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# INTERNATIONAL MALAYSIA LAW CONFERENCE

ASIAN PERSPECTIVES, GLOBAL VIEWPOINTS



Daily Conference News | 27 Sept 2012 (Thursday)

## Drums of Change Usher in the International Malaysia Law Conference 2012



The International Malaysia Law Conference 2012 (IMLC 2012) kicked off with a bang this morning. Leading the luminaries gracing this biennial event were the Right Honourable Dato' Sri Mohd Najib bin Tun Abdul Razak (Prime Minister of Malaysia), YAA Tun Arifin bin Zakaria (Chief Justice of the Federal Court of Malaysia), YAA Tan Sri Dato' Seri Md Raus Bin Sharif (President of the Court of Appeal), YAA Tan Sri Dato' Seri Zulkefli bin Ahmad Makinudin (Chief Judge of Malaysia), Judges of the Federal Court, Court of Appeal, and High Court, YB Senator Tan Sri Abu Zahar Bin Dato' Nika Ujang (President of the Senate), Mr Khairil Azmi bin Mohd Hasbie (President of the Advocates' Association of Sarawak), Mr Shin Young-Moo (President of the Korean Bar Association), Ministers, Mr Lim Chee Wee (President of the Malaysian Bar) and Raphael Tay (Chairperson of the IMLC 2012 Organising Committee).

Mr Raphael Tay started the ball rolling by addressing the delegates with a very moving introductory speech. Describing the IMLC 2012 in the words borrowed from the late Tun Abdul Razak, the then-Prime Minister who officiated the first Malaysia Law Conference back in 15

July 1971, as a "momentous event, one filled with hope that was, and is to come". Mr Tay addressed the need for the law and its society to stay relevant. The delivery of legal services has evolved, hence the theme for this year, "Asian Perspectives, Global Viewpoints". Today, the provision of legal services has become a cross-border affair, and it is necessary for the Bar to work towards this end. He ended his speech by saying that he was grateful that he had witnessed people from different walks of life come together and share one common cause for a better Bar, and to meet the challenges of a globalised world.

President of the Malaysian Bar, Mr Lim Chee Wee, then gave his opening address, in which he emphasised the importance of the rule of law and economic competitiveness in his speech. He spoke on the necessity of the judiciary to be strengthened in terms of independence, integrity, selection, training, and financial security, and have access to the best available advice. Mr Lim commended the advances made in law reform and rule of law with the repealing of the ISA and the likes of other oppressive laws, but said there that was much left to improve on.

In representing the Bar, Mr Lim had several recommendations to be made for the further betterment of the rule of law and the Judiciary as a whole. In his recommendations, he said, "Judicial Appointments Commission to be made more open and transparent." Mr Lim further called for "an increase in remuneration and benefits for magistrates, sessions court judges, judicial officers and judges, commensurate with the importance of judicial responsibilities and comparable (or at least close to) the benefits of private practice." Apart from the increase in remuneration, Mr Lim said also in his speech that more resources should be directed to ensure that judges are kept up to date with the latest developments in the judicial world, to appreciate the latest legal trends, and to learn from legal luminaries.

Mr Lim stressed that rule of law had a role to play in economic competitiveness, contrary to popular belief. He said in his speech, "the importance of this is underscored by the fact that key rankings such as World Economic Forum's Global Competitiveness Report 2011-2012 and World Bank's Doing Business

Report 2012 have as key indicators independence of the judiciary, efficiency in dispute resolution and strength of investor protection."

In giving his Opening Address, the Right Honourable Prime Minister stated that the transformation from Malaysian Law Conference to International Malaysia Law Conference is most timely and appropriate. With the amendments to the Legal Profession Act, the competition is no longer just overseas, but in our very own backyard. Further, the Prime Minister spoke on the fruitful collaboration between the Government and the success of the Yayasan Bantuan Guaman Kebangsaan (YBGK). The Prime Minister also remarked how proud his late father was on the contributions of the Malaysian Bar and how this could potentially be a smart partnership. In conclusion, the Prime Minister said that lawyers had transcended race, religion and political affiliations by their professional bond, and urged lawyers to do their duty in promoting racial harmony to achieve national unity. The delegates were entertained to an exciting



"Malaysia" style performance by the Malaysia Drum Symphony whose lively sound of drums resonated ever so loudly. The guests then departed to enjoy the refreshments available while networking, as the Prime Minister toured the exhibition booths and revelled in the goods and services on offer.

By Sheelaa Ragavan and H R Dipendra



Fundamental Freedoms Fringe Fest ("4F")  
Date: 27 Sept 2012  
Time: 7:30 pm - 10:00 pm  
Venue: Plenary Hall, Centre Core, Kuala Lumpur Convention Centre

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# Inspirational Tan Sri Dr Tony Fernandes - "Music Man turned Entrepreneur Wizard"



The 40-minute session with Tan Sri Dr Tony Fernandes was a light-hearted, inspiring session that made all his audience think twice about their professions (i.e. law).

that he's going to start an airline. At this juncture, he told the audience very frankly, "There's a very fine line between brilliance and stupidity."

A firebrand who has always wanted to start his own airline since he was 5 years old, the dream finally came true after he left a 12-year career in the music industry in New York City, ("because of piracy [and]... my boss couldn't wait for me to leave"), and saw the way EasyJet was operating in Luton airport. He was fascinated by the cheap flights throughout Europe that was being offered, and called his wife immediately to tell her

He described the early years of AirAsia with self-deprecating humour: how he and his two friends from the music business decided they needed political connections to get an airline licence, ("we did not know the Malaysian Bar"), found a way to make an appointment with Tun Dr Mahathir to whom he said "I'm going to destroy Singapore", and impressed Tun Dr Mahathir with their passion enough for them to be

given permission to begin an airline on the condition that they had to purchase an airline for themselves. Interspersed with the occasional jibes at the Bar Council and lawyers in general, he told the audience how he and his partners took over AirAsia, a failing airline. They promptly bought the failing airline, AirAsia for RM 1 from DRB-Hicom, and took over with a RM 1 million budget on 8 September 2009. Three days later, 9/11 shook the world but Tan Sri Dr Tony said they soldiered on as he knew that people still needed to fly locally throughout Malaysia. In the next 10 years which he described as "painful", and "a lot of hard work", AirAsia has grown from 2 planes and 254 staff to 105 aircraft carriers and more than 900 staff servicing 33 million passengers. It has become the fastest growing airline in the world and for four years in a row since 2009, has been voted the world's best airline by passengers.

The secret formula for AirAsia's success was manifold but he focused on one, which is "people is our biggest asset." Believing that there is always good talent at all levels of his company, AirAsia has built many careers for their staff. A poignant story he told was of a "very bright" boy from Sibul who worked as a bag carrier earning RM 800. Upon meeting him, Tan Sri Dr Tony encouraged him to take the test to join their cadet pilot programme and after he scored the highest marks, entered the programme. Today, six years later, he is a Captain of an A320 earning RM 35,000 a month. Tan Sri Dr Tony also shared AirAsia's secret of preventing trade unions, which is by putting his ear to the floor. Through a rotation system, where he tries his hand at all the departments of his company, he is able to better

understand the problems facing each department. An example shared was how he quickly changed his mind about not installing a RM 2 million belt loader after working during his rotation as a bag carrier for Indonesian flights, ("people there literally carry their houses away"). AirAsia's company structure further illustrates his belief in a non-hierarchical, transparent, and cooperative system: No doors in the office, two layers of hierarchy in the company from top to bottom, and no separate buildings for different departments.

Other strategies for AirAsia include trying new routes ("50% of our routes are what no one else has done before"), innovative marketing (check out AirAsia's cheeky advertisement ribbing Singapore Airlines), branding (garnering the sponsorship contract for the English Football Association's referees for four years), and embracing digital technology with the largest airline mobile site in the world. At this time, he also busted the myth that AK stands for Ananda Krishnan but rather was already in existence when he took over AirAsia from DRB-Hicom.

Tan Sri Dr Tony ended his session by persuading us lawyers that we can make dreams come true using himself as an example. ("I dreamt of owning an airline, football team and a F1 team [since boarding school]"). It was a shame that the session ended abruptly due to time constraints. Delegates were not able to ask him questions but left the session inspired that taking risks and being bold can have its rewards.

By Lee Lyn-Ni and H R Dipendra

# Islamic Finance – The Next Frontier and Beyond

The first session on Islamic International Finance at the International Malaysian Law Conference 2012 attracted a large and highly-interested audience. Mr Jal Othman moderated the session, which included a reputable panel of speakers from the fields of academia and commerce.

The three panelists shared the view that Islamic Finance has grown at a prodigious rate internationally and commended Malaysia for being globally recognised as a global leader in this area.

The first speaker was the amiable Professor Andrew White of the Singapore Management University. Professor White said one would be hard-pressed to identify another industry that has endured as much consistent growth internationally as Islamic Finance over the past few years. In some jurisdictions the industry has experienced a 20-40% growth. He advised any lawyer intending to enter the field of Islamic Finance to be conversant in the core areas of law such as insurance law and commercial law.

The second speaker was Mr Daud Vicary Abdullah who is the President and CEO of the International Centre for Education in Islamic Finance ("INCEIF"). He claims that one of the main advantages of Islamic Finance was that it promoted financial inclusion worldwide and ensured that most people around the world have easy access to financial services. Mr Daud said that good ethics are firmly embedded in Islamic Finance. He claimed that was why the industry appeared attractive to both



developing and mature economies. In concluding his presentation, he described Malaysia as having an enviable reputation as a "global leader in Islamic Finance".

The final speaker was Mr Mohamed Rafe bin Mohamed Haneef, the CEO of HSBC Amanah. Mr Rafe commenced his segment by underscoring the similarities between Islamic Finance Law and the common law.

He cited the frequent application of the doctrine of promissory estoppel within the legal principles of Islamic Finance as an example. He predicts that by the year 2020, Islamic Finance would see a more equitable distribution of wealth and greater equality in the sharing of risks amongst the consumers of its services. He described the present market as being predominantly risk averse although he expects a gradual transformation of the Islamic Finance industry in the years to come.

The session concluded with a question and answer session which saw members of the audience accede to Mr Jal Othman's earlier request to "slice and dice" the panelists with penetrating questions. During the session, Professor White and Mr Daud agreed that the reason for Malaysia's success in the field of Islamic Finance was the political will to develop the industry domestically, which was driven by Bank Negara.

Professor White and Mr Rafe both said that there was a need to dispel the perception that only those steeped in Islamic Law were best suited to enter the field of Islamic Law.

All the panelists assured the audience that the industry was well suited for those with a good grounding in the conventional areas of the law because of the commonalities between the common law and Islamic Finance Law.

In response to a question on Malaysia's achievements in this area, Mr Rafe said that Malaysia still could do more to entrench itself as a leader in the field. He suggested that Malaysia should take the opportunity to establish its presence overseas as there are currently only a few lawyers and banks that are branching out beyond the local borders.

By Gregory Das and Fahri Azzat

# Damned if You Do, Damned if You Don't: Social Media Add a New Dimension to Online Advertising, Marketing and Brand Integrity

The session started off with Deepak C. Pillai, the moderator, addressing the audience and introducing the panel of speakers, namely Paul Subramaniam, Lau Kok Keng, Alex Charlton QC and Foong Cheng Leong, and the emphasis of their speeches.

discuss the shift from the traditional "one to one" and "one to many" media platforms to the present "many to many" social media platforms. Paul then went on to highlight the difficulty of regulating social media legally with the following poser - "How do you control the issuer and the line of communication when everyone can be the issuer and every line is a line of communication?"

Paul went on to elaborate on the fundamental nature of social media and stated that the law has not caught up with it. One sure protection that parties can rely on is to not use social media but that is not an option. "It would be commercial suicide."

"Social media holds promise but also harbours threat." In his view, the greatest threat social media poses is that there is no stopping once it goes out, and emphasises that the law is, at this juncture, inadequate to deal with the legal conundrums brought forth by social media. Self-help or self-regulation is the only protection one can rely on against social media.

Paul then concluded by saying that "The law is not ready; it has to evolve" before he passed the baton to the next speaker.

**Intellectual property and social media**  
The second speaker, Lau Kok Keng, centred his speech on the issue of intellectual property law and its ill-defined and uncertain relationship with social media. He initiated his speech by saying that social media users, especially businesses, "are placed in a minefield".

Firstly, he highlighted the use of social media in business and its obvious advantages, namely, the extensive reach it offers in terms of advertising and brand building. Next

"Social media is a paradigm shift: It is communication reinvented", he told the audience. He went on to



he went on to deal with the conflict between social medias and the areas of intellectual property law such as copyright infringement, trademark law, patent law and the law of confidentiality.

He also emphasised on the issue of ownership of contents on social media site and platforms by the following poser: Who owns the information in social media? Would it be the user or the social media company?

Lau then gave an answer to the question by saying that in many instances, through the end user license agreements, it is the social media who owns the account and the information therein.

Finally, Lau went on to discuss on the issue of intellectual property infringement which is where his earlier minefield reference is most relevant. The advent of social media has certainly contributed to the increase in cases of copyright infringement such as username squatting and "facesquatting"; a term used for someone that creates a Facebook account in the name of another person and entity.

**The United Kingdom's perspective**  
The 3rd speaker, Alex Charlton QC, proceeded to give an insight on the United Kingdom's perspective of the social media and its interaction with the law. In doing so, he referred to numerous cases in the United Kingdom to

highlight the legal difficulties one would face in the UK when it comes to dealing with the social media.

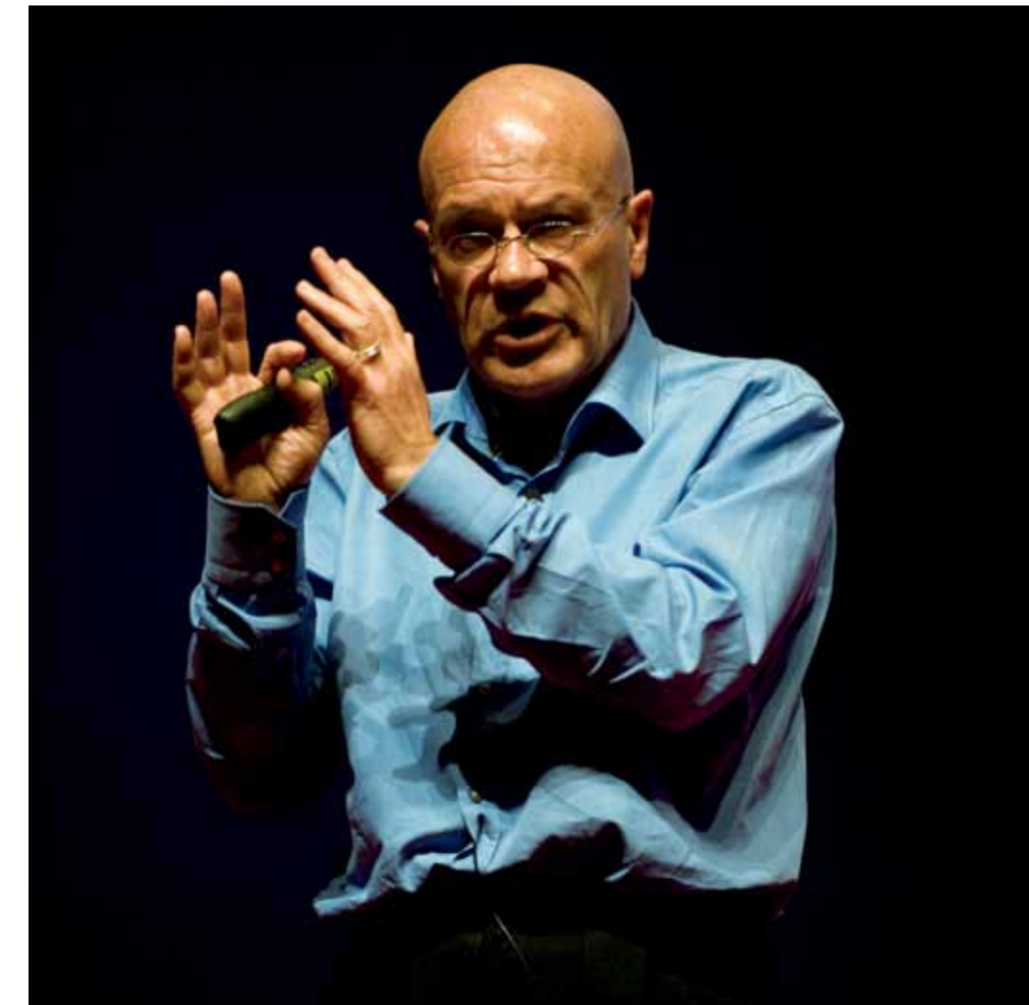
Similar to the previous speaker, Alex also explained the difficulty of using of the contents of the social media platforms where through end user license agreements, the contents usually belong or can be utilised by the social media platforms.

Alex went on to speak on the issue of privacy and the social media specifically in the manner in which the law is inadequate in dealing with it.

Nevertheless, Alex stated that it is not always true that the law is toothless when it comes to social media and that set out on the ways in which Courts in the United Kingdom can enforce social media laws by way of criminal proceedings.

**The Malaysian experience**  
The final speaker, Foong Cheng Leong offered a very different angle when it came to his turn and his presentation sought to point out the popularity of social media and the dangers it presents. Foong likens social media to a mob and to illustrate his point he shared a number of entertaining case studies including the famous "Kentucky Fight Club" scandal.

By Tan Jee Tjun and Nizam Bashir



Justice Mah Weng Kwai who moderated this session began by introducing the speaker Martin Jacques.

Justice Mah also highlighted the power and energy presence of the People's Republic of China and stressed that China had attained the highest gross domestic product at purchasing power parity per capita. He proceeded to raise several fundamental issues to be considered by the speaker, namely the effect of China's sharp economic rise on the world and the possibility of China ruling the world in the future.

The speaker, Martin Jacques began by recalling his fond memory of Malaysia and that of his late wife Harinder Veriah who died tragically. Martin Jacques is the author of the best-selling book "When China Rules the World" which has sold over 250,000 copies.

Martin began by highlighting the two major issues facing China:

1. Country of 1.3 billion people and it is fast growing. Since 1978, China's economy was 1/20th of America. Presently it is growing at a rate of 10% per year, which marks a huge transformation that is affecting the world.
2. What is China? Refuting the Western view of China, Martin quickly pointed out that China was never colonized and was in reality a civilisation state. This was in direct contrast to western countries which were "nation states" rather than "civilisation states".



The Chinese sense of identity is drawn from the Chinese civilisation which is prominent in its food, culture medicine, and education. This is their sense of identity, as opposed to the sense of nationalisation. Politically, the main difference between China and Western modern nations lie in the concept of Chinese unity. Unification of China started over 2000 years ago and they have stayed together ever since. With this comes stability and order, China is poised to blossom. It was under Chairman Mao and Deng Xiao Peng that China's ascension started.

Martin was also quick to point out that there is a misconception when Hong Kong was handed over to the China. Recognising that Hong Kong is based under a different system, China adopted the one country, two systems policy. As long as the other territories (to which China maintains as part of its own) accept the principle of Chinese sovereignty, they can have their own separate systems. This included Taiwan. This concept is, unfortunately, alien to the western democracies.

It is important to note that China had never expanded or colonized beyond its territory although it could have easily done so. This is an important difference between the Western and the Chinese concept of expansion. This resonates with the Chinese concept of "Middle Kingdom" and being in the centre of the Earth. China, in truth, need not find the need to step into the other territories.

Indeed Tibet and the Spratly Islands are part of this larger understanding.

Martin Jacques, who consistently used the phrase "we" signified that he is part of the larger Chinese equation,

then presented a chart flow of "Proportions of Exports from South East Asia countries to China" wherein the amount has grown in tremendous amount over the recent years. He thus predicts that the new economic system of the world will be China centric with its quick and vast growth of economy. The Chinese, as Martin Jacques emphasised, draw their strength from the fact that the people regard themselves as one race although they are the product of many different sub-race and culture.

What then is the weakest point of the Chinese System? Martin Jacques says that it is easy to categorise the poor human rights record and the lack of democracy as key weaknesses. Martin, however, said that a recent survey suggests that the man on the street is satisfied with the government of the day. In fact, the Chinese economy is strong that it only suffered a minor setback during the 1998 financial crises.

Martin also justified that China will continue to defend its sovereignty at all costs. He cited the Indo-China war as an example where China quickly reclaimed the lands occupied by India and did nothing more.

In conclusion, he ended it by stressing that the whole world will feel the growth of China. We are at the beginning of China's global transformation. Given the shortness of time, not many questions were allowed. This author for one, would have wanted answers on what role Martin Jacques saw Malaysia playing in the larger China transformation.

By Sandesh Kabir Singh and H R Dipendra

# Corruption in Multinational Companies: The Laws, Preventive Measures and Remedies

The curse of corruption is one plaguing many countries in our region. Thus the IMLC 2012 session on Corruption in Multination Companies was eagerly awaited. The speakers comprised Kelly Austin (Partner, Gibson Dunn & Crutcher, Hong Kong), Alex Tan (Executive Director, Forensic Services of PricewaterhouseCoopers, Malaysia) and Dato' Haji Mustafar B Hj Ali (Director, Investigative Division, Malaysian Anti-Corruption Commission), and the session was moderated by Wong Keat Ching.

Kelly began by explaining the efforts of Transparency International in compiling an annual Corruption Perceptions Index. As a global "regulator", this index is perceived as a relatively reliable standard and heavily relied upon by many multinational corporations in considering the country in which they would invest in. Kelly highlighted the fact that these corporations will come out with various robust programmes to ensure that their mission of "doing business corruption free" is met.

In the US, the Foreign Corrupt Practices Act of 1977 (the FCPA) was passed as a direct progeny of the Watergate scandal. It contains an extensive range of anti-bribery provisions. It gives enforcement powers to both the Department of Justice and the Securities and Exchange Commission. The former is tasked

with the enforcement of criminal provisions and the latter enforces civil and administrative provisions. Kelly commented that there is a shift of paradigm on the enforcement provisions to individual enforcement action.

Kelly highlighted that most of the recent blockbuster enforcement actions are taken against companies which are not headquarter in the United States.

Kelly also touched on the investigation involving Malaysian officials in the case of Alstom Control Components and Tyco Inc. She observed that there is an improvement in the enforcement against bribery in Asia. In Malaysia, there is an increase in cross-border enforcement as evidenced in the case of Security and Note Printing Australia. She concluded her talk by emphasising the various factors which have to be taken into account in a compliance programme.

Alan gave an overview on the operation of the UK Bribery Act, which encompasses four key offences: active bribery, passive bribery, bribery of foreign public officials and the corporate offence of failure to prevent bribery. It is a defence for the company if it is able to prove that adequate procedures have been taken in preventing bribery. The 6 guiding principles of the Act are proportionate procedures, top level commitment,

risk assessment, due diligence, communication, monitoring and review. Alan quipped that this Act is applicable to "any person having a footprint in UK".

Pointing out that bribery, fraud and corruption by its nature are hard to be detected, Alan pointed out that the patterns of bribery tend to be highly varied across and within different clients. The investigation structure includes a very complex data analysis. The analyst will have to capture the relevant data and identify the bribery topics before proceed to analyse the same. The analysis includes a study on the user behaviour pattern based on various techniques.

The third speaker, Dato' Haji Mustafar gave an overview of the operation of the Malaysian Anti Corruption Commission in tackling corruption involving multinational companies. "Most people know corruption when they see it. The problem is that different people see it differently", commented Dato' Mustafar.

He also emphasised that the law related to corporate criminal responsibility is remarkably lacking in clarity considering it is of relatively recent origin. On the penal provisions under the MACC Act 2009, Dato' Mustafar remarked that MACC could investigate practically any person, be it a public body, public officials or persons using their office to accept gratification. He

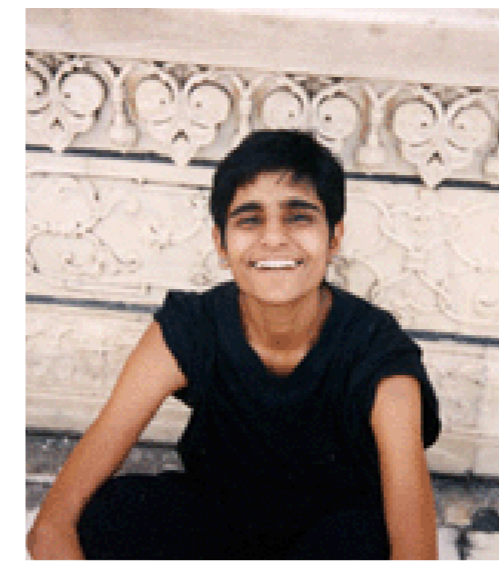
also highlighted the heavy penalty in the form of imprisonment and fine which may be imposed upon conviction.

As to the detection and investigation measures, he noted that the MACC has to deploy a pro-active intelligence team, as opposed to a reactive team to detect any corrupt conduct in the corporate sector.

The measure includes the inspection of administrative practices, systems and procedures, secondment of former MACC officers to Government Linked Companies (GLC), Certified Integrity Officers, corporate integrity pledges (CIP), whistle-blower protections, disclosure of government procurement contracts and integrity pacts.

During the question and answer session, there was an active engagement between the delegates and the speakers. Amongst the questions posted are on the bilateral cooperation between MACC with foreign anti-corruption enforcement bodies, the judiciary's approach in sentencing the person convicted of committing the act of corruption as well as the latest stage of investigations by MACC on the Sarawak Chief Minister ("Still under investigation", was the answer).

By Mike Lee and K Shamuga



## Harinder Veriah Trust International Law Award

Harinder Veriah was a young Malaysian lawyer who died in Hong Kong on 2 Jan 2000, in tragic circumstances, at the age of 33. Born and brought up in Petaling Jaya, she took an external London University law degree, studying part-time while working. She practised law in Malaysia for three years before moving to England to live with her husband. After taking an LLM at King's College, London, she worked as a solicitor

for Lovells in London and later in their Hong Kong office for three years. Harinder made a huge impression at Lovells, and a very successful future beckoned until her untimely death.

Harinder was no stranger to adversity. She lost her mother when she was six, and had a very difficult childhood. Harinder was ennobled by her experience, always empathising with those less fortunate than herself. The Trust has been created in her memory: to honour an extraordinary person, and to embrace and disseminate the values that she held so dear.

In memory of Harinder, Lovells, the international law firm for whom she worked, agreed to employ a young Malaysian lawyer at their London office for a period of up to two years.

More details about Harinder and the award can be found on [www.harinderveriah.com](http://www.harinderveriah.com), from which this write-up was adapted.

Martin Jacques is Harinder Veriah's husband, and Chair of the Harinder Veriah Trust. He is the author of the global best-seller *When China Rules the World: The End of the Western World and the Birth of a New Global Order*, which explains how to understand China and how it will shortly overtake the US economy in size. He is a visiting senior fellow at the London School of Economics, a visiting professor at Tsinghua University, Beijing, and a fellow of the Transatlantic Academy, Washington DC.

## Work Experience at Hogan Lovells

From the day Shariza Noordin, one of the panel interviewers of the Harinder Veriah Trust, informed that I was the privileged candidate selected to join Hogan Lovells on a two-year secondment, my legal horizons have been broadened in ways beyond my wildest imagination. In mid-November 2010, I found myself inadvertently transported across continents, time-zones, cultures, jurisdictions and practice areas: from the South East Asian city of Johor Bahru to Chancery Lane of London, the centre of many of England's greatest bastions of law and legal history. A description of a mere job change is an understatement. The East-West move is a quantum leap from a general high-street style of practice serving individuals, small-medium companies and the grass-root community to the other end of the legal spectrum that is an international practice serving global businesses and multinational enterprises.

The arrival day at Hogan Lovells saw me being whisked into the courtroom scene: a cross-examination session by a Queens Counsel in the Royal Courts of Justice. It was a suit involving an investment bank claim under a merger-and-acquisition agreement. I spent my first seat learning about financial services, regulatory and commercial litigation. I assisted a partner in a regulatory dispute in relation to consumer legislation

and complaints lodged by consumers against a reputable car company. March to April 2011 was an intensive work period, preparing for an expedited trial held three months after litigation started, where my team defended proceedings for injunctive relief and breach of shareholders' agreement. I dabbled in a politically-sensitive case involving the Georgian Government in an arbitration case of expropriation of a TV station and amusement park. Being part of a team taught me that a good team spirit is indispensable.

The international flavour was enhanced when I joined the litigation department in the field of insurance and reinsurance. One of the earliest tasks was drafting a settlement agreement where an Indonesian marine insurer made a claim under an alleged marine reinsurance treaty through London brokers. I was given a chance to attend mediation in a dispute over losses suffered in connection with the breakdown of a joint venture concerning the provision of actuarial services in France. I assisted a senior associate in an insider trading policy review that required liaising with specialist insurance teams in Hogan Lovells offices in Germany, France, the Netherlands and Italy.

Over time, I came into contact with transactional commercial work in the real estate department. I

was part of a project management team in a high-profile transaction for one of the largest real estate managers in the UK on its acquisition of a 50% stake in three shopping centres. On normal days, there were dealings with the Land Registry regarding title and plan searches and substantive applications. Occasionally, I researched on UK-specific property law arising from client queries. Legal learning aside, I gained some business marketing skills by attending informal events such as evening drinks and client lunch.

My first exposure to the practice area of project finance was in November 2011. Hogan Lovells organised a UK-China Infrastructure Investment Conference. Being one of the few Mandarin-speaking employees in the firm, I was invited to interact with the guests at the cocktail reception.

Seven months later, I was transferred to the Infrastructure and Project Finance group in my last seat. I was placed in the construction-focused practice that works on the non-contentious aspects of a variety of traditionally-funded projects, UK property development transactions, outsourcing and facilities management arrangements. At the same time, I assisted the construction dispute team in an arbitration relating to the construction of an offshore wind farm. I came across a business pitch to tender for new legal work in connection with a Malaysian energy project. An invaluable learning opportunity arose to research into the current Malaysian oil & gas industry and infrastructure.

Capitalising on Hogan Lovells' award-winning pro-bono practice, I gained much personal satisfaction volunteering in cause-worthy projects. I helped a

charitable organisation working therapeutically with vulnerable children and young people on the acquisition of their new therapy centre. On some evenings after work, I attended legal clinics so that that people living with HIV have access to legal advice, representation and justice. I got involved in a research project initiated by The Open Society Justice Initiative ("OSJI") that focused on accountability for freedom of information and expression.

I'm confident that what I have learnt by osmosis working alongside the cream of the crop in the London legal fraternity surpasses what I have presented in this article. It is deeply etched in my mind that I would not have come this far without my benefactor, the Harinder Veriah Trust. I'm truly grateful to Martin Jacques, Graham Huntley and the board of trustees who set up and administered the Trust. There is much to give thanks for, for all aspects of the Trust ranging from the placement sponsorship, the financial assistance, the warm hospitality to the strong moral support rendered to me.

In learning to overcome the immense challenges posed by an internationally-competitive work environment, I hope to affirm all that the Trust aims to achieve. With the wealth of knowledge and experience gained in the 20 months at Hogan Lovells, I endeavour to be of greater service to the legal industry and the general community in the future.

By Tan Suk Fui<sup>1</sup>

<sup>1</sup>Tan Suk Fui was the third recipient of the Harinder Veriah Trust International Law Award.

## Cloud Computing: Issues in the Air



"Cloud Computing: How safe and protected will you be?" saw an informative and engaging exchange between the moderator, Suaran Singh Sidhu, a Partner of Suaran & Sankey and the respective speakers namely Andrew Cooke from Microsoft Operations Pte Ltd's Legal and Corporate Affairs, Ahmad Rizan Ibrahim, the Group Chief Executive Officer of Dataprep Holdings, Tong Lai Ling, a Partner from Raja, Darryl & Loh and Michael Tan, the Senior Counsel from Google Asia Pacific.

"Everything we save has to be placed somewhere whereby more often than not, it does not reside in our own offices, but elsewhere." Ahmad Rizan then went on to explain that cloud providers are a shared infrastructure by several organisations or clients with shared concerns and managed by an organisation or third party. The key concerns with cloud providers are that the information is available so openly and as such, are easily accessible and distributed. To further aggravate that, cloud provider employees have access to the information stored. It only follows that the process and function is therefore open to manipulation by an outsider.

Tong Lai Ling then shared her legal knowledge with specific reference to the Personal Data Protection Act

2010 ("PDPA"). The underlying axiom of the PDPA is: a data user shall not process data of an individual who is subject of personal data unless consent is given. The PDPA does not apply to all types of data but only to those in relation to commercial transactions and where data subjects are identifiable from said information. Where it applies, failure to comply with PDPA is a fine not exceeding RM300,000 or imprisonment for a term not exceeding 2 years or both. Interestingly, an employee in a management position may be severally or jointly charged with that company. Having briefly explained the key principles under the PDPA, Tong Lai Ling concluded that there was a conflict between cloud computing and the PDPA as where cloud computing is about reducing the level of direct control of personal data, the focus of the PDPA was control of personal data.

"Security concerns are characterised by who you are and what you do." As the loss of privacy goes to the heart of security, Andrew Cooke notes that customers are concerned as to whether they would be notified in the event there was unauthorised access to their data. Nevertheless, good cloud providers always provide notification in the event of a breach and customers can ask for such notification at the outset.

Another key concern of customers are authorised but unexpected access to their data, namely due to law enforcement requests. In this regard, Andrew Cooke postulated that law enforcement will more often than not have access to data anyway, regardless of where it is placed.

Some of the biggest roadblocks in negotiations are lawyers who represent customers who would take extreme risk-adverse positions. Whilst acknowledging the existence of security concerns, Andrew Cooke opined that security risks could be mitigated by ensuring that necessary security measures were put into place. It is imperative that the right cloud is used. This would depend primarily on how secure the customer wants the data to be. Nevertheless, as there is a standardised offering of cloud services around the globe, generally there is no ability to change the server based on customer concerns or specification. As such, for cloud to work and be cost affordable, there needs to be trust and understanding between cloud providers and their customers. Significantly, Andrew Cooke pointed out, there should be a good transition out process whereby at the end of the contract, the cloud services should assist the customer in getting their data back.



"The future of data is in the cloud." On YouTube alone, Michael Tan tells us, 48 hours of video is being uploaded on a daily basis which is roughly the equivalent of 32 Hollywood movies. The advantages of the cloud speak for itself. Due to its infrastructure, the cost of housing data is drastically reduced and data is introduced at a much faster pace. Data from cloud is also easily accessible whether via mobile phones or tablets. It is for this very reason that users want to access their data anytime, from anywhere that makes security arduous.

That brings us to the question, how secure is the system that stores your system on the Cloud? In this, he says, there is limited data at end points in order to prevent data loss. Security is built into the DNA of the products to prevent external attacks and there is a scalable solution security model to millions of users whereby there are various levels and/or servers. As such, even if one server is hacked, only bits and pieces of information are potentially gained. Due to the date replication on multiple levels, there is no single point of failure.

Michael Tan summarised that essentially, privacy and security meant making sure the data the customers provide which cloud providers process is used in the manner in which it was meant to be used. Privacy is ultimately about consent; you control your data. At the end of the contract, the key is to ensure the cloud deletes all the data.

By Joanne Chua Tsu Fae and Fahri Azzat

# Day 1 | Photos



## IMLC Delegates' Opinion Poll

The International Malaysia Law Conference ("IMLC") 2012 has created history with many "firsts". The conference, previously known as "Malaysian Law Conference", has gone global. We have been bold with our choice of topics on various diverse themes. And, we have employed the latest in information technologies, including radio-frequency identification technologies, and social media and web broadcasting.

The IMLC Organising Committee is running an opinion poll throughout the three-day conference to garner delegates' opinions on selected issues presented at the IMLC 2012.

The voting for the main question will run throughout the three days and delegates can cast their votes via SMS from 26 Sept 2012 to 5:00 pm on 28 Sept 2012.

In addition, one question based on a selected plenary session topic will be posed daily. Voting via SMS for the daily questions can be done until 5:00 pm each day (3:45pm on 28 Sept 2012).

### Questions for IMLC Delegates' Opinion Poll

#### Main Question

Should the mandatory death penalty in Malaysia be abolished and discretionary powers restored to the judiciary?

**YES (60164)**      **NO (60192)**

Text your response to **+614-2988 3481**

Each delegate may vote only ONCE. Delegates can cast their votes via SMS until 3:45pm on 28 Sept 2012. Telco charges are applicable.

#### Question for Day 01

According to author Martin Jacques, "China is not a chip off the old Western block" and one should "expect Beijing to refashion the world in a style that is distinctively Chinese, not ersatz European".

Is China's transformation good for the world?

**YES (60154)**  
**NO (60163)**  
**I DON'T KNOW (89223)**

Text your response to **+614-2988 3481**

Each delegate may vote only ONCE. Delegates can cast their votes via SMS until 5:00 pm on 26 Sept 2012. Telco charges are applicable.

#### Question for Day 02

The Malaysian Government's Economic Transformation Programme ("ETP") has created waves of opportunities and improved Malaysia's economy and its peoples' life.

Has the ETP had any impact on your daily life?

**YES (478853)**  
**NO (478854)**  
**I DON'T KNOW (89283)**

Text your response to **+614-2988 3481**

Each delegate may vote only ONCE. Delegates can cast their votes via SMS until 5:00 pm on 27 Sept 2012. Telco charges are applicable.

#### Question for Day 03

Is allowing the entry of foreign lawyers to Malaysia a positive development?

**YES (561168)**      **NO (561169)**

Text your response to **+614-2988 3481**

Each delegate may vote only ONCE. Delegates can cast their votes via SMS until 3:45pm on 28 Sept 2012. Telco charges are applicable.

09:00am - 10:15am  
10:15am - 10:35am  
10:35am - 11:50am

Plenary Session: Asian landscape: What next? (Venue: Plenary Hall)  
Speakers: • Dato' Sri Nazir Razak, Group Chief Executive, CIMB Group  
• Tommy Thomas, Partner, Tommy Thomas  
• Professor Edmund Terence Gomez, Dean, Social & Behavioral Science, Research Cluster, University of Malaya  
Moderator: Dato' Sri Nazir Razak, Partner, Shook Lin & Bok; Past President, Malaysian Bar  
Coffee Break with Exhibitors  
Breakout Session

### Stream 1 (Session 4) - Plenary Hall OIL & GAS

ASEAN-China Guidelines for Co-operation in the South China Sea: Can the guidelines effectively solve boundary disputes in the South China Sea?  
Session Sponsor: Skrine  
Joint Session with Bar Council Law Reform and Special Areas Committee  
Speakers  
• Maria Antonina M Mendoza-Oblena, First Secretary and Consul, Head of the Philippine Embassy's Political Section  
• Leonardo Bernard, Research Associate, Centre for International Law, National University of Singapore  
Moderator: Faizah Jamaludin, Partner and Head of the Oil and Gas Practice Group, Skrine

### Stream 2 (Session 4) - Plenary Theatre INTELLECTUAL PROPERTY

Intellectual property trends, issues and challenges of the 21<sup>st</sup> century  
Joint Session with Bar Council Intellectual Property Committee  
Speakers  
• Audrey Yap Su Ming, Partner, Yusam Audrey, Singapore  
• Linda Wang, Partner, Tay & Partners  
• Professor David Llewelyn, Professor (Practice) & Deputy Dean, School of Law, Singapore Management University; Professor of Intellectual Property Law, King's College London  
Moderator: Wong Jin Nee, Partner, Wong Jin Nee & Teo

### Stream 3 (Session 4) - Rooms 304 & 305 HR & EMPLOYMENT

The relevance of trade unions in the business sector today  
Joint Session with Bar Council Industrial Law Committee  
Speakers  
• Dr Nagiah Ramasamy, Senior Lecturer, Department of Management and Economics, Sunway University Business School  
• Bartłomiej Raczkowski, Partner, Raczkowski Wspólnicy, Poland  
• A Navamukundan, Executive Secretary, National Union of Plantation Workers  
• Nanitha Balan ES Moorthy, Partner, Zul Rafique & Partners  
Moderator: Selvamalar Alagaratnam, Partner, Skrine

10:35am - 12:15pm

### Stream 4 - Room 302 NATIONAL YOUNG LAWYERS FORUM

Social media: Guilty! For updating your Facebook status and tweeting!  
Joint Session with Bar Council National Young Lawyers Committee  
Speakers  
• Edmund Bon Tai Soon, Partner, Choi & Co; Co-Founder of Legal Blog www.loyarburuk.com  
• Azhar b Azizan @ Harun (Art Harun), Advocate and Solicitor, Hisham Sabri & Kadri; Active Blogger at art-harun.blogspot.com  
• Datin Paduka Marina Mahathir, Writer; Women's Rights and HIV/AIDS Activist; TV Producer  
Moderator: Lee Shih, Partner, Skrine

12:00pm - 01:15pm

Breakout Session

### Stream 1 (Session 5) - Plenary Hall OIL & GAS

Production Sharing Contracts in the Malaysian petroleum industry: A PETRONAS perspective  
Joint Session with Bar Council Law Reform and Special Areas Committee  
Speaker  
• Nooruddin Abdullah, Head, Legal, Upstream Exploration & Production Business, PETRONAS  
Moderator: Faizah Jamaludin, Partner and Head of the Oil and Gas Practice Group, Skrine

### Stream 2 (Session 5) - Plenary Theatre CORPORATE COUNSEL

The role of General Counsel in the global economy  
Session Sponsor: ZICOlaw Joint Session with Bar Council Legal Profession Committee  
Speakers  
• Henry Leong, Asia Pacific Counsel, GE Water & Process Technologies  
• Mohamed Nasir Sallehuddin, Director, Legal, Khazanah Nasional Bhd  
• Firdous Jan Mohamed, General Counsel, Asia Pacific, Schlumberger  
Moderator: Stephen Maloy, Senior Advisor, ZICOlaw

### Stream 3 (Session 5) - Rooms 304 & 305 COMPLIANCE

Competition law in the Asia Pacific region: Malaysia, Australia, and beyond  
Joint Session with Bar Council Competition Act Subcommittee  
Speakers  
• Ragunath Kesavan, Commissioner, Malaysia Competition Commission; Partner, Kesavan; Past President, Malaysian Bar  
• Wong Tat Chung, Partner, Wong Beh & Toh  
• Anand Raj, Partner, Shearn Delamore & Co  
Moderator: Shila Dorai Raj, Chief Executive Officer, Malaysia Competition Commission

01:15pm - 02:15pm

02:15pm - 03:00pm

Networking Lunch  
Plenary Session: Malaysia's Government and Economic Transformation Programme: A journey towards high income (Venue: Plenary Hall)  
Speaker: Dato' Sri Idris Jala, Minister in the Prime Minister's Department; Chief Executive Officer, PEMANDU  
Moderator: Tony Woon Yeow Thong, Secretary, Malaysian Bar; Partner, Woon & Co  
Breakout Session

03:15pm - 04:30pm

### Stream 1 (Session 6) - Plenary Hall LAW & SOCIETY

Freedom of the press  
Joint Session with Bar Council Professional Standards and Development Committee  
Speakers  
• Masjaliza Hamzah, Executive Officer, Centre for Independent Journalism  
• Malik Imtiaz Sarwar, Partner, Malik Imtiaz Sarwar  
• R Nadeswaran, Editor (Special and Investigative Reporting), The Sun Daily  
Moderator: Jacqueline Ann Surin, Co-Founder and Editor, The Nut Graph

### Stream 2 (Session 6) - Plenary Theatre CORPORATE COUNSEL

The many facets of an in-house counsel's role—Compliance and internal controls included?  
Joint Session with Singapore Corporate Counsel Association  
Speakers  
• Wan Kwong Weng, Managing Director and Group General Counsel, Mapletree Investments Pte Ltd  
• Syed Naqiz Shahabuddin, Partner, Naqiz & Partners  
Moderator: Eric Pereira, Online Sales Manager, ASEAN Region, Sweet & Maxwell Asia/Thomson Reuters

### Stream 3 (Session 6) - Rooms 304 & 305 ARBITRATION

International Commercial Arbitration: Perspectives from the four corners of the globe  
Joint Session with Bar Council Arbitration Subcommittee  
Speakers  
• Yang Ing Loong, Global Coordinator, Sidley Austin, Hong Kong  
• Chan Leng Sun SC, Baker & McKenzie Wong & Leow, Singapore  
• Ng Jem-Fei, Barrister of Essex Court Chambers, United Kingdom  
Moderator: Dato' WSW Davidson, Consultant, Azman Davidson & Co

04:30pm - 05:00pm

05:00pm - 06:15pm

Coffee Break with Exhibitors  
Breakout Session

### Stream 1 (Session 7) - Plenary Hall LAW & SOCIETY

Can Australia serve as a positive role model for combating terrorism while upholding human rights?  
Joint Session with Bar Council Human Rights Committee and Constitutional Law Committee  
Speakers  
• Bret Walker SC, Independent National Security Legislation Monitor, Australia  
• Phil Robertson, Deputy Director, Human Rights Watch, Asian Division, Bangkok  
Moderator: Andrew Khoo Chin Hock, Partner, Andrew Khoo & Daniel Lo

### Stream 2 (Session 7) - Plenary Theatre LAW PRACTICE MANAGEMENT

Legal services: The evolving legal landscape  
Session Sponsor: LexisNexis  
Joint Session with Bar Council Legal Profession Committee and Trade in Legal Services Committee, and The Law Society of Singapore  
Speakers  
• Matt Kesner, Chief Information Officer, Fenwick & West LLP, USA  
• Wong Meng Meng SC, President, The Law Society of Singapore  
Moderator: Gaythri Raman, Head of Customer Discovery & Innovation, Asia, LexisNexis

### Stream 3 (Session 7) - Rooms 304 & 305 COMPLIANCE

Challenges in legal compliance: Managing an investigation  
Joint Session with Bar Council Goods and Services Tax ("GST") and Tax Subcommittee, and Competition Act Subcommittee, and Sabah Law Association  
Speakers  
• Anand Raj, Partner, Shearn Delamore & Co  
• Domingo Castillo, Partner, SyCip Salazar Hernandez & Gatmaitan, Philippines  
• Shamsulhan Shamsuddin, Executive Director, Compliance & Examination, Securities Commission Malaysia  
Moderator: Roger Chin, Secretary, Sabah Law Association

06:30pm - 07:30pm

07:30pm - 10:00pm

Plenary Session: 2nd Raja Aziz Addruse Memorial Lecture (Venue: Plenary Hall)  
Counter-Terrorism, Human Rights and the Rule of Law—The UN Perspective  
Speaker: Ben Emmerson QC, Matrix Chambers, UK; UN Special Rapporteur on Human Rights and Counter-Terrorism  
Moderator: Dato' Param Kumaraswamy, Former UN Special Rapporteur on the Independence of Judges and Lawyers; Past President, Malaysian Bar  
Fundamental Freedoms Fringe Fest at Plenary Hall, Centre Core, KLCC

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