SHOOK LIN & BOK
EST 1918
KUALA LUMPUR

celebrating 95 years

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The newsletter is also available on our website.

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

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Speech at the 95th Anniversary of Shook Lin & Bok at Majestic Hotel on 3 Oct 2013

by Dato' Dr Cyrus Das,
Managing Partner, Shook Lin & Bok

Distinguished Guests, Ladies & Gentlemen,

On behalf of the Partners and Lawyers of Shook Lin & Bok, it gives me great pleasure to welcome each and everyone of you to our Anniversary celebration this evening.

It is a source of great happiness and encouragement to us that such a large number of guests have joined us in our celebrations this evening.

When the Firm first started back in 1918, I do not think it was ever envisaged by our founder, the late Honourable Yong Shook Lin that the firm would grow to its present size or see its 95th Anniversary.

The firm had started as a one-man law firm on the 1st floor of a shop house in Cross Street, later Jalan Silang, near the clock tower at Medan Pasar. Its clientele was entirely from the local businessmen. It did not initially enjoy the patronage of the big British corporations and plantations whose business went to the British law firms established in KL.

A wholly Asian law firm was an untested commodity at that time.

But the firm persevered and grew with strong local support.

In 1938 it became Shook Lin & Bok when Tan Teow Bok returned from Oxford and teamed up with Yong Shook Lin.

Mr Bok, as he was popularly called, specialized in banking and corporations law. It was soon to become the mainstay of the Firm's legal work, and it continues to this day.

Both men were outstanding professionals with a strong sense of dedication, ethics and integrity. They were devoted to their clients.

These values, I am happy to say, continues to be the guiding principles driving the Firm today.

I wish to add that the same principles has engendered in our lawyers a ***strong commitment to the rule of law, the cause of justice*** *and* ***care for the less fortunate in our society****.*

I am proud to say that Shook Lin & Bok as a law firm has undertaken the most number of cases pro bono on behalf of the land rights of the Orang Asli.

I have no doubts that if our founders lived in the present era and be aware of the present challenges for a just and fair society they would fully subscribe to the public interest profile of the firm.

As stated, I do not think that either of them thought that the Firm will grow to the size of a mega law firm with close to a 100 lawyers as it is today. We are divided into 14 Departments that provide legal services in all aspects of civil, commercial and administrative law.

It would not have been possible for the firm to achieve this size without the continued support and goodwill from all of you present here this evening.

It was decided by the Partners that this 95th Anniversary should not just be celebrated among ourselves but should be celebrated with all of you as an expression of our appreciation for your continued goodwill and support.

And so, once again I say, a very big 'Thank you' and wish you a very pleasant evening, and hope you would stay on and enjoy the evening with us.

The Legal 500 Asia Pacific 2014 Rankings

Shook Lin & Bok has been recommended as a TOP-TIER FIRM in Malaysia in 3 practice areas:

- Dispute resolution
- Intellectual property
- Islamic finance

Shook Lin & Bok has also been recommended in the following 5 practice areas:

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

5 lawyers are listed in elite "Leading lawyers" list. The Legal 500 Asia Pacific 2014's guide to outstanding lawyers in Asia Pacific.

Banking and finance - Lai Wing Yong
Corporate and M&A - Patricia David Saini
Dispute resolution - Dato' Dr. Cyrus Das
- Porres Royan
Intellectual property - Michael Soo

19 lawyers are recommended in The Legal 500 Asia Pacific 2014 editorial (listed below)

Banking and finance

- Jalalullail Othman
- Khong Mei Lin
- Lai Wing Yong
- Ng King Hoe
- Ng Lay San

Capital markets

- Ng King Hoe
- Ng Lay San

Corporate and M&A

- Hoh Kiat Ching
- Ivan Ho Yue Chan
- Patricia David Saini

Dispute resolution

- Dato' Dr Cyrus Das
- Porres Royan
- Nagarajah Muttiah
- Yoong Sin Min
- Steven Thiru
- Sudharsanan Thillainathan

Intellectual property

- Michael Soo
- Porres Royan
- Lee Lin Li
- Ng Kim Poh

Islamic finance

- Jalalullail Othman

Real estate and construction

- Lai Wing Yong

ARTICLES

Financial Services Act 2013 & Islamic Financial Services Act 2013

By Jal Othman, Head, Islamic Finance

Introduction

We have seen so much change in the global economy over the past decade, especially in the post 9/11 era, where efforts to combat money laundering and terrorism financing have intensified in response to new political realities, increasingly sophisticated money laundering techniques and fraudulent activities surrounding the banking sector.

Bankers and financial professionals should take a responsible approach in all investment and lending/financing operations with their customers' money, even in the case of high-risk, high-return type of clients. While clients suffer enormous losses due to risky investments, the financial executives still receive compensation packages and bonuses in millions of dollars. Although it is true that the banking profession traditionally generates huge amounts of wealth for its executives, their excessive bonuses have become an ethical concern when their clients' wealth has been destroyed, due to these forms of speculative investment practices by the financial institutions.

The integrity of the financial system must be preserved, and in an effort to do so, this issue has risen up to the top of the Malaysian Government's "to do" list. The financial brutality that is spreading like wild fire needs to be curbed. The lessons learnt by Malaysian regulators from all these financial crises are reflected in the enactment of the Financial Services Act 2013 (**FSA**) and Islamic Financial Services Act 2013 (**IFSA**).

What are the FSA and IFSA, you may ask. They are unique inventions – a blend of six pieces of legislations, namely the Banking and Financial Institutions Act 1989 (**BAFIA**), the Insurance Act 1996, the Payment Systems Act 2003 and the Exchange Control Act 1953 into the FSA, and the Islamic Banking Act 1983 (**IBA**) and the Takaful Act 1984 into the IFSA, which the Malaysian Parliament has breathed new life into, with exceptional finesse and without dampening any of their legislative efficaciousness. Both Acts were given the Royal Assent on 18 March 2013 and were gazetted on 22 March 2013. Both Acts came into force on 30 June 2013 (with the exception of certain provisions relating to insurance and takaful matters).

In reference to the financial issues alluded to in the preceding paragraphs, both the FSA and IFSA have been designed to curb these issues including fraudulent activities as well as speculative investment practices. Section 21(d) of the FSA provides for deregistration

of a registered person if a shareholder, director or any person concerned with the operation or management of the registered person has been convicted of an offence under the FSA or an offence involving fraud or dishonesty under any other written law. Section 59(1)(b) of the FSA and Section 68(1)(b) of the IFSA provide for disqualification of a person from holding any senior office if the person is involved in any fraudulent conduct. On the other hand, Section 72(b) of the FSA and Section 81(b) of the IFSA require an auditor to immediately report to the Central Bank of Malaysia, Bank Negara Malaysia (BNM), any offence involving fraud.

With regards to speculative investment, Part V, Division 1 of the FSA and Part VI, Division 1 of the IFSA provide for prudential standards that are aimed at deterring these unethical practices. For example, under Section 48 of the FSA and Section 58 of the IFSA, every director and officer of an institution shall comply with internal policies and procedures to ensure integrity, professionalism and expertise in the conduct of business affairs.

Under the FSA and IFSA, in order to address urgently the issue of unscrupulous individuals being appointed as the top-most persons in a financial institution, "fit and proper" requirements were imposed on these key personnel. Such requirements include requirements relating to probity, personal integrity and reputation, competency and capability, and financial integrity.[1]

The FSA and IFSA are also designed in line with BNM's Financial Sector Blueprint 2011-2020 (**FSBP**)[2] and the Economic Transformation Programme[3]. The FSBP, themed "Strengthening Our Future - Strong, Stable, Sustainable", sets an ambitious path for the country's economic development and entrenches the financial sector not as an enabler of growth but "as a key driver and catalyst for economic growth".[4] The implementation of the FSBP is on track; as at 20 March 2013, 76 initiatives representing 35% of the total number of initiatives have been completed or are being implemented on an ongoing basis.[5] This includes the enactment of the FSA and IFSA.

The Economic Transformation Programme (**ETP**) is a comprehensive effort that will transform Malaysia into a high-income nation by 2020. The ETP reflects the objectives of the FSBP and both the FSA and IFSA. Key recommendations made by the ETP will be addressed within the effective legal framework provided by both the FSA and IFSA.

The legislations are engineered as across the board legislative framework and supervisory regime for financial institutions in Malaysia which also double as a financial safety net. The FSA and IFSA are said to share about 75% similar provisions. The IFSA stresses more on Shariah compliance and governance of key Islamic financial institutions aiming to promote financial stability.

Impact of the FSA and IFSA

BNM's Powers

So, how do the Acts refine Malaysia's modern financial sector? There are some fresh and significant features of both these Acts which might smoothen the creases of the financial sector.

For a start, it is noteworthy that both the FSA and IFSA provide for a broader and more extensive power to BNM and Malaysia's Ministry of Finance (MOF).

[1] S 60 of the FSA, S 69 of the IFSA.

[2] Bank Negara Malaysia Press Release. <http://www.bnm.gov.my/index.php?ch=8&pg=14&ac=2373>

[3] Performance Management and Delivery Unit. "Overview of ETP." Pemandu, 2012 <http://etp.pemandu.gov.my/About_ETP-@-Overview_of_ETP.aspx>

[4] Parker, Mushtak. "Bank Negara's new master plan charts future direction of financial system." ArabNews 1 Jan. 2012. <http://www.arabnews.com/node/402698>

[5] Bank Negara Malaysia, "Financial Stability and Payment Systems Report 2012.", 20 Mar. 2013. <http://www.bnm.gov.my/files/publication/fsps/en/2012/fs2012_en.pdf>

To illustrate, BNM is now empowered through these Acts to specify standards on business conduct relating to transparency and disclosure requirements, promotion of financial services or products, provision of recommendations or advice including assessments of suitability and affordability of financial services or products.[6] The aim is simple – to ensure financial service providers are fair, responsible and professional when dealing with financial consumers.[7]

[6] S 123 of the FSA, S 135 of the IFSA.

[7] S 123 of the FSA, S 135 of the IFSA.

An extension of BNM's powers is reflected in the power of BNM to assume control over a business, in situations where it considers that the financial stability of the financial institution is at risk.[8] To curtail the downfall of the financial institution, the MOF on the recommendation of BNM may designate a bridge institution, as an alternative to winding-up, in which the business, assets and liabilities of the distressed financial institution will be vested.[9] Where required, BNM is also authorised to provide financial assistance to the bridge institution.[10]

[8] S 167 of the FSA, S 179 of the IFSA.

[9] S 176(1) of the FSA, S 188(1) of the IFSA.

[10] S 184 of the FSA, S 196 of the IFSA.

Financial Holding Companies (FHC)

Financial holding companies are also given recognition under the Acts, which give BNM a broader oversight over Financial Holding Companies (**FHC**), making the FHC subject to the same regulatory requirements as the banks they hold. This in effect strengthens risk governance over the activities of financial groups to prevent undue risks to the safety and soundness of financial institutions.[11] Prior to the introduction of both these Acts, the BAFIA and IBA only regulate individual banking entities and not FHC.

[11] Part VII of the FSA, Part VIII of the IFSA.

Financial Ombudsman Scheme

Without doubt the financial sector is a risky business. Financial players and investors will want legal recourse should their financial dealings or investments face difficulties. In this context, the FSA and IFSA have introduced the Financial Ombudsman Scheme (**FOS**).[12]

[12] S 126 of the FSA, S 138 of the IFSA.

The FOS is a scheme approved by BNM, for the resolution of disputes between an eligible complainant and a financial service provider in respect of financial services or products. It ensures effective and fair handling of complaints and for the resolution of disputes.[13]

[13] Ibid.

Acquisitions and Disposals of Interests

Prior to the enforcement of the Acts, approval of the MOF must be obtained in acquiring or disposing of 5% or more of the issued share capital of a financial institution or its controller[14]. The FSA introduces a lighter and more efficient regulatory approval process whereby applications to acquire or dispose of 5% or more interest in shares of a licensed person can just be made to BNM.[15] There is a similar provision under the IFSA.[16] The approval of the MOF is only required if the proposed acquisition results in the acquirer obtaining control or holding more than 50% of the equity interest in the licensed person.[17] For individual[18] shareholding, the Acts only permit up to 10% holding of interest in shares.[19] These provisions in relation to the acquisition and disposal of interest in shares extend to foreign entities.

[14] S 45 of BAFIA.

[15] S 87(1) of the FSA.

[16] S 99(1) of the IFSA.

[17] S 87(2) of the FSA, S 99(2) of the IFSA.

[18] Defined as natural person under S 2 of the FSA and IFSA.

[19] S 92 of the FSA, S 104 of the IFSA.

Both the FSA and IFSA now permit any increase in shareholding of the licensed person as long as such increase does not exceed a multiple of 5%.[20] The same rule applies to subsequent agreements for acquisition of shares. Approval by the MOF is only required if a shareholder who has an aggregate interest in shares of a licensed

[20] S 87(3)(a)(i)(B) of the FSA, S 99(3)(a)(i)(B) of the IFSA.

person of more than 50%, or who has an aggregate interest in shares of a licensed person of less than 50% but has control over the licensed person, proposes to dispose of any interest in shares and the disposal will result in the shareholder holding an interest in shares of less than 50% or in the shareholder ceasing to have control over the licensed person.[21]

[21] S 89 of the FSA, S 101 of the IFSA.

The FSA also provides clarity on the definition of "interests in shares", which would include a direct interest in shares, effective interest in shares and also aggregates legal, beneficial, direct and effective interests.[22]

[22] Sch. 3 of the FSA and IFSA.

Conclusion

As we know, the financial sector is developing at a much speedier pace now, and to cope with it, the FSA and IFSA are designed specifically to preserve financial stability and to further support the growth of the robust Malaysian financial system and the real economy. The canvas of the financial sector is now painted to express a principles-based approach, which combines greater supervisory judgment and intensity with high-level principles of sound practice. The bigger picture is to cater for the much more sophisticated and interconnected financial system as the financial sector revolutionises. The changes introduced will revamp the architecture under which the financial players and investors operated for the last 20 years. Time will tell whether the efforts will pay off.

An Overview of the Limited Liability Partnerships Act 2012 ("LLPA")

By Ng King Hoe, Partner

Introduction

A. The LLPA is an Act to provide for the registration, administration and dissolution of limited liability partnerships (**"LLP"**) and to provide for related matters.

B. The LLPA has come into force with effect from 26 December 2012.

Fundamentals Of A LLP

A. A LLP is a body corporate and has legal personality separate from that of its partners.[1]

[1] Section 3(1)

B. A LLP has perpetual succession.[2]

[2] Section 3(2)

C. Any change in the partners of a LLP does not affect the existence, rights or liability of the LLP.[3]

[3] Section 3(3)

D. A LLP has unlimited capacity and is capable of:[4]
   (i) suing and being sued;[5]
   (ii) acquiring, owing, holding and developing and disposing of property; and[6]
   (iii) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.[7]

[4] Section 3(4)
[5] Section 3(4)(a)
[6] Section 3(4)(b)
[7] Section 3(4)(c)

E. The Partnership Act 1961 and the rules of equity and common law applicable to partnerships are not applicable to a LLP registered under the LLPA.[8]

[8] Section 4

Formation Of A LLP

A. Any two or more persons consisting of individuals or bodies corporate associated for carrying on any lawful business with a view to profit may form a LLP in accordance with the terms of a LLP agreement entered into between the partners ("**LLP Agreement**").[9]

[9] Section 6

B. A LLP may be formed for the carrying on of a professional practice.[10]
   (i) professional practice[11] means the practice of:
      (aa) a chartered accountant;
      (bb) an advocate and solicitor; and
      (cc) a company secretary;[12]
   (ii) the partners of a professional practice must:
      (aa) consist of natural persons practising the same professional practice only;[13]
      (bb) have in force professional indemnity insurance cover for an amount as approved by the Registrar of LLP[14] ("**Registrar**") (and if applicable after consultation with the governing body of the professional practice[15]).

[10] Section 8
[11] Section 2
[12] First Schedule
[13] Section 8(a)
[14] Section 8(b)(i)
[15] Section 8(b)(ii)

C. The mutual rights and duties of the partners of a LLP, and the mutual rights and duties of the LLP and its partners, are governed by the LLP Agreement.[16]

[16] Section 9(1)(a)

D. The LLP Agreement must consist of the following[17]:
   (i) the name of the LLP which must end with the words "***Perkongsian Liabiliti Terhad***" or "***PLT***"[18];
   (ii) the nature of business of the LLP[19];
   (iii) the amount of capital contribution by each partner[20];
   (iv) the partners have agreed to become partners of the LLP[21]; and
   (v) unless provided otherwise in the LLP Agreement, the LLP Agreement is deemed to provide for the matters specified in the Second Schedule of the LLPA[22] which include:
      (aa) all the partners are entitled to share equally in the capital and profits of the LLP[23];
      (bb) the LLP must indemnify each partner in respect of payments made and personal liabilities incurred by that partner in the ordinary course of business of the LLP or for the preservation of the business or property of the LLP[24];
      (cc) every partner must take part in the management of the LLP[25];
      (dd) any matter relating to the LLP shall be decided by resolution passed by a majority in number of partners and each partner shall have one vote[26];
      (ee) no majority of the partners can expel any partner unless a power to do so has been expressly provided in an agreement between the partners[27].

[17] Section 9(2)
[18] Section 13(1)
[19] Section 9(2)(b)
[20] Section 9(2)(c)
[21] Section 9(2)(d)
[22] Section 9(1)(b)
[23] Item 2 of the Second Schedule
[24] Item 3 of Second Schedule
[25] Item 4 of Second Schedule
[26] Item 8 of Second Schedule
[27] Item 12 of Second Schedule

Registration Of A LLP

A. A person may apply for registration of a LLP to the Registrar by submitting the documents specified and paying the fee as prescribed, by the Registrar.[28]

B. A LLP formed for the purposes carrying on a professional practice shall be accompanied by an approval letter from the relevant governing body (e.g. the Malaysian Bar in the case of an advocate and solicitor in West Malaysia).[29]

C. A LLP is duly registered under the LLPA once a notice of registration has been issued by the Registrar.[30]

Liabilities Of A Partner

A. A partner is not personally liable for any obligation of a LLP, i.e. the obligation is solely the obligation of the LLP.[31]

B. A partner is personally liable for his/her own wrongful act or omission but he/she is not personally liable for the wrongful act or omission of any other partner.[32]

C. If a partner is personally liable as a result of his/her own wrongful act or omission the LLP is liable to the same extent as the partner.[33]

D. The liabilities of a LLP shall be borne out of the property of the LLP.[34]

E. Every partner of a LLP is the agent of the LLP[35] and the LLP may disclaim liability for anything done by a partner if:
   (i) the partner is acting without authority; and[36]
   (ii) the person dealing with the partner knows that the partner has no authority[37] or does not know that he is a partner of the LLP.[38]

Conversion From Conventional Partnership To LLP, etc.

A. A partnership registered under the Registration of Businesses Act 1956 and a partnership formed for the purposes of carrying on any professional practice may convert to a LLP.[39] An application for conversion requires inter alia an approval letter from the relevant governing body.[40]

B. A private company may convert to a LLP if:
   (i) there is no subsisting security interest at the time of its application for conversion; and[41]
   (ii) the partners of the LLP to be converted comprise all the shareholders of the private company only.[42]

   An application for conversion requires a statement signed by all its shareholder[43] including a statement that all of its creditors have agreed with the application for conversion[44] and the Registrar may require the statement to be verified.[45]

C. The Registrar may refuse to register a conversion if he is not satisfied with the particulars or information furnished.[46]

D. Upon registration, the conventional partnership or private company shall be deemed to be dissolved[47] (and shall be removed from the register of business or register of companies maintained under the relevant Act, as the case may be[48]) and take effect as a LLP under the LLPA.[49]

[28] Section 10(1)
[29] Section 10(3)
[30] Section 11(3)
[31] Section 21(2)
[32] Section 21(3)
[33] Section 21(4)
[34] Section 21(5)
[35] Section 23(1)
[36] Section 23(2)(a)
[37] Section 23(2)(b)(i)
[38] Section 23(2)(b)(ii)
[39] Section 2
[40] Section31(1)(b)
[41] Section 30(1)(a)
[42] Section 30(1)(b)
[43] Section 31(2)(a)
[44] Section 31(2)(a)(vi)
[45] Section 31(3)
[46] Section 32(2)
[47] Section 33(1)(c)
[48] Section 33(1)(d)
[49] Section 33(1)(a)

E. Any pending proceeding by or against the conventional partnership or private company on the date of registration may be continued, completed and enforced by or against the LLP.[50] The same applies to any conviction, ruling, order or judgment.[51]

[50] Section 34
[51] Section 35

F. Any agreement entered into by the conventional partnership or private company prior to the date of registration shall continue in force and enforceable by or against the LLP as if the LLP were named as a party thereto on and after the date of registration as a LLP.[52]

[52] Section 36

G. However, any approval, permit or licence issued under any written laws prior to the date of registration as a LLP will no longer be applicable to the LLP.[53]

[53] Section 40

H. Every partner of a conventional partnership continues to be personally liable with the LLP for any liability or obligation incurred by the conventional partnership prior to the conversion or which arose from any contract entered into prior to the conversion.[54] Once any such liability or obligation has been discharged by the partner, that partner is entitled to be fully indemnified by the LLP unless provided otherwise in any agreement with the partners.[55]

[54] Section 41(1)
[55] Section 41(2)

Winding-Up Of A LLP

A. The provisions in the Companies Act 1965 relating to a receivership and winding-up by the Court of a company limited by shares shall apply to the receivership and winding-up of a LLP.[56]

[56] Section 49(1)

B. Voluntary winding-up of a LLP is governed by the LLPA,[57] i.e. when a LLP has ceased to operate and has discharged all its debts and liabilities a partner of the LLP may apply to the Registrar for a declaration of dissolution of the LLP.[58] A creditor may object the proposed dissolution within thirty (30) days of the date of publication or posting of the notice of dissolution.[59]

[57] Section 50(1)
[58] Section 50(2)
[59] Section50(5)

Estate Planning for Digital Assets

By Goh Siu Lin (Deputy Head, Family, Probate & Trusts) and Lim Qiu Jin

As our lives have become more virtual, the record of our identities and actions performed is now increasingly likely to be dealt with online. Digital assets that we own may include software, websites, downloaded content, online banking information, social-media accounts and even e-mails. Family and fiduciaries may face a few difficulties in trying to access the deceased's digital assets: 1) passwords; 2) encryption; and 3) federal criminal law that penalize unauthorized access to computers and data (Computer Crimes Act 1997 in Malaysia).

As such, nowadays when we prepare a will, we have the added responsibility of leaving instructions to our loved ones about what to do with our online assets after we die. For example, leaving details of passwords or access codes.

This article explores the different ways in which the principal digital service providers respond upon being informed that an account holder has passed away. Many of the legal requirements referred to relate to those set in United States where many of the largest digital service providers are based.

A. E-mail

Gmail[1] and Hotmail[2] allow the email accounts of the deceased to be accessed, provided certain requirements are met. Yahoo![3] has adopted a policy of refusing access to email accounts when an account holder dies, stating that it will delete an account once proof of death has been given. The terms of service indicate that survivors have no right to access the email accounts of the deceased and, in a section entitled *'no right of survivorship and non-transferability'*, account holders must agree that *'contents within account terminate upon death'*. This is, in our view, of little help to executors or beneficiaries who wish to keep the contents of the account concerned because the terms of service prohibit the company from disclosing private e-mail communications. Yahoo! will turn over an account to family members only after they go through the courts to verify their identity and relationship to the deceased.

B. Social Media

One of the problems with social media websites is that there is no uniform set of rules in accessing the data in the case of the death or incapacity of the account holder. Below are a few examples of main principal websites most frequently accessed.

[1] https://support.google.com/mail/answer/14300
[2] http://answers.microsoft.com/en-us/windowslive/forum/hotmail-profile/my-family-member-died-recently-is-in-coma-what-do/308cedce-5444-4185-82e8-0623ecc1d3d6
[3] http://info.yahoo.com/legal/us/yahoo/utos/utos-173.html

(i) Facebook

Facebook's policy on death is to turn the deceased user's profile into a memorial, *"as a place where people can save and share their memories of those who've passed."*[4] The deceased's wall remains active, so that the friends and family can post memorial messages. Memorializing of a profile involves: the deceased user's profile is no longer being shown in the "Suggestions" box on the right-hand side of the homepage; the privacy setting is altered so that only confirmed friends can view the profile and search for it; contact information & status updates are removed; no one is able to log into the account in the future.

[4] http://blog.facebook.com/blog.php?post=163091042130

(ii) Flickr

This online photo management and sharing application has a limited free service but requires a regular subscription to access all photographs held on an account. Unless the subscription continues to be paid after death there is a danger that Flickr will close the account simply because it has ceased to be maintained.[5] Account holders should arrange for their executors to keep paying, at least until they have time to deal with the Flickr assets. Alternatively, the account holder should back up their photographs on a hard disk or in another format.

[5] http://www.flickr.com/help/forum/98825/

(iii) Instagram

Similarly, the photos stored in this application may be able to be accessed by the deceased's family by informing Instagram about the death of the Instagram user. This can be done through e-mail.[6]

[6] http://instagram.com/legal/privacy/#section8

(iv) Twitter

Upon request, Twitter can close accounts and provide archives of public Tweets for deceased users. Family members are required to submit a formal request to Twitter's Trust & Safety department.[7]

[7] http://support.twitter.com/groups/33-report-a-violation/topics/148-policy-information/articles/87894-how-to-contact-twitter-about-a-deceased-user

(v) YouTube

YouTube grants access to accounts of deceased persons provided if certain requirements are met:[8]

- A copy of the death certificate of the deceased;
- A copy of the document that gives the family the Power of Attorney over the YouTube account.

[8] http://support.google.com/youtube/bin/answer.py?hl=en&answer=94458

Bequeathing E-Affairs

As discussed above, many digital assets are normal assets that happen to be held in digital form, for instance photographs or an online bank account. In bequeathing online assets in a will, the main question to be determined is whether the provisions contained in the will, as drafted, cover digital assets. In addition, in preparing a will, the content of what should be considered as digital assets must be ascertained as well. In getting one's digital affairs in order, this website is being helpful by listing down a few steps in bequeathing the online assets:[9]

[9] http://blogs.loc.gov/digital-preservation/2011/07/when-i-go-away-getting-your-digital-affairs-in-order/

> *"The first step is to inventory everything about your online life, such as your email accounts, Facebook, Twitter…everything. Use a spreadsheet or create a table in a word-processing document. For each website, list the name, URL, your username and password. Include any additional information someone might need to access each account. Or indicate if*

you want an account deleted. Note if there is any money at stake in an account or if there are any business implications. ….Do you have any money sitting in your Paypal account? Do you have an ongoing business on eBay?

The second step is to research any rights issues that may impede your heirs from accessing your accounts. When you create an account on most sites you agree to its policies or terms of service. Check each site for their policy on deceased members and the access rights of heirs. Determine what authorization you may have to supply, if any, and jot that information down on your inventory.

Some sites allow users to be memorialized after they die.Some sites delete an account if it remains inactive for a period of time or if a due payment is not received, so note on your inventory if a site has time-related conditions.

It may help to designate a digital executor, someone who is internet savvy, can carry out your instructions and, if necessary, work with the legal executors of your will. ….

The third step is notification. Tell your heirs about your intentions for your digital content. You don't have to share usernames and passwords yet, just let them know that you've created a document with detailed information about your digital possessions and tell them where you will keep that document once you print it out. A logical place for it would be with your will or other important papers."

Possible problems arising in bequeathing online assets

It is tempting to leave digital information in a will but is not recommended as anyone can see these after the testator has passed away and the will becomes a public document. One way round this may be to use an online digital inheritance arrangement. Executors and beneficiaries only need the access code to the online storage facility.[10]

[10] http://www.stepjournal.org/journal_archive/2012/step_journal_november_2012/i%E2%80%99m_shutting_down_now.aspx

Conclusion

Despite the increasing role that digital assets play in our lives, no governing law has been stipulated in Malaysia regarding estate planning of digital assets. Since the concept of bequeathing e-affairs in Malaysia is still at its infancy stage, a person in bequeathing online assets must carefully consider all accounts and communicate details to permit access to his or her executor. This is important as more and more of our business and social interactions are conducted online, our files are stored in digital form. By planning for the administration of one's digital estate, the administration of the deceased's estate is made easier, enabling the deceased's wishes to be followed.

Enforcement of the Personal Data Protection Act 2010

By Lee Lin Li, Partner and Aretha Wan Kah Ling, Associate (Intellectual Property, Information Technology & Licensing)

The Personal Data Protection Act 2010 [Act 709] ("PDPA"), has come into force on 15th November 2013 together with four subsidiary legislations. The PDPA applies to "personal data" processed in Malaysia and personal data processed outside Malaysia which is intended to be further processed in Malaysia.

The four subsidiary legislations are:

(a) Personal Data Protection Regulations 2013
(b) Personal Data Protection (Class of Data Users) Order 2013
(c) Personal Data Protection (Registration of Data User) Regulations 2013
(d) Personal Data Protection (Fees) Regulations 2013

A. Personal Data Protection Regulations 2013

The Personal Data Protection Regulations 2013 provides guidance on the compliance with the PDPA in particular with regard to the seven principles. The main provisions of the regulations are as follows:

(a) The consent from the data subject may be in any form that can be recorded and maintained properly by the data user.

(b) If the data subject is below the age of eighteen years, consent must be obtained from the parent, guardian or person who has parental responsibility over the data subject.

(c) For the purposes of data access, the data user must provide the data subject with at least the designation of the contact person, phone number, fax number (if any), email address (if any) and such other related information.

(d) The data user must keep and maintain a list of disclosure of personal data to third parties.

(e) The data user must develop and implement a security policy which is in compliance with the security standard set out by the Commissioner.

(f) The data user is responsible for ensuring that the security standard in the processing of personal data is complied with by any data processor carrying out the processing of the personal data on behalf of the data user.

(g) The personal data of a data subject shall be retained in accordance with the retention standard set out by the Commissioner.

(h) Personal data shall be processed by the data user in accordance with the data integrity standard set out by the Commissioner.

(i) Contravention of the standards set out by the Commissioner is an offence and the data user is liable on conviction to a fine not exceeding RM 250,000 or imprisonment for a term not exceeding 2 years or both.

(j) The personal data system is open to the inspection of the Commissioner or any inspection officer at all reasonable times.

B. Personal Data Protection (Class of Data Users) Order 2013

The Order sets out the different classes of data users which require registration under the PDPA. The classes of data users are as follows:

(1) Communications

(a) A licensee under the Communications and Multimedia Act 1998. [Act 588]
(b) A licensee under the Postal Services Act 2012 [Act 741]

(2) Banking and Financial Institution

(a) A licensed bank and licensed investment bank under the Financial Services Act 2013 [Act 758].
(b) A licensed islamic bank and licensed international islamic bank under the Islamic Financial Services Act 2013 [Act 759].
(c) A development financial institution under the Development Financial Institution Act 2002 [Act 618].

(3) Insurance

(a) A licensed insurer under the Financial Services Act 2013.
(b) A licensed takaful operator under the Islamic Financial Services Act 2013.
(c) A licensed international takaful operator under the Islamic Financial Services Act 2013.

(4) Health

(a) A licensee under the Private Healthcare Facilities and Services Act 1998 [Act 586].
(b) A holder of the certificate of registration of a private medical clinic or a private dental clinic under the Private Healthcare Facilities and Services Act 1998.
(c) A body corporate registered under the Registration of Pharmacists Act 1951 [Act 371].

(5) Tourism and hospitalities

(a) A licensed person who carries on or operates a tourism training institution, licensed tour operator, licensed travel agent or licensed tourist guide under the Tourism Industry Act 1992 [Act 482].
(b) A person who carries on or operates a registered tourist accommodation premises under the Tourism Industry Act 1992.

(6) Transportation

(a) Malaysian Airlines System (MAS).
(b) Air Asia.
(c) MAS Wings.
(d) Air Asia X.
(e) Firefly.
(f) Berjaya Air.
(g) Malindo Air.

(7) Education

(a) A private higher educational institution registered under the Private Higher Educational Institutions Act 1996 [Act 555].
(b) A private school or private educational institution registered under the Education Act 1996 [Act 550].

(8) Direct selling

(a) A licensee under the Direct Sales and Anti-Pyramid Scheme Act 1993 [Act 500].

(9) Services

(a) A company registered under the Companies Act 1965 [Act 125] or a person who entered into partnership under the Partnership Act 1961 [Act 135] carrying on business as follows:
    (i) legal;
    (ii) audit;
    (iii) accountancy;
    (iv) engineering; or
    (v) architecture.

(b) A company registered under the Companies Act 1965 or a person who entered into partnership under the Partnership Act 1961, who conducts retail dealing and wholesale dealing as defined under the Control Supplies Act 1961 [Act 122].

(c) A company registered under the Companies Act 1965 or a person who entered into partnership under the Partnership Act 1961, who carries on the business of a private employment agency under the Private Employment Agencies Act 1981 [Act 246].

(10) Real Estate

(a) A licensed housing developer under the Housing Development (Control and Licensing) Act 1966 [Act 118].
(b) A licensed housing developer under the Housing Development (Control and Licensing) Enactment 1978, Sabah.
(c) A licensed housing developer under the Housing Developers (Control and Licensing) Ordinance 1993, Sarawak.

(11) Utilities

(a) Tenaga Nasional Berhad.
(b) Sabah Electricity Sdn. Bhd.
(c) Sarawak Electricity Supply Corporation.

(d) SAJ Holding Sdn. Bhd.
(e) Air Kelantan Sdn. Bhd.
(f) LAKU Management Sdn. Bhd.
(g) Perbadanan Bekalan Air Pulau Pinang Sdn. Bhd.
(h) Syarikat Bekalan Air Selangor Sdn. Bhd.
(i) Syarikat Air Terengganu Sdn. Bhd.
(j) Syarikat Air Melaka Sdn. Bhd.
(k) Syarikat Air Negeri Sembilan Sdn. Bhd.
(l) Syarikat Air Darul Aman Sdn. Bhd.
(m) Pengurusan Air Pahang Berhad.
(n) Lembaga Air Perak.
(o) Lembaga Air Kuching.
(p) Lembaga Air Sibu.

C. Personal Data Protection (Registration of Data User) Regulations 2013

This Regulation governs the registration of data users. Data users belonging to two or more classes must make an application for registration separately for each class of data user. The certificate of registration is valid for a period of not less than one year unless the notice of revocation of registration is served to the data user. The certificate of registration must be displayed by the data user at a conspicuous place at the principal place of business. A data user must notify the Commissioner of any change in particular in the certificate of registration. The fees payable for registration and renewal of data users are RM100 for a sole proprietor, RM200 for a partnership, RM300 for a private limited company and RM400 for a public limited company.

D. Personal Data Protection (Fees) Regulations 2013

This Regulation provides for the amount of fees payable by the data subject for a data request access.

The fees range from:
(a) RM2 per request for access to a data subject's personal data without a copy;
(b) RM5 per request for access to a data subject's sensitive personal data without a copy;
(c) RM10 per request for access to a data subject's personal data with a copy; and
(d) RM30 per request for access to a data subject's sensitive personal data with a copy.

The Regulation also provides the amount of fees payable to the Commissioner for a copy of a statement of the grounds of the decision of the Commissioner, inspection of the register, making copies and extracting entries in the Register.

Transitional Period

Data users are required to comply with the provisions of the PDPA within three months from the coming into force of the PDPA. The PDPA provides some comfort to the public that their personal information is protected by this new legislation. Companies should take immediate steps in reviewing their policies, processes, third party notifications, contractual rights and obligations as well as standard forms and notices which relate to processing of personal data in order to ensure they are in compliance with the PDPA.

CASE UPDATES

The following lawyers contributed to the preparation of various case updates in this issue: Yoong Sin Min, Lam Ko Luen, Ng Hooi Huang, David Dinesh Mathew, Kong Chia Yee, Victoria Loi.

Quistclose Trust

PECD Berhad v. AmTrustee Berhad (Civil Appeal No. 02(f)-59-08/2012(W)) Federal Court 17.10.20133

The Federal Court has on 17.10.2013 delivered a landmark decision in the case of PECD Berhad v. AmTrustee Berhad (Civil Appeal No. 02(f)-59-08/2012(W)).

Our Ms. Yoong Sin Min, Mr Lau Kee Sern and Ms Cheah Faan Jin had acted for AmTrustee Berhad, the Respondent in the Federal Court appeal.

In unanimously dismissing the appeal, the Federal Court of Malaysia has delivered an important decision on the position of a Quistclose Trust not only in this country but in the Commonwealth jurisdiction as well.

The facts of the case are as follows:

1. A company, Peremba Jaya ("the Issuer"), had issued RM200 million Islamic Notes but defaulted in payments thereunder. AmTrustee acted for the 14 Noteholders who held these Notes. The Issuer was a subsidiary of a listed company, PECD Berhad ("PECD").

2. PECD requested the Trustee/Noteholders to withhold acting against the Issuer. In exchange for such indulgence, PECD undertook to pay the Trustee RM30 million from the proceeds of a rights issue exercise.

3. The relevant shareholders' and regulatory approvals were obtained for the rights issue exercise. In all the required statutory documents for such exercise, including the Circular to shareholders and Abridged Prospectus, which were approved by the authorities, the purpose of paying this RM30 million to the Trustee towards reduction of the Issuer's debt under the Notes was expressly stated.

4. The rights issue exercise was completed and the shareholders who had subscribed for the rights issue were duly given their rights shares. The subscription monies were placed into a PECD Rights Issue Account. However, after receiving such rights issue monies, PECD refused to honour its commitment to pay RM30 million from such monies to AmTrustee but instead chose to use it for a s. 176, Companies Act restructuring scheme which would have resulted in the Trustee having to share such monies with the other creditors of PECD.

5. PECD obtained an ex-parte order to convene a creditors meeting as well as for a restraining order under s. 176. The Trustee, represented by Shook Lin and Bok, managed to set the order aside on the basis, inter alia, that the monies were held on trust by PECD for the Trustee and ought not to be used for the general unsecured creditors. The appeal was unanimously dismissed although the majority judges dismissed the appeal on different grounds.

6. AmTrustee then filed a suit against PECD for the RM30 million on the basis that it was monies held on trust for the Trustee and relied on the case of **Barclays Bank Ltd v. Quistclose Investments Ltd** [1970] AC 567, as well as other cases.

   In the **Quistclose** case, a financier, Quistclose Investments, granted a loan to a company for the specific purpose of paying dividends to its shareholders. After the monies were remitted to the company's bank, Barclays Bank, the company went into liquidation. Barclays Bank wanted to exercise a right in insolvency of set off of these monies against a debt owed by the company. Quistclose, however, claimed that these were trust monies intended for a specific purpose which was not fulfilled and that the monies ought to be paid back to Quistclose. The House of Lords held that such arrangements gave rise to a fiduciary character, ie., as a **primary trust in favour of the intended payee and if the primary trust fails, a trust in favour of the payor of the fund**. The monies were held not to form part of the insolvent company's estate.

7. The Quistclose case involved a claim by the payor of the funds. In the PECD case, it is the intended receipient, AmTrustee, who is claiming the funds. PECD insisted that the Trustee was only an unsecured creditor and that the monies belonged to PECD, as the payor of the funds (the subscribers for the rights shares) were not claiming for a return of the monies. PECD argued that any payments paid to AmTrustee would amount to preference of a creditor over others, as the company was already in financial straits. The High Court, however, found that the monies were trust monies held for the Trustee. Accordingly, AmTrustee managed to obtain payment of the RM30 million. PECD was later ordered to be wound up about two months later but its liquidator pursued an appeal. On 9.2.2012, the Court of Appeal unanimously dismissed the appeal.

8. The matter proceeded further to the Federal Court where leave to appeal was given for this issue:

   "Whether the beneficiary of a Quistclose trust can in law be a person who is not a provider or payor of the money".

9. On 17.10.2013, after having heard the appeal, the Federal Court delivered its decision and unanimously dismissed the appeal. In a very detailed Judgment, Justice Malanjum (CJ, Borneo) looked into the nature of the Quistclose trust and the cases and commentaries on the same which were delivered in various other Commonwealth jurisdictions. In gist, His Lordship held:

   (a) In this case, there was an implied acceptance by PECD that a Quistclose-type trust had been created. The only issue was whether AmTrustee, not having provided the monies for the same, could enforce the trust.

   (b) After a detailed analysis of Quistclose and various cases and commentaries on the same, the conclusion was that AmTrustee had acquired the beneficial interest in the monies and could enforce the payment thereof. This was in light of the fact that the provider of the monies (the shareholders) were not asking for the monies back, having already received their rights shares and they had already been expressly informed that the monies was intended to pay AmTrustee, that the monies were earmarked before PECD went into liquidation as the monies were placed in the PECD Rights Issue Account, and that AmTrustee itself had been informed and knew the monies were intended to be paid to it out of the rights issue exercise. This was therefore not a simple ordinary commercial arrangement and AmTrustee had acquired the beneficial interest to the RM30 million and could enforce payment.

   (c) The facts and circumstances of this case required the exercise of flexibility to achieve the ends of justice. Allowing the liquidator to keep the monies would be grossly unfair and unjust to the noteholders and AmTrustee and unconscionable on the part of the liquidator. The Court must however be vigilant to prevent abuse of this concept.

10. This decision has established that in a rights issue exercise, if an intended recipient of monies has been specifically named and is informed that it would be receiving some or all of the rights issue monies, that person has a right to claim such monies as **trust monies**, even if the company were to decide subsequently to vary the use of the rights monies raised. Thus this case must be borne in mind if there is an intention for the company to vary the purpose of the payments out of such rights issue exercise.

11. There may also be further implications, eg., if a bank were to grant a loan for a specific purpose of paying a named entity and the named entity has been informed of this. If the borrower is in liquidation whilst the monies is still in the borrower's hands and have not been paid to the intended recipient, that intended recipient could invoke this decision to claim the monies as trust monies, payable in priority over other creditors, including the lending bank. This arises from the concept that such monies would not form part of the borrower's estate.

12. This Federal Court decision has laid down principles governing the Quistclose Trust which has not been so clearly enunciated by other courts in other jurisdictions and would likely be referred to by other courts in other lands.

Islamic Finance

Kuwait Finance House (Malaysia) Bhd v. Vesta Energy Sdn Bhd & Ors [2012] 9 CLJ 516

In *Kuwait Finance House (Malaysia) Bhd v. Vesta Energy Sdn Bhd & Ors* [2012] 9 CLJ 516, Shook Lin and Bok acted for the plaintiff in an action against its Customer and guarantors to recover monies due under *Ijarah* and *Murabahah Tawarruq* facilities. In granting summary judgment and dealing with the defendants' issues raised to oppose the plaintiff's application for summary judgment, the court examined the nature of Murabahah Tawarruq and Ijarah transactions.

The court had made the following observations:

(a) A Murabahah Tawarruq facility involved an asset purchase (by the Islamic bank) and asset sale (to the customer), whereby the customer agrees to buy from the Islamic bank the asset at a deferred sale price. The customer in such transaction is not interested in owning the asset but it is to facilitate cash advances to him who is in need of cash. A *Murabahah Tawarruq*-based transaction allows the imposition of a profit rate or profit margin.

(b) The Customer's contention that the profits sought to be recovered by the plaintiff bank were unconscionable and were in effect *riba* (interest) was rejected, as the increase between the purchase and sale price is permitted in Islam. In order to challenge whether the profit imposed is reasonable or not, the Customer should have raised the same before any contract was concluded.

(c) An *Ijarah* is a lease or service contract for an agreed payment/commission within an agreed period. The customer would sell the beneficial ownership of certain assets to the plaintiff bank who would immediately lease the same to the customer, against payment of monthly lease rentals to the plaintiff for the lease term. The customer would own the said assets at the expiry or early termination of the lease through a purchase. Ownership of the asset was not necessary if the transaction contemplated the lease of the beneficial ownership of the asset.

(d) The plaintiff's claim for late payment compensation (*ta'widh*) was lawful and was not a penalty or *riba* as the Syariah Advisory Council of the Central Bank of Malaysia had confirmed this in a resolution dated 25.8.2011.

(e) The defendants' argument that the plaintiff bank ought to participate in the loss of investments suffered by the Customer and that there was uncertainty or *gharar* in the finance transaction due to business uncertainties, was rejected. A distinction was drawn between *gharar* (risk and uncertainties in contractual agreements) and *ghorm* (risk in business outcomes which cannot be eliminated as "no one is free from the vagaries of price volatilities"). The plaintiff should not be dragged into the loss suffered by the Customer as the transaction was not on *Mudharabah* or *Musharakah* basis but on *Ijarah* and *Murabahah* basis.

(f) There was a discussion of the statutory role of the Shariah Advisory Council (whose decisions are generally binding on Islamic financial institutions) and that of the establishment of Shariah Committee ("SC") by Islamic banks and that products have to go through a stringent review process and for Bank Negara to approve, to ensure these products are shariah compliant.

Banking

Shencourt Sdn. Bhd v. Aseambankers Malaysia Berhad [2011] MLJU 552

On 27.9.2013, the Court of Appeal unanimously reversed the High Court decision of Shencourt Sdn. Bhd v. Aseambankers Malaysia Berhad [2011] MLJU 552, to the relief of the banking industry.

1. The facts of the Shencourt case are as follows:

   (a) In 1996, a syndication of lenders had granted Shencourt Sdn. Bhd. ("Shencourt") a syndicated loan of RM62.5 million, to assist in Shencourt's construction of a project. Arising from the 1997/1998 financial crisis, there were delays in the project and the loan was restructured in 1999. However, in 2000, a drawdown under the facilities was refused by the lenders arising from, inter alia, a default in servicing interest. Negotiations ensued and eventually, another

financier stepped in offering to participate in the financing with RM35 million.

(b) The syndicate lenders and Shencourt then entered into a second restructuring of the facilities in 2003, whereby the lenders gave a haircut on the outstanding sum and agreed to be partially paid a sum of RM8.5 million from the new financier's facility. As part of the restructuring, it was also agreed that there will a moratorium on the payment of interest and principal sums. All the security for the syndicated loan was agreed to be shared pari passu between the syndicate lenders and the new financier. A further loan was granted to Shencourt in 2004, as well as an extension of the moratorium on payments.

(c) In 2005, the moratorium on payment of interest under the syndicated loan expired. Shencourt filed a suit against the Agent bank for damages and alleged, inter alia, that the Agent bank had wrongly refused to allow drawdown under the facilities in 2000, that it was not in arrears of interest payments, that the Agent bank and lenders had acted in a manner which caused damage to the project, that as a portion of the new loan was used to partially pay down the syndicated loan this had caused Shencourt to suffer a shortfall in funds, that the lenders had an ulterior motive why they did not want to allow further drawdown on their facilities, that they had acted maliciously and had engineered a default in the facilities. The cause of action was based on "breach of duty to act in good faith".

2. The lenders filed its own suit against Shencourt and its guarantor for recovery of the loan. Both suits were tried together and parties and the court agreed that the trial would proceed on the issue of liability first.

3. After a lengthy trial, the High Court found the Agent bank and lenders liable to Shencourt and awarded damages of RM117.5 million to Shencourt with further damages ordered to be assessed. The lenders' claim for the loan sum was dismissed with all the security ordered to be discharged. The High Court decision established the following:

(a) that the lenders owed a fiduciary duty to Shencourt and had acted maliciously towards Shencourt;

(b) the lenders also had a duty and a legal obligation to act in good faith, which was over and above the contractual terms and the breach of such "doctrine of good faith" would found a new cause of action;

(c) as there was a breach of the above duties, the lenders could not recover the loan granted. Shencourt was entitled to have the security returned, free of encumbrances and the loan of the new financier was also to be repaid by the lenders.

5. The Agent bank and lenders mounted an appeal. On 27.9.2013, the Court of Appeal unanimously allowed the appeal of the Agent bank and lenders and also granted the lenders judgment for the loan sums due. There were two sets of written grounds of Judgment issued by the Judges. The Court of Appeal held that:

(a) a lender does not owe a fiduciary duty in a banker-borrower relationship, especially where the terms governing such relationship are expressly set out in a written agreement and the findings of the High Court concerning the conduct of the lenders were erroneous;

(b) the doctrine of good faith is a new doctrine still in a state of flux in other legal jurisdictions but it has no application in a banker-borrower relationship, especially as such relationships are governed by fairly detailed agreements;

(c) the High Court had failed to consider the issue of estoppel, where the allegations were made against the lenders in respect of conduct prior to the restructuring of the facilities and the further facilities granted by the lenders. Shencourt ought to have been estopped from raising such allegations as the lenders had altered their position to their detriment, eg., by restructuring the loan, giving further advances and indulgence and having to share their security with the new financier;

(d) the lenders were fully entitled to recover their loan sums due and the security was ordered to be reinstated;

(e) the High Court ought not to have found the lenders liable for damages when the trial had proceeded only on the question of liability and there was no proof of damage/loss shown.

Shook Lin and Bok acted for the Agent bank and lenders in this case. The Court of Appeal decision was welcome in that it rejected the imposition of extremely onerous duties on banks in a bank-borrower relationship and which would legally require the bank to look after the interests of the defaulting borrower. Such decision also reinforces the principle that a loan given by a bank can still be recovered even if the borrower were to sue the bank for damages for any wrongdoing.

Banking

RHB Investment Bank Bhd. v. Plaza Rakyat Sdn. Bhd and Anor [2013] 2 CLJ 556

In the case of RHB Investment Bank Bhd. v. Plaza Rakyat Sdn. Bhd and Anor [2013] 2 CLJ 556, a suit was filed by a syndication of lenders against their Borrower and the guarantor, for recovery of the syndicated loan amount. The loan had been granted to the Borrower in 1994 for the construction of a project in the heart of Kuala Lumpur and was secured by a charge over leases over the project lands. Arising from the Borrower's default under the loan, a demand was made in 1998 but thereafter a Debt Restructuring Agreement ("DRA") was entered into between the lenders and the Borrower/guarantor in 2004. In the DRA, the Borrower had acknowledged its indebtedness to the lenders.

However, the DRA was terminated and in 2010 and the lenders filed their recovery action. At the trial, the Borrower/guarantor opposed the action on the basis that:

(a) the action was time-barred, as the first letter of demand had been issued in 1998 and the limitation period was 6 years, since this was a recovery action based on breach of a loan agreement (contract);

(b) that there was no acknowledgment of debt which the lenders could rely on in the DRA to revive the limitation period as the DRA had been terminated;

The lenders, represented by Shook Lin and Bok, countered the above positions and their submissions were accepted by the High Court, who held, inter alia:

1. The limitation period applicable here is governed by **s. 21(1) of the Limitation Act** (which provided for a limitation period of 12 years from the date when the right to receive the money accrued, in relation to a claim to recover money **secured by a mortgage or a charge**) and not **s. 6(1) of the Act** (which provided for a 6-year limitation period for claims founded on a contract). The Court held that even though the claim was not a charge action and was based on the Borrower's personal covenant to pay under the loan agreement, the limitation period was 12 years, as the moneys sought to be recovered were secured by a charge. This would avoid an incongruous situation where two different limitation periods would be applicable to the same facility, ie., 6 years for the action which is based on the loan agreement, and 12 years for the realisation of charge.

2. Even if the limitation was 6 years, the lenders were not time-barred as there was a revival of the limitation period by virtue of the express acknowledgment of indebtedness of the Borrower in the DRA. The Limitation Act only requires there to be an unequivocal acknowledgment in writing of the debt, for the limitation period to commence from such date of acknowledgment (**sections 26 and 27, Limitation Act**). Thus even if the DRA had been terminated, there was the express acknowledgment of debt therein, which entitled the lenders to rely on the date of the DRA to consider when the limitation period commenced.

Judgment was granted against the Borrower and the guarantor. The appeal against this decision has since been withdrawn.

Companies

Federal Court Civil Appeal No. 02(f)-91-11/2012(B) Francis A/L Augustin Pereira and another v. Dataran Mantin Sdn. Bhd and 179 Others

On 17.10.2013, the Federal Court delivered a decision which paved the way for schemes of arrangement involving only a particular class of creditors of a company under s. 176 of the Companies Act.

Dataran Mantin had developed a project ("the Project") on land owned by its subsidiary, Mico Vionic Sdn. Bhd. ("Mico Vionic"). The Project land was charged to OCBC Bank (Malaysia) Berhad. Dataran Mantin could not complete the Project and a winding up petition was presented against it by a creditor. Pending hearing of the winding up petition, a provisional liquidator was appointed.

The provisional liquidator consented to a scheme of arrangement proposed by some purchasers of the units in the Project. The scheme contemplated the entry of a white knight to complete the Project and settlement of the debts of the Project creditors, namely, the purchasers, OCBC Bank and contracters/suppliers of the Project. The scheme was passed by these creditors and was sanctioned by the Court pursuant to s. 176 of the Companies Act.

Two creditors of Dataran Mantin, who were not Project creditors, then applied to set aside the Court order sanctioning the scheme, alleging the scheme to be defective as it did not take into consideration all the other creditors of Dataran Mantin. The purchasers and OCBC Bank (who was represented by Shook Lin and Bok) intervened to oppose the application. The Shah Alam High Court allowed the application and set aside the scheme, and thereafter ordered Dataran Mantin to be wound up.

On appeal, the Court of Appeal reversed the High Court's decision and held that the scheme was good. The two creditors obtained leave to appeal to the Federal Court on the following issues:

1. "Whether s. 176 of the Companies Act can confer preference on one group of creditors whilst excluding another group altogether where the company is in the process of being wound up."

2. "Who in law would constitute a class of creditors within the meaning of s. 176 of the Companies Act, 1965?"

The Federal Court in dismissing the appeal, delivered its unanimous decision which in gist states the following:

(a) S. 176 allows for a scheme to be directed at a distinct class of creditors of a company, so long as the rights of the creditors in this class are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. In this case, it would have been impossible for the Project creditors to consult with the other unsecured (non-Project) creditors of Dataran Mantin, as their interests would not be common;

(b) There was no undue preference of creditors here as a scheme for only a class of creditors is permitted under s. 176, the provisional liquidator had consented to the same and the Project land did not belong to Dataran Mantin but to its subsidiary company, Mico Vionic. Dataran Mantin, as a shareholder of Mico Vionic, was held to have no legal interest in the land.

(c) Further, as the Project land was already charged to OCBC Bank, if the scheme were to be set aside, OCBC Bank would be compelled to realize the land charge under the National Land Code and the auction proceeds would not even be sufficient to settle the debt due to OCBC Bank, as the debt exceeded the value of the Project land, with no surplus proceeds to be given to Mico Vionic.

(d) The parties who were truly aggrieved were the purchasers and OCBC Bank as the sole secured creditor. The scheme would revive the Project and reduce the indebtedness of Dataran Mantin.

Arbitration

AJWA For Food Industries Co (MIGOP), Egypt v. Pacific Inter-Link Sdn. Bhd. [2013] 7 CLJ 18

The Federal Court in *AJWA For Food Industries Co (MIGOP), Egypt v. Pacific Inter-Link Sdn. Bhd.* [2013] 7 CLJ 18, recently shed light on the expanse of how contracting parties may be bound by an arbitration agreement incorporated by a reference to a document which contains an arbitration clause under the Malaysian Arbitration Act 2005.

The Respondent had initiated two arbitration proceedings against the Appellant under the Palm Oil Refiners Association of Malaysia (PORAM) Rules of Arbitration which culminated in two arbitration awards in favour of the Respondent. Dissatisfied, the Appellant sought to set aside or amend the arbitration awards at the High Court on the grounds that the arbitral tribunals had no jurisdiction to hear the parties as there was no arbitration agreement. The Respondent contended that there were arbitration agreements incorporated by reference to documents containing arbitration clauses.

The High Court agreed with the arbitral tribunals' finding that the arbitral tribunals had the necessary jurisdiction to hear the disputes as there was an arbitration agreement between the parties.

On appeal, the Court of Appeal (reported at [2013] 2 CLJ 395) unanimously agreed with the decision of the High Court and held that a written agreement to arbitrate does not mean a formal agreement executed by both parties, so long as the arbitration agreement is incorporated into a written document even though the arbitration agreement was not signed by the Appellant:

> *"…the sales contracts which expressly incorporated the respondent's standard terms and conditions, which in turn contained the arbitration agreement… satisfy the writing requirements under s. 9(4) and 9(5) of the Arbitration Act 2005 to constitute a valid arbitration agreement between the parties, even though the said arbitration was not signed by the appellant."*

Ultimately, on appeal, the Federal Court in affirming the decision of the Court of Appeal, concluded that:

(i) There is no requirement under the Malaysian Arbitration Act 2005 that where a reference is said to be made to a document containing an arbitration clause in an agreement, that that agreement must be signed.

(ii) Section 9(5) of the Malaysian Arbitration Act 2005 does not require the document which contains the arbitration agreement to be attached or published and it is sufficient if the incorporation is made by a notice in the document.

In other words, it appears that so long as an agreement between parties makes reference to an arbitration clause or agreement in another document, it may be binding on the parties and it matters not that such document was unsigned or not attached to the agreement.

Limitation

Tenaga Nasional Berhad v. Kamarstone Sdn Bhd(2013) Federal Court Civil Appeal No. 02-68-2012 (A)

Tenaga Nasional Berhad v. Kamarstone Sdn Bhd: A decision of the Federal Court on the principles of law relating to the retrospective reach of statute and postponement of the limitation period

Our Mr Steven Thiru and Mr David Mathew acted for the Appellant, Tenaga Nasional Berhad, in the above case.

In allowing the appeal, Dato' Jeffrey Tan FCJ, delivering the judgment of the court, took the opportunity to uphold the rule of construction that a statute should not be interpreted retrospectively to impair an existing right or obligation, unless such a result is unavoidable by reason of the language used in the statute – per the advice of Lord Brightman to the Board in the Privy Council case of **Yew Bon Tew** v. **Kenderaan Bas Mara** [1983] MLJ 1.

This was a case where the Appellant, the national electricity supplier, entered into a contract for the supply of electricity to the Respondent on 15.8.1996. In January 2003, the Appellant discovered that the Respondent had been undercharged for a period that ran from October 1996 to October 2002. This was due

entirely to the application for a wrong meter multiplying constant by the Appellant. The correct multiplier should have been 100 instead of 50.

By reason of this, the Respondent was undercharged a total of RM581,876.77. The Appellant issued two letters of demand, on 13.1.2003 and 29.7.2003, to the Respondent to settle the shortfall. On 15.9.2003, the Respondent wrote back to request that the Appellant accept a reduced sum of RM28,328.40 to be paid by ten instalments. This proposal was rejected by the Appellant who proceeded to launch a civil suit on 26.10.2005 to recover the shortfall.

The High Court held that for limitation purposes, time only started to run when the mistake in the multiplier was discovered. The High Court also held that this was also the date when the cause of action arose.

In the circumstances, the High Court dismissed the Appellant's claim on the ground the Appellant's claim was caught by the amendment to Regulation 11 (2) of the Licensee Supply Regulations 1990, which limits the Appellant's right to recover a retrospective adjustment to three months. The amendment came into effect on 15.12.2002, which was before the discovery of the mistake.

The Court of Appeal agreed with the High Court.

In reversing the decisions of the High Court and the Court of Appeal, the Federal Court held that since no retrospective effect was evident from its language, the amendment to Regulation 11 (2) must be constructed as a prospective provision without any retrospective application.

Insofar as the limitation point was concerned, the Federal Court ruled that this was not a case where limitation could be postponed pursuant to Section 29 (c) of the Limitation Act 1953 which covers cases where *"the action is for relief from the consequences of a mistake"*. The Federal Court was of the view that the essential ingredient of the cause of action brought by the Appellant was not mistake but breach of contract. As a consequence, the Appellant could not take advantage of Section 29 (c) to postpone the starting point of the period of limitation to January 2003.

The Federal Court however agreed that the Appellant could rely on Section 26 (2) of the Limitation Act based on the Respondent's letter of 15.9.2003, which appeared to acknowledge that a debt was owed to the Appellant.

Section 26 (2) of the Limitation Act states that *"Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment"*.

In this connection, Dato' Jeffrey Tan FC observed as follows:

> *"Evidently, in the aforesaid letter, the Respondent did not deny liability. Also, the Respondent did not deny that a "gigantic expense … of RM581,876.77" was incurred. But rather, from the totality of the tone and language used, there was a clear and unequivocal acknowledgement by the Respondent that there was a subsisting debt of RM581,876.77, the acknowledgement of which was further borne out by the plea of the Respondent to the Appellant to waive the shortfall. We could accept that the plea of indigence would have been made in good faith. But unfortunately for the Respondent, because of the acknowledgement, the right of action of the Appellant for the shortfall for the period prior to 26.10.1999, was thereby deemed to have accrued on 15.9.2003. When action was filed in 2005, limitation had not set in."*

Shook Lin & Bok Celebrates its 95th Anniversary

by Gregory Das

The firm celebrated its 95th Anniversary by hosting a lavish cocktail reception on 3.10.2013 at the Majestic Hotel, Kuala Lumpur. The event was attended by over 500 of the firm's clients and business partners from various fields of industry.

The impressive turnout was indeed a testament to the firm's position as one of the leading law firms in the country. What makes the firm's success even more impressive is its sustained growth from its modest origins in 1918 when it occupied a building at 89, Cross Street (now known as Jalan Silang). Since then, the firm has weathered both the British and Japanese occupations as well as some difficult economic periods in the country.

Shook Lin & Bok has close to a hundred lawyers and fourteen departments, led by partners who are well-regarded in their respective fields. The firm also remains committed to upholding corporate social responsibilities by handling various pro-bono cases and organizing and sponsoring many charity projects.

There was therefore a great deal to celebrate at the firm's 95th Anniversary celebrations. It was also emblematically appropriate that the event was held in honour of the firm's clientele, who are very much a part of the firm's story and will no doubt, feature prominently in the continued success of the firm.


celebrating
95
years


95
years
SHOOK LIN & BOK


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95


SHOOK LIN & BOK


SHOOK LIN & BOK
Celebrates
95th ANNIVER
3rd October 2013
The Majestic Hotel Kuala


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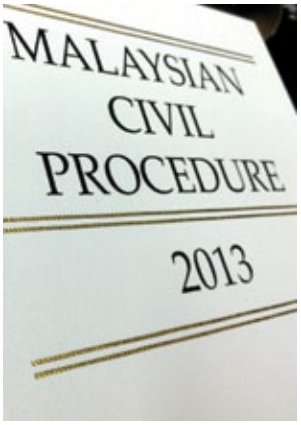
Lam Ko Luen elected President of the Malaysian Institute of Arbitrators (MIArb), Ms Victoria Loi elected Council member - 11th June, 2013

The firm congratulates Mr. Lam Ko Luen and Ms Victoria Loi, on being elected President and Council Member, respectively, of the Malaysian Institute of Arbitrators (MIArb) at its Annual General Meeting on 11th June 2013. Ko Luen and Victoria will be serving for a 2 year term of 2013/2015.

Contributing Editors to the inaugural Malaysian Civil Procedure 2013



The firm is proud to be a part of the editorial team leading to the successful inaugural publication of the Malaysian Civil Procedure 2013 published by Sweet & Maxwell Asia. The following lawyers undertook this project on the firm's behalf:

- Goh Siu Lin
- Sudharsanan Thillainathan
- Cilia Chong
- Jane Guan
- Bong Ying Wei

Elevation to Partnership 2014

The firm is pleased to announce the elevation of two partners with effect from 1st January, 2014.

We congratulate Mr. Ivan Ho Yue Chan who has been promoted as general partner and Ms Kong Chia Yee who has been admitted to the partnership.

Ivan Ho Yue Chan graduated with an LL.B. (Honours) degree from the University of Hull and is a Barrister-at-Law, Lincoln's Inn. He was called to the Malaysian Bar in 1987. His areas of practice include Corporate, Banking & Finance and Intellectual Property, Information Technology & Licensing. He is currently the Deputy Head of the Corporate Department of the firm.

Kong Chia Yee was born in Penang and is a graduate in Bachelor of Laws from the University of Sheffield, United Kingdom. She was called to the Bar in 2006. Her area of practice is civil and commercial litigation, with special emphasis on Banking and Finance litigation.

Visit by the Korean Bar Association

The firm welcomed delegates from Korean Bar Association (KBA) to its offices on 4.7.2013. This marked the establishment of an internship programme for young Korean lawyers and law students with the firm.

大韓辯護士協會
Korean Bar Association

18th Floor, # 124 Teheran-ro, Gangnam-gu,
Seoul, 135-784, Republic of Korea
www.koreanbar.or.kr

TEL : +82 2 2087 7781
FAX : +82 2 3476 2770

July 12, 2013

Dato' Dr. Cyrus V. Das
Managing Partner
Shook Lin & Bok
20th Floor, AmBank Group Building
55, Jalan Raja Chulan
50200 Kuala Lumpur

Dear Dato' Dr. Cyrus V. Das,

I would like to express my words of gratitude for all the kind warm welcome you have showed towards me and the Korean Bar Association ("KBA") delegation last July 4th, 2013. It was my privilege to have visited Shook Lin & Bok with its remarkable history where our KBA delegates were opportune to meet with other representative attorneys from your law firm to discuss about the current situation of the opening legal market and the increase of legal professionals in our field of law. Through such networking, we were able to find answers to the questions we have had about Malaysia's legal market and its system. We hope the meeting was as advantageous to you as it was to us.

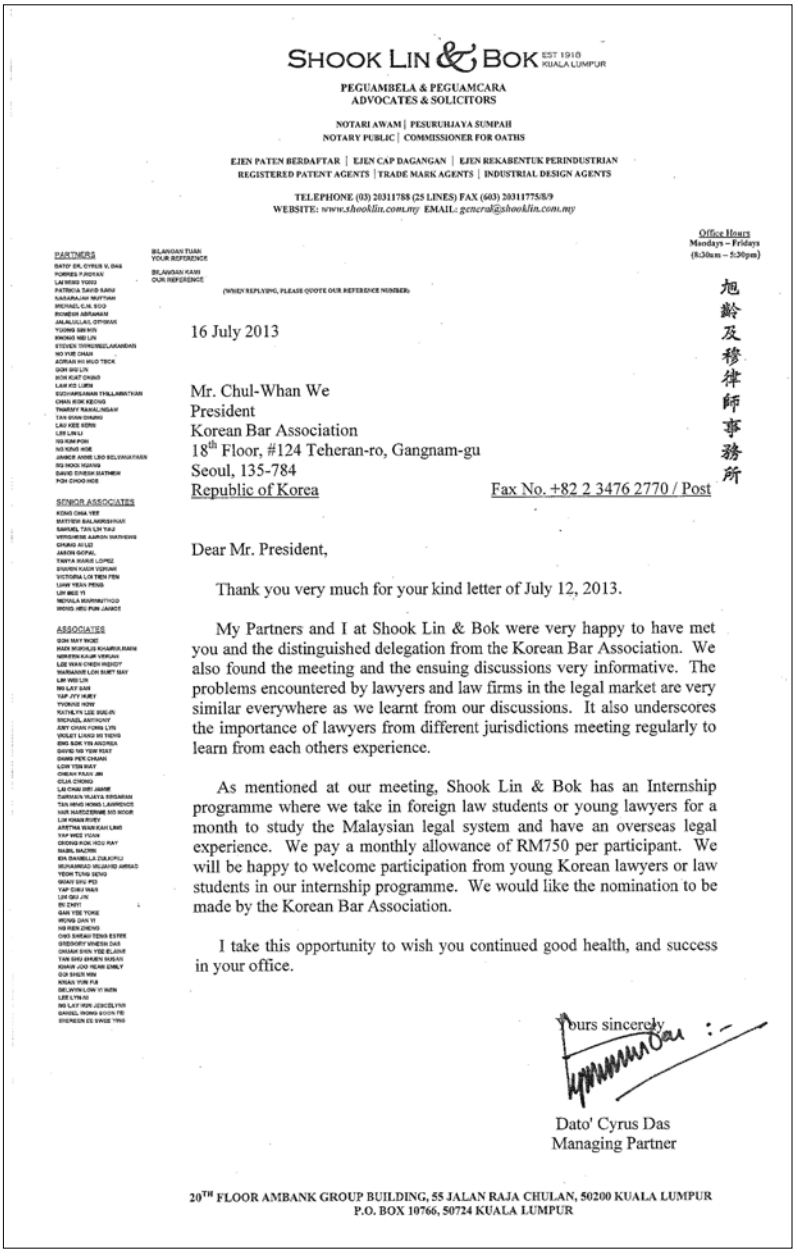
Although the international legal competition is becoming fierce, we hope for the continual success and development of Shook Lin & Bok.

I sincerely thank you once again for your warm hospitality.

Best regards,

Chul-Whan We

Chul-Whan We
President



SHOOK LIN & BOK EST 1918 KUALA LUMPUR

PEGUAMBELA & PEGUAMCARA
ADVOCATES & SOLICITORS

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REGISTERED PATENT AGENTS | TRADE MARK AGENTS | INDUSTRIAL DESIGN AGENTS

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WEBSITE: www.shooklin.com.my EMAIL: general@shooklin.com.my

Office Hours
Mondays – Fridays
(8:30am – 5:30pm)

PARTNERS

SENIOR ASSOCIATES

ASSOCIATES

BILANGAN TUAN
YOUR REFERENCE

BILANGAN KAMI
OUR REFERENCE

(WHEN REPLYING, PLEASE QUOTE OUR REFERENCE NUMBER)

旭齡及穆律師事務所

16 July 2013

Mr. Chul-Whan We
President
Korean Bar Association
18th Floor, #124 Teheran-ro, Gangnam-gu
Seoul, 135-784
Republic of Korea

Fax No. +82 2 3476 2770 / Post

Dear Mr. President,

Thank you very much for your kind letter of July 12, 2013.

My Partners and I at Shook Lin & Bok were very happy to have met you and the distinguished delegation from the Korean Bar Association. We also found the meeting and the ensuing discussions very informative. The problems encountered by lawyers and law firms in the legal market are very similar everywhere as we learnt from our discussions. It also underscores the importance of lawyers from different jurisdictions meeting regularly to learn from each others experience.

As mentioned at our meeting, Shook Lin & Bok has an Internship programme where we take in foreign law students or young lawyers for a month to study the Malaysian legal system and have an overseas legal experience. We pay a monthly allowance of RM750 per participant. We will be happy to welcome participation from young Korean lawyers or law students in our internship programme. We would like the nomination to be made by the Korean Bar Association.

I take this opportunity to wish you continued good health, and success in your office.

Yours sincerely,

Dato' Cyrus Das
Managing Partner

20TH FLOOR AMBANK GROUP BUILDING, 55 JALAN RAJA CHULAN, 50200 KUALA LUMPUR
P.O. BOX 10766, 50724 KUALA LUMPUR

Firm sponsors "Shook Lin & Bok Excellence Award (Best BPTC Law Student)" at the KPUM Law Awards Dinner on 15th August, 2013

The winner was Ms Vivian Siew Syun Ling. Ms Khong Mei Lin represented the Firm in making the presentation at the awards night.

KPUM is Kesatuan Penuntut Undang-Undang Malaysia di United Kingdom dan Eire (United Kingdom and Eire Malaysian Law Students Union)

Taylor's Law School Ball Awards 2013

The firm sponsored the "Shook Lin & Bok High Achiever's Award for Best Overall Performance in Year 1 and Year 2" at the Taylors' Law School Ball Awards & Ceremony 2013. The winner was presented by our Ms Khong Mei Lin to Ms Ebbie Amanda Wong.

Goh Siu Lin was interviewed by KiniTV and featured in Asia Calling's article "Adoption, Not An Easy Option in Malaysia?"

Our Ms Goh Siu Lin was interviewed by KiniTV and featured in Asia Calling's article "Adoption, Not An Easy Option in Malaysia?" on 8th August, 2013.

The said article is accessible on this link:
http://www.portalkbr.com/asiacalling/english/southeastasia/2875157_5000.html

Asia Calling is a weekly news and current-affairs program produced in Jakarta by Indonesia's only independent radio network, KBR68H which covers a broadcast area spanning Asia, in Australia, Timor Leste, the Philippines, Pakistan, Afghanistan and many other countries throughout the region.

Janice Ann Leo delivered a talk for members of the Kuala Lumpur Bar on "How to Report Sexual Harassment - Breaking the Wall of Silence".

Our Ms Janice Ann Leo was invited by the Kuala Lumpur Bar Practitioners' Affairs Committee to deliver a talk to members of the Kuala Lumpur Bar on 12.11.2013 on "How to report Sexual Harassment – Breaking the Wall of Silence.".

Janice touched on the relevant laws and remedies available to victims of sexual harassment as part of the series of educational talks to address sexual harassment in the workplace.

"Incorporating a Company: Choosing the Right Legal Entity", a talk delivered by Ms Sharin Kaur Veriah and Ms Goh May Woei

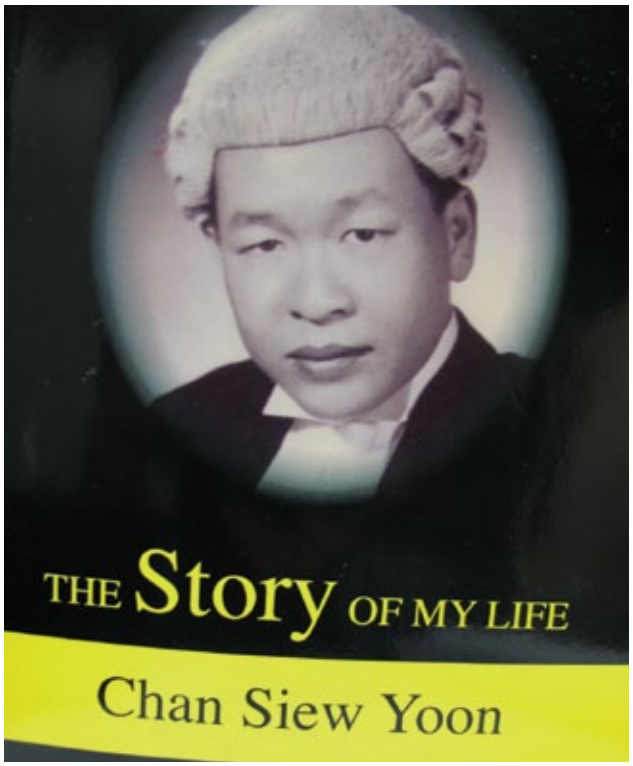
Sharin Kaur Veriah and Goh May Woei were invited to speak on the topic of "Incorporating a Company: Choosing the Right Legal Entity" at a one day conference organized by the Information Technology and Publications Committee of the Kuala Lumpur Bar on the 26th of November 2013. The audience for the conference comprised mainly of in house legal counsel, lawyers as well as members of the public.

Chan Siew Yoon Book review

Written by Goh Siu Lin

Former Senior Partner Chan Siew Yoon writes private memoirs

"The Story of My Life".



The Firm's former Senior Partner Mr. Chan Siew Yoon has written a short memoir of his life from 1926 for private circulation only. Mr. Chan was the pupil master of the present Managing Partner Dato' Dr. Cyrus Das back in 1973. Mr. Chan is also the nephew of the firm's founding partner, Tan Teow Bok whom he strove to emulate aspiring to become *"a good lawyer arguing cases in Courts."*

Dato' Dr. Das remembers Mr. Chan as a dedicated litigation lawyer who was wholly devoted to his cases. He handled many leading cases during his time in practice, most noteworthy of which was Choo Ah Pat vs Chow Yee Wah & Anor [1975] 1 MLJ 245 where the Bank's appeal to the Privy Council was successful.

Siew Yoon's early life began in Tanjong Tualang, Perak. His father, Chan Yam Yee, a Chinese scholar, arrived in Malaya, impecunious. His first job was with a pawnshop in Nibong Tebal, later venturing into business by starting a Chinese medicine shop followed by a goldsmith shop. As was usual of his time, Siew Yoon's father was very conservative, frequently stating *"..what was important to a girl was not so much a good education as an admirable virtue."*. A statement that would be viewed as controversial by many a feminist today.

His mother, Foong Sow Ying was a Penangite, born in 1900. She spoke Hokkien, observed Malay customs and wore the sarong kebaya. She *"lived in the house of Uncle Bok's father and helped look after Uncle Bok's grandmother."*

Siew Yoon mastered the English language despite being Chinese-educated and coming from a Chinese-speaking family. He had his primary education at Toong Hon Chinese School before switching to an English medium school (Batu Gajah Government English School). The Japanese invaded Malaya when he finished his Standard 5 education. He was forced to study at home using borrowed books from friends. At the end of the Japanese occupation, he resumed his schooling, obtaining a Grade 1 Certificate for his Cambridge examinations. He was placed second in class but felt ashamed of his "P" pass grade in English. He says, *"A Grade 1 Certificate with a "P" in English is just as bad as a Grade III Certificate"*. After two subsequent attempts, he finally obtained a credit. He also obtained a credit in Latin. This meant he was finally qualified to be admitted to one of the English Inns of Court and he applied to Gray's Inn.

His steely resolve to improve on his English skills saw him diligently translating articles from the ***World Digest*** and ***Reader's Digest*** into Chinese for publication by ***Nanyang Press***. This laid the foundation for his future translation and work as an interpreter in the political chapter of his life.

Siew Yoon was the Secretary of the Perak MCA and paid a salary of RM400.00 a month, which he considered a princely sum. He was also elected as the Honorary Secretary of the Perak Alliance. Due to his bi-lingual abilities and prowess in the Chinese language, he was entrusted with the responsibility of interpreting Tun Sir Tan Cheng Lok's political speeches live, once at a public rally and another time at a dinner held at the Perak Chinese Chamber of Commerce attended by delegates of MCA from all over Malaya. Both were successful. At the MCA dinner when Siew Yoon was walking back to his seat after

interpreting the speech of Tun Sir Tan Cheng Lok, he was given a standing ovation. His interpretation was appreciated by the MCA delegates and the guests. A moment earlier, Tun Sir Tan Cheng Lok's excellent speech was given a thunderous applause.

Siew Yoon also worked with other MCA luminaries of his time which included Tun Leong Yew Koh (who had a road named in his memory in Taman Tun Dr. Ismail). Tun Leong was a lawyer who *"served the government of China once in the post as governor of Yun Nan province"*. He had a practice in Ipoh.

After a year in Malaya during which Siew Yoon studied and sat for his Part 1 of his law degree, he sailed for England to study his Part II which would take another 2 years. He lodged and boarded at Malaya Hall in London and a few days after his arrival, paid a visit to the Chief of the BBC Overseas Service, when he was asked to prepare and read out a speech in Mandarin on the historical day of Malaya's Independence. This is what he says of his participation of Merdeka *"I made the speech and it was there and then pre-recorded for broadcast on Independence Day. I was quite satisfied with the speech and its contents...."*

Of the dinners which he had to attend as part of the dining term of Gray's Inn, he remembers being seated at the same table as Wee Min Shaw, one of the sons of the Chairman of Shaw Brothers of Hong Kong where the guest speaker was Lord Denning whose advice was heeded by Siew Yoon when he practiced back home *".. if anyone wished to be a good lawyer he must* ***speak clearly*** *when addressing the court, so clear as if the* ***words spoken were carved as they fell.***"

On his return to Ipoh, he read in the chambers of Messrs Leong Yew Koh & Co. After his admission to the Bar, he left practice and became the Secretary of the Employees' Provident Fund to which he found himself to be unsuited and was encouraged by Mr. Gill (who later became the Chief Justice of Malaya), to join the Judicial Service. His first appointment was as a Senior Assistant Registrar of the Selangor High Court, later as Magistrate at Kuala Lumpur Court Hill (where Menara Maybank stands today) and followed by President of the Sessions Court.

At the height of the Indonesian Confrontation when he felt it was unsafe for his family to live in Malacca, he asked for a transfer which was turned down. He decided to enter private practice based on 3 offers he had received. He sought the views of his Uncle Bok who then said, *"Look here, you are not going anywhere. If you are going into private practice, you should join Shook Lin & Bok."* The next day, Siew Yoon received an offer to be an assistant at a salary of RM2,000.00 per month and within 2 years, he would be made a junior partner. However, for some personal reason, he left the firm after working for a short while.

A few months later, he was contacted by Yong Pung How, SLB's managing partner and rejoined the firm as partner of both the Kuala Lumpur and Singapore firms. His fellow partners of that time were Yong Pung How, L.P. Thean and Chan Sek Keong in the Singapore firm and Tan Teow Bok, Michael Wong and himself in Kuala Lumpur. He recalls *"Shook Lin & Bok was one of the biggest firms in Malaysia as well as in Singapore.*

At the height of his career, Siew Yoon handled many high profile cases details of which, are elaborated in separate appendices to his book. He slowly carved a name for himself in the legal arena, winning many of his cases before Justice Datuk S.M Yong and was even personally praised by the judge who said *"He is a very good lawyer"*. This was his reaction: *"I was quite happy to hear that and considered it as proof of my humble achievement. I mention this whole episode as part of my life story and if any of my readers consider me conceited, so be it."* Another case which brought him *"professional and intellectual satisfaction"* was **Lee Heng & Co vs. VC Melchers & Co [1963] MLJ 47**.

Siew Yoon credits his successes to many individuals including his uncle, the late Mr Tan Teow Bok, Mr Yong Pung How and the late Chief Justice Gill. He ends his book with some advice,

"Unless one is hampered by his or her financial resources, one must make it ***a point to travel****, as broadly as possible so as to become wiser and brighter."*

SLB sponsors Touch Community Society, Seremban (TCS) Family Day - 3rd August, 2013

TCS is a non-profit organisation for special children/ young persons with learning difficulties. The objective of the organisation is to integrate special children into the mainstream workforce by developing their academic, social, physical and emotional skills. Currently, they have 23 children enrolled at their centre.

The Sports and Family Day in August 2013 themed, "We Love" "We Touch" "We Win" serves to showcase the children's progress throughout the year to their families. It also allows the children to integrate with members of the society.

This year, the firm is proud to be a co-sponsor of the event. Our lawyers assisted in the organising of the activities and felt privileged to be given the opportunity to engage with these special children on a personal level. All there had a fun time.

The firm extends its appreciation to the organising team of Low Yen May, Estee Ong and Lee Lyn-Ni.

The Shook Lin & Bok Sports Challenge Trophy 2013: A Review

By Gregory Das

This year's Sports Challenge Trophy provided enough storylines to keep a scriptwriter busy over the many months of post tournament dreariness. The competition included its fair share of sublime and suspenseful matches, bold fashion statements from the most unlikely of sources and some unconventional chants and cheers of one Banking Litigation partner that were reminiscent of the old Red Indian hunting cries heard on the plains of Alaska.

The Challenge Trophy this year featured a riveting table tennis competition which was held at the squash courts on the 7th floor of the AmBank Group Building. The seven days of the competition repeatedly attracted a large and fiercely vocal group of supporters comprising of the firm's lawyers and staff. One particularly vocal spectator/competitor was Mr. Lau Kee Sern, whose high-pitched chants were as piercing as his barrage of formidable smashes throughout the tournament (no wonder the firm's Banking Litigation lawyers regularly produce such melodious *Yam-Seng* choruses at almost every Annual Dinner & Dance).

Another individual who continuously made particularly loud (fashion) statements during the competition was the firm's IT guru Mr. Chua. Mr. Chua took it upon himself to not only let his table tennis skills do the talking, but his sports attires as well. One of the highlights of this year's tournament was the Hawaiian cum 'surfer-dude' board-shorts which Mr. Chua pulled off with graceful ease. It must be mentioned that Mr. Chua has since categorically denied that the board-shorts were actually a tactic to distract his opponents (although this claim could be validly challenged as most eyes were on his radiant pair of shorts and not his unassailable smashes).

Mr. Chua was a member of the talent-laden Staff team that consistently displayed a series of commendable performances during the tournament. The team was led by the faultless skills of Ong Seok Yong and the reliable Kamarudin Harun. Unfortunately, the same commendation cannot be extended to the Associates and Pupils teams that struggled to find their stride in the competition. This was notwithstanding some promising displays by Marianne Loh, Dang Pek Chuan and Ng Ren Zheng for the Associates.

It was therefore appropriate that the Challenge Trophy Final pitched the tournament's two best teams against each other. This was the Staff team and the Partners team whose admirable performance in the competition must be attributed to the flawless artistry of Lau Kee Sern, Ng King Hoe, Tan Gian Chung, Tharmy Ramalingam, Ng Hooi Huang, Ng Kim Poh and Lee Lin Li. They failed to disappoint in the Final, which saw the Partners (led by David Dinesh Mathew) narrowly defeat the Staff in a fiercely fought affair which produced some of the competition's most arduous and television-worthy rallies. However, the Best Player Award went to a member of the Staff team – Faizzul Saifi, who demonstrated remarkable skill and humility in the face of ruthless opponents.

As the dust settles from the 2013 Challenge Trophy, most in Shook Lin & Bok must be reflecting on the Partner's unrelenting march towards a second successive Challenge Trophy victory and their impressive dominance throughout the competition's rich history. One must wonder whether the status quo will be maintained at next year's tournament or whether the Partners' opponents will finally muster the courage required to stand up to their bosses in the sports arena.

Interview with IT wizard Mr. Chua Soon Hock

By Gregory Das

I recently had the pleasure of interviewing the firm's head IT technician and star table tennis player Mr. Chua Soon Hock about his work at Shook Lin & Bok and the secret behind the success of the Staff table tennis team. Naturally, one of the first questions I asked him was what his favourite computer game was. "I don't play computer games", he replied with a suspicious laugh. "Even when I was younger I didn't." Mr. Chua responded as such whilst perusing his Google page on his computer in his office and was consciously resisting the temptation to accept the invitations to play Candy Crush and other online games. I got the distinct impression that his resistance doesn't always hold sway on every occasion.

This is how the rest of the interview went.

CSH = Chua Soon Hock

Q.: How long have you been at Shook Lin & Bok?
CSH: Ten years. I joined Shook Lin & Bok on the 3rd of November 2003.

Q.: What made you decide to join Shook Lin & Bok?
CSH: I worked in an industrial factory where I did IT work for ten years. I wanted to try an office environment.

Q.: Have you always had an interest for IT?
CSH: Of course! I studied IT in university.

Q.: Now, you seem like quite a family man, judging from the number of family photos you have in your room. How many children do you have?
CSH: I have two boys and one girl. My eldest daughter is 8 years old now, my second is 6 years and the youngest is 4 years.

Q.: How do you normally spend your free time with your family?
CSH: Normally on Saturdays we spend our family time in places like the national library, shopping malls, parks and we generally do whatever activities benefit our children the most.

Q.: You take your children to the library and make them read on the weekends!?

CSH: [Laughs] Yes I do.

Q.: Are you a very strict parent?

CSH: [Laughs] Well, how should I answer that? I don't force my children to spend long hours doing their homework everyday. But my expectations are very high. As in, if one of my children doesn't get an "A" for an exam I would be angry with myself as I probably should have asked him or her to work a little harder to prepare for their papers.

Q.: Are you the main IT man at home?

CSH: At home I don't do any IT related things. I have one computer at home, but it's for the children only.

Q.: Have you ever used the fact that you are a trained IT technician as a bargaining tool against your children at home?

CSH: I will help them if they ask me for help. I will also guide them on how to use certain programs and teach them about the basic functions. Now a day IT is one of the subjects in schools, even in primary schools. Those days we didn't have this.

Q.: What is the main thing you like about your line of work?

CSH: I get very happy when I see a department that was previously using a manual system being transformed to one that is more reliant on computers and then becomes more productive. In our firm, we have improved a lot in the HR and Accounts departments. Previously, when I was working in a steel factory, we helped them with their IT system and the production department in the factory really improved a lot.

Q.: Do you think our firm has become more reliant on IT facilities over the years?

CSH: Yes. Because of the technology now, it has become very crucial for a law firm to have a good IT system. The candidates for employment these days will always ask what kind of an IT system the firm has. Now IT has become one of the factors that will influence their decision to join the firm or not.

Q.: Can you tell us a funny incident relating to your work in the office?

CSH: There was once when one of the firm's secretaries accidentally kicked her computer's power plug out of the power socket. She wasn't aware that she did this. So she panicked and called me to help her. I went there and checked her work station and found out the source of the problem.

Q.: Oh dear! Can you name this secretary?

CSH: [Laughs] No, better not.

Q.: That's fine Mr. Chua. Now, I watched you play during the Challenge Trophy competition. You're a very good table tennis player! How long have you played tennis table?

CSH: I used to play when I was younger, in my school days. But it has been a long time since I last played. I didn't practice on my own before the tournament or anything.

Q.: Did the Staff team have training sessions?

CSH: Yes. We had training sessions once a week.

Q.: I heard your team was very serious about the tournament.

CSH: Oh yes. They're all very serious about it. Our team leader, Ms. Ong, was very serious. I was made to buy enough raquests and table tennis balls for our training sessions!

Q.: Hahaha. Did you ever get scolded by Ms. Ong during the training sessions?

CSH: [Laughs] No la. I didn't.

Q.: As you know the Partners team won the competition. Would you like to give us your honest comments on this? Don't worry I won't tell my Dad.

CSH: [Laughs] Well in our first match with the Partners, the Staff team beat them. But we then lost in the second match with the Partners. The reason for this was to do with our strategy and player selection for the match. The most important match was the mixed doubles match, but we had the wrong strategy and chose the wrong players for it.

Q.: It was a very close match so you should have no regrets. Okay, I'm going to ask you about your board shorts and those flaming red shoes. What inspired the choice of attire?

CSH: [Laughs] You know what happened on the day of the Finals? I completely forgot that we were meant to play on the day. So I didn't bring any of my sports clothes at all! So I borrowed a tee shirt from Jafri and I borrowed Wei Lih's red shoes. The board shorts are my own. They are my favourite shorts!

Q.: Have your wife or children ever commented on your board shorts?

CSH: [Laughs] My wife doesn't like them. She always asks me why I like wearing shorts like that. But it really depends on the situation. If its at the beach then its okay.

Q.: Don't worry Mr. Chua, I think only real men wear board shorts! Now, what is the thing you like the most about working in Shook Lin & Bok?

CSH: When I joined in 2003, I noticed there was no Server Room. There was no proper structure for the firm's Server system. I managed to convince Mr. Too, the Chief Executive Partner at the time, that we needed a special room for the Server system. So now it is tidier and the wires for the system are a lot more organized.

Also, there was no electronic system for the firm's lawyers and staff to submit leave applications or transport claims. Then I thought we needed to change this and we now have the system we use in the office today.

So the thing I like about working here is to see the changes.

Q.: You have certainly left your mark in this firm Mr. Chua. We've still got time for a few more questions. What are your favourite hobbies and past times?

CSH: Swimming. I go every weekend. I bring my children along sometimes. I also spend a lot of time in my Church on the weekends where I prepare for our Sunday School lessons for the children there.

Q.: That's great. Which causes you more stress; dealing with the lawyers in the firm or the children at your Church?

CSH: [Laughs] Of course working here is more stressful! [Said sarcastically … I hope].

Q.: What is your favourite movie?

CSH: The Life of Pi. I took my children to watch it and we all enjoyed it a lot.

Q.: Who is your favourite singer?

CSH: I have a favourite Chinese singer. But I can't remember his name. [Calls Gloria from Accounts and she immediately provides the answer to Chua's queries]. Yes Gloria knew it. His name is Jacky Cheung.

Q.: Great! I shall contact Ms. Gloria the next time I need the name of a Chinese Singer! Okay thank you for your time Mr. Chua. Goodbye.

CSH: Thanks. Goodbye.

The Shook Lin & Bok Annual Dinner and Dance 2013

By Gregory Das

The firm's Annual Dinner and Dance 2013 was held at the palatial Putrajaya Marriot Hotel on 12.10.2013. The theme for the evening was 'Heroes and Villains' and a good number of the firm's lawyers and staff showed up to the event in costume.

The facial expressions of the hotel's guests in reaction to the costumes of the lawyers and staff ranged from complete bewilderment to jovial approval. The evening saw many a Joker (no side reference to any of the Partners in the firm), a Medusa, a light-saber bearing character from Star Wars and even a more docile version of Tony Fernandez.

Among the guests of honour were, retired Chief Justice of Singapore Dato' Seri Chan Sek Keong (a former partner of the firm) and former Chief Executive Partner Mr. Too Hing Yeap.

The evening was punctuated with items of entertainment which had the members of the audience in raptures throughout the event. There were a series of musical and dance items performed by The Miracles, a group of the more Broadway-inclined lawyers and staff in the firm. The firm's very own award-winning songstresses The Usual Suspects (comprised of Daniella Zulkefli and Eu Zhiyi) graced the stage to perform two songs that further illustrated their talent. The audience was also treated to two performance sets by the critically acclaimed Jo Kukathas (of Ribena Berry and YBeeee fame) that elicited spurts of hysterical laughter from the audience.

The evening was yet another successful social event held by the firm that proved that Shook Lin & Bok's lawyers know just how to unwind even in the most comical and figure-hugging attires!

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