods in Class 9 in Malaysia and that there was no evidence of use by the appellant of the mark on Class 9 goods, either prior to or after the first respondent's trade mark application. Therefore, the appellant had no reputation or goodwill in the Giordano mark in connection with goods in Class 9. Consequently, the court held that there was no risk of confusion as alleged by the appellant. The Court also made reference to the fact that the appellant, having failed in its opposition of the Class 14 application for Giordano opted not to appeal the decision, and allowed the mark to proceed to registration. This to the Court was a clear indication that the appellant had accepted the fact that it cannot claim monopoly over the Giordano mark. The appellant has filed an application for leave to appeal to the Court of Appeal.

Resolving Intellectual Property Disputes

Outline of paper presented by Michael Soo at the Malaysian Institute of Arbitrators Regional Arbitration Conference, Kuala Lumpur, 22nd and 23rd June 2007

World Intellectual Property Organization: Alternative Dispute Resolution

Mediation

- WIPO Arbitration and Mediation Center ("Center") administers patent disputes, software / information technology, copyright issues, trade mark issues (including trade mark coexistence), employment issues in an intellectual property context, consultancy and engineering disputes, and domain name disputes.

- Examples of mediations conducted under the WIPO Rules

  (a) A technology consulting company holding patents in three continents disclosed a patented invention to a major manufacturer in the context of a consulting contract. The manufacturer started selling products which the consulting company alleged had included the patented invention. The parties then negotiated a patent license but failed. The parties successfully reached a settlement in a two day meeting that not only covered the royalty issue but also included agreement of future consulting contracts.

  (b) A Dutch company concluded a copyright license with a French company with regards to a technical publication. The license agreement includes a WIPO mediation clause. The licensee became insolvent and defaulted on the royalties due under the license agreement. The Center appointed an Intellectual Property specialist as the mediator. A settlement agreement was concluded.

- Resolving disputes through court litigation has become time-consuming and expensive ordeal. This is particularly the case when a controversy involves intellectual property rights which tend to be highly technical and complicated.

- Arbitration clauses channel legal disputes into private arbitration rather than into court.

- Arbitrators are given broad remedial powers (at least in the United States). They can order specific performance, create escrow funds, appoint receivers, and award both compensatory and/or, punitive damages.

- Arbitration awards are often easier to enforce than the judgment of a foreign court.

- An arbitrator must give both parties an opportunity to present their cases. Whether the evidence is primarily documentary or, as is customary in the United States, through oral testimony, which is subject to cross examination, is an issue for the advocates and the tribunal to decide.

- In the United States, the American Arbitration Association ("AAA") is well known for encouraging the use of alternative dispute resolutions. A significant number of commercial agreements contain arbitration clauses that refer to the AAA. Parties often ask the AAA to provide them with lists of experienced arbitrators, with biographical information.

- Evolution of the domain name registration system is causing growing concern for trade mark owners worldwide. In particular some of the effects of the following are:-

  (a) the growth in the number of professional domain names dealers and the volume of their activity;

  (b) the use of computer software to automatically register expired domain names and their 'parking' on pay-per-click portal sites;

  (c) the option to register names free-of-charge for a five-day 'tasting' period;

  (d) the proliferation of new registrars;

  (e) the growth in the number of accredited registrars; and

  (f) the establishment of new generic Top Level Domains (gTLDs) [.mobi; .travel].

- 'Domain name tasting' is a practice in which a person or entity (who may be affiliated with a registrar) registers a domain name for a five-day grace period without payment of the registration fee, and parks it on a pay-per-click website monitored for revenue. Where the name is dropped or re-registered by a new registrant, a new grace period starts. Only those domain names generating significant traffic are permanently registered. As a result, tens of millions of domain names are temporarily registered on this basis each month.

- "While electronic commerce has flourished with the expansion of the Internet, recent development has

fostered practices which threaten the interests of trade mark owners and cause consumer confusion. Practices such as 'domain name tasting' risk turning the domain name system into a mostly speculative market. Domain names used to be primarily specific identifiers of businesses and other internet users, but many names nowadays are mere commodities for speculative gain," noted Mr. Francis Gurry, WIPO Deputy Director General, who oversees WIPO's dispute resolutions work.

- In 2006, a total of 1,823 (gTLDs and country code Top Level Domains (ccTLDs)) complaints alleging cybersquatting were filed with WIPO's arbitration and Mediation Center ("Center"). Cybersquatting disputes filed with the World Intellectual Property Organization (WIPO) in 2006 increased by 25% as compared to 2005.

- The Center received 10,177 Uniform Domain Name Dispute Resolution Policy (UDRP) or UDRP based cases (gTLD and ccTLD) since December 1999 through to December 2006, covering 18,760 domain names.

- A total of 9,389 (97% of total cases) UDRP cases received by the Center have so far been resolved. Decisions have been rendered in 7,328 cases with some 84% of those cases to transfer the domain name to the complainant, approximately 16% being denied and 2,061 cases have been terminated on other grounds, primarily on the basis of settlement agreements.

- The Center has also received 60 cases involving disputes of internationalized domain names such as domain names in non-Roman scripts such as Arabic, Chinese, or Korean.

- The geographical spread of named parties to WIPO UDRP cases (gTLD and ccTLD) reached 137 countries at December 2006. The most frequently named party country for complainant countries in gTLD cases are United States, France, United Kingdom, Germany, Spain, Switzerland, Italy, Canada, Australia and Netherlands. The most named respondent countries after the United States were the United Kingdom, China, Republic of Korea, Canada, Spain, France, Australia, Italy and Russia.

- Malaysia was the complainant country in 15 cases and was named as respondent country in 52 cases. The geographical spread of named parties in several other countries in the region are as follows:-

  A new gTLD <.mobi> was launched in May 2006 by the registry, Mobile Top Level Domain Ltd. (mTLD), as a domain "dedicated to delivering the Internet to mobile devices." Two separate domain-specific procedures were created and administered by the Center.

  The first special procedure applicable to .mobi consists of the unprecedented Premium Name Trademark Application Rules for .MOBI which enable trade mark owners to reclaim Premium Names (the generic value of which had led the Registry to reserve these for auction or other commercial allocation).

  The second special procedure application to .mobi was the .mobi Sunrise Challenge Policy, which allowed interested parties to challenge .mobi name inappropriately registered during the special registration period.

Uniform Domain Name Dispute Resolution Policy ("UDRP")

- UDRP is specifically designed to discourage and resolve the abusive registration of trade marks as domain names. A complainant must demonstrate that the disputed domain name complies with the following:-

  (a) is identical or confusingly similar to its trade mark;

  (b) that the respondent does not have a right or legitimate interest in the domain name; and

  (c) that the respondent registered and used the domain name in bad faith.

The procedure is as follows:-

(a) the domain name registration in question is frozen (suspended) during the proceedings;

(b) the panelists will submit their decisions within 14 days;

(c) the registrar is legally bound to implement the panelist's decision if the panelist's decision to transfer a domain name is not challenged in court within the period of 10 days.

Approved dispute resolution service providers for Uniform Domain-name dispute – resolution policy

- WIPO is a service provider to disputes in generic Top Level Domains, new generic Top Level Domains and country code top level domains for most countries.

- Asian Domain Name Dispute Resolution Centre [ADNDRC] is a joint undertaking between the China International Economic and Trade Arbitration Commission (CIETAC) and the Hong Kong International Arbitration Centre (HKIAC). CIETAC is currently the sole domain name dispute resolution provider for .cn ccTLD and HKIAC for .hk ccTLD.

Malaysian Dispute Resolution Service Provider

- Regional Centre for Arbitration Kuala Lumpur ("RCAKL") has been appointed the .my domain name dispute resolution service provider by the Malaysian

Network Information Centre ("MYNIC"). MYNIC administers the .my domain name.

- All the domain name disputes are governed and administered in accordance with MYNIC's Domain Name Dispute Resolution Policy ("MYDRP"), Rules of the MYDRP ("Rules") and RCAKL Supplemental Rules.

- Submission of complaint to the provider by the Complainant must state whether it chooses to have the proceeding decided by a single-member or three-member panel. Complaint shall not exceed five thousand (5000) words and must pay the Provider the fees within 5 working days.

- The provider will review the complaint and send the complaint to the Respondent 3 working days after the provider has received payment of the fees.

- Within 15 working days, the Respondent must submit response to the provider with payment of fees stating whether the Respondent chooses to have the proceeding decided by a single-member or three-member panel.

- The Provider will send the response to the Complainant.

- If the complainant wishes to reply to the Respondent, it may submit a reply within 5 working days. The Provider will appoint the panel(s) within 5 working days from the pool of 20 panelists in Malaysia.

- Within 14 working days, the provider will transmit the file to the panel, and the panel will decide and inform the provider of the decision. The Provider will inform MYNIC and parties the decision within 3 working days.

- If either Party is not satisfied with the decision of the Panel, the Parties, by agreement in writing, may commence an arbitral proceeding in accordance with the Rules of the RCAKL or file a Court action within ten(10) working days of after RCAKL have informed the Parties and MYNIC of the Panel's decision.

- The complaint and the response shall not exceed five thousand (5000) words and be sent to RCAKL in electric form; and in hard copy, either by electronic form or hard copy. RCAKL will not take further action to examine the Complaint and/or its compliance with the Rules until it has received the fees.

- If the Respondent fails to submit its Response without showing any exceptional Circumstances, RCAKL shall proceed to appoint a Panel. The Complaint, Response, Reply (if any) and further written statements and documents shall constitute the complete record to be considered by the Panel.

- A total of 11 cases have been filed with RCAKL since 2003, 4 decisions ordering transfer of domain name, 3 decisions ordering the domain name to be terminated, 2 decisions ordering the domain name to remain and 2 are pending decision.

KL Bar Idol 2007

We sought out our own singing sensation Chryshanthini Niles for a tête-â-tête. Chrysh is an ardent fan of American Idol and secretly harbors ambitions of singing superstardom, and is some way towards that goal, having been recently crowned Kuala Lumpur Bar Idol 2007.

Congratulations on winning the Kuala Lumpur Bar Idol 2007. We heard you completely annihilated the competition on your way to winning the title?

[hearty chuckle] Well, I wouldn't quite put it that way. The other competitors were very good as well and did give me a good run for my money so to speak.

How did you end up participating in the Kuala Lumpur Bar Idol 2007 competition?

I've always loved singing and regularly sing in church as well as weddings so a few friends suggested that I try out at the auditions. The rest as they say is history.

What were the auditions like? Go on; spill the beans… any lawyers show up at the audition intending to give William Hung a run for his money?

Well there were one or two weaker singers but I have to say the Kuala Lumpur Bar does have some talented lawyers.

What songs did you pick to sing at the auditions?

I sang two songs, one being 'Tunggu Sekejap' by the late P. Ramlee and 'The way you look tonight' by Frank Sinatra. I didn't have any musical accompaniment at the auditions, so I decided to choose songs with a strong melody which would sound relatively good even without any accompaniment.

At what age did you start singing and who inspired you?

My singing career so to speak started at the tender age of 4. My sister and I were made to 'perform' at every family gathering. No one inspired me to start singing, but I was a huge Whitney Houston fan when I was growing up. I love music, and it is probably one of the only things that gives me pure joy. I have very eclectic taste in music and love most genres, favourites being jazz, r&b and slow rock. My favourites include, Frank Sinatra, Ella Fitzgerald, Whitney Houston, Christina Aguilera, Michael Jackson, Joss Stone, Queen, Metallica…I could go on and on.

Do any other members of your family sing?

My whole family sings actually, including mum and dad. But I sing regularly at various events, be it church, weddings, fund raising events etc with my four sisters.

Tell us a little about the Kuala Lumpur Bar Idol Competition.

The competition is two years old, making me the second winner. It is a charity event that forms part of the Kuala Lumpur Bar's effort to give something back to society. Unlike American Idol, the KL Bar Idol winner is not chosen by way of the usual public vote. What happens is that a money box is passed around to the live audience after each competitor sings and the person who collects the highest amount of money against his or her name is declared the winner. This money is then donated to charities in the Klang Valley area, this year's being the Sri Shenbagavali Asram Home and Pusat Dialisis Touch.

So how much money did you garner?

About RM12,000. I believe the total amount collected by the finalists was approximately RM24,000.

What songs did you end up picking for the finals?

I ended up singing the 1970's classic 'Fame' and 'One Night Only' from the Dreamgirls soundtrack.

Why did you choose these songs?

Actually, 'Fame' was not the song I originally chose. But a member of the band which was accompanying the finalists, insisted that I try the song out as he was convinced I could do it. So, I tried it out and decided to follow his advice.

As for 'One Night Only', I thought it really suited my voice. My friends were very apprehensive of the song as it was not a popular number, but I had a gut feeling it would all fall into place as it is quite a catchy number. I even managed to have a hand in the arrangement of the song as well, which was good fun.

Is there a routine you go through in the run up to a competition or a wedding where you would be singing?

Not really. I am a perfectionist though, and I will usually run through the songs over and over. It's easy when I am doing a solo number, but it usually annoys my sisters when we are doing a group performance as I am the slave driver of the group.

Many thanks for your time.

A pleasure.

(David Dinesh Mathew assisted in this interview)

The firm sponsors Taylor's Law Debate 2007

The firm welcomes the opportunity to contribute to nurturing legal education in the community and is pleased to have sponsored the Inter University Law Debate 2007 organised by Taylor's University College. The participating Universities were University Malaya, University Technology Mara, University Kebangsaan Malaysia, Multimedia University, Inti International University College, Kemayan ATC, KDU College and Taylor's University College. The topic for the finals was "Capital punishment for murder: the right to live is outweighed by the duty to punish", and the Taylor's University College team emerged as the champions. Court of Appeal Judge Dato' Gopal Sri Ram graced the occasion as the Chief Adjudicator in the final held on 13.7.2007.

SHOOK LIN & BOK

EST 1918
KUALA LUMPUR

Advocates & Solicitors | Registered Patent Agents | Registered Trade Marks Agents | Registered Industrial Design Agents | Notary Public

PARTNERS

Too Hing Yeap Ext 201
hytoo@shooklin.com.my
Dato' Dr Cyrus V Das Ext 217
cydas@shooklin.com.my
Porres P Royan Ext 212
pproyan@shooklin.com.my
Lai Wing Yong Ext 213
wylai@shooklin.com.my
Patricia David Saini Ext 288
patdavid@shooklin.com.my
Nagarajah Muttiah Ext 216
naga@shooklin.com.my
Michael CM Soo Ext 370
michaelsoo@shooklin.com.my
Romesh Abraham Ext 241
romesh@shooklin.com.my
Jalalullail Othman Ext 204
jal@shooklin.com.my
Yoong Sin Min Ext 242
smyoong@shooklin.com.my
Yuen Kit Lee Ext 246
yuenkitlee@shooklin.com.my
Ivan Ho Yue Chan Ext 225
ivanycho@shooklin.com.my
Khong Mei Lin Ext 221
meilinkhong@shooklin.com.my
Lee Wooi Mien Dahlia Ext 244
dahlialee@shooklin.com.my
Mohanadass Kanagasabai Ext 234
mohan@shooklin.com.my
Steven Thiruneelakandan Ext 236
stevent@shooklin.com.my
Adrian Hii Muo Teck Ext 255
adrianhii@shooklin.com.my
Goh Siu Lin Ext 206
siulin@shooklin.com.my
Hoh Kiat Ching Ext 208
kchoh@shooklin.com.my
Lam Ko Luen Ext 243
koluen@shooklin.com.my
Chay Ai Lin Ext 228
ailinchay@shooklin.com.my
Sudharsanan Thillainathan Ext 227
sudhar@shooklin.com.my
Chan Kok Keong Ext 237
kkchan@shooklin.com.my
Tharmy Ramalingam Ext 233
tharmy@shooklin.com.my
Ong Boo Seng Ext 365
bseng@shooklin.com.my
Kevin Prakash Ext 308
kevinprakash@shookin.com.my
Alvin Tang Wye Keet Ext 250
alvintang@shooklin.com.my
Tan Gian Chung Ext 367
gctan@shooklin.com.my

CONSULTANT

Michael KL Wong Ext 215

PRACTICE AREAS & PARTNERS

CORPORATE
Lai Wing Yong
Patricia David Saini
Jalalullail Othman
Yuen Kit Lee
Ivan Ho Yue Chan
Khong Mei Lin
Hoh Kiat Ching
Chay Ai Lin

BANKING & FINANCE
Lai Wing Yong
Patricia David Saini
Jalalullail Othman
Yuen Kit Lee
Khong Mei Lin
Hoh Kiat Ching
Chay Ai Lin

PROPERTY & CONVEYANCING
Lai Wing Yong
Patricia David Saini
Jalalullail Othman
Yuen Kit Lee
Khong Mei Lin
Hoh Kiat Ching
Chay Ai Lin

INSURANCE, SHIPPING & AVIATION
Porres P Royan
Nagarajah Muttiah
Romesh Abraham
Steven Thiruneelakandan
Sudharsanan Thillainathan
Alvin Tang Wye Keet

BANKING & FINANCE LITIGATION
Too Hing Yeap
Porres P Royan
Yoong Sin Min
Lee Wooi Mien Dahlia
Adrian Hii Muo Teck
Goh Siu Lin
Chan Kok Keong
Tharmy Ramalingam
Tan Gian Chung

CONSTRUCTION, ENGINEERING & ARBITRATION
Dato' Dr Cyrus V Das
Nagarajah Muttiah
Mohanadass Kanagasabai
Lam Ko Luen
Kevin Prakash

GENERAL & CIVIL LITIGATION
Dato' Dr Cyrus V Das
Porres P Royan
Nagarajah Muttiah
Romesh Abraham
Mohanadass Kanagasabai
Steven Thiruneelakandan
Adrian Hii Muo Teck
Goh Siu Lin
Lam Ko Luen
Sudharsanan Thillainathan
Tharmy Ramalingam
Kevin Prakash
Alvin Tang Wye Keet

INTELLECTUAL PROPERTY, INFORMATION TECHNOLOGY & LICENSING
Michael CM Soo
Porres P Royan
Ivan Ho Yue Chan
Ong Boo Seng

PROBATE & ADMINISTRATION
Dato' Dr Cyrus V Das
Goh Siu Lin

EMPLOYMENT & LABOUR
Dato' Dr Cyrus V Das
Romesh Abraham
Steven Thiruneelakandan

TAX ADVISORY & COMPLIANCE
Dato' Dr Cyrus V Das
Sudharsanan Thillainathan

COMPANY SECRETARIAL SERVICES
Too Hing Yeap
Chay Ai Lin

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

Shook Lin & Bok
20th Floor, AmBank Group Building
55, Jalan Raja Chulan
50200 Kuala Lumpur
Malaysia

Tel: (603) 20311788
Fax: (603) 20311775/8/9

website: www.shooklin.com.my
email: general@shooklin.com.my