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# **Asian Landscape: What Next?**

Datuk Dr Cyrus Das, the moderator of the session, started the introductions by referring to the speakers as "an academic, a banker and a lawyer", and wittily added that the speakers were introduced in alphabetical order.

#### Political economy of development: Lessons from Asia

The first speaker, Professor Edmund Terrence Gomez, Dean of Social and Behavioral Science, Research Cluster, University of Malaya, gave the audience an academic insight into the not-so-simple world of the Asian socio-political landscape through his detailed speech, which was aptly described as a "microview" of Asian economics by Datuk Dr Cyrus Das.

The professor started off by referring to the economic history of a number of Western and Asian countries, such as the economic development of Japan, Korea, Taiwan, the United Kingdom and the United States. The essence of Professor Edmund Gomez's speech was 2 economic theories, namely the Developmental Stage and neo-liberalism. The Developmental Stage is essentially the concept of government-business cooperation, where there is supervision of economic development by the government, whilst neo-liberalism is the complete opposite — it is a liberalisation of the economy, allowing free rein to the economic players.

He explained that regulation is very important in neoliberalism by expounding the concept of "revolving door", where financial entities utilise their wealth to capture the state which allows for the determination of policies. He noted, interestingly, that the person who controls the bank controls the economic development of the country.

Professor Edmund Gomez went on to explain the importance of policies, and steps to improve the economic development post-global crisis. In doing so, he suggested that the state has to play a role in the creation of a tripartite link between the state, banks and investments. He explained that the economic emphasis of several successful Asian economies was distinct, for example in Korea, the emphasis was on big corporations whilst in Taiwan, the economy was based on small and medium enterprises ("SMEs"). On the subject of SMEs, Professor Gomez noted their importance and gave the example of Singapore where there was presently a shift of focus from governmentlinked companies ("GLCs") to SMEs.

Professor Edmund Gomez also pointed out other important areas in improving economic development, such as the need to promote research & development ("R&D"). He felt that Malaysia was not paying sufficient attention to R&D compared to other countries in the Asian region and emphasised the need to nurture GLCs productively. He wrapped up his speech by stating that the government, business and labour must work together to improve the economic development of a country, and suggested that state intervention will actually inspire confidence in economic growth and development but it must be accompanied by institutional political reforms in Malaysia.

### What next?

The second speaker, Dato' Sri Nazir Razak, Group Chief Executive, CIMB Group, provided a banker's insight as to what he saw as the Asian landscape. In the second



half of the session "What next?", Dato' Sri Nazir Razak gave an insight as to what the future offers for Asia. To him, what was next for the Asian landscape was something less certain.

Much like the first speaker, Dato' Sri Nazir Razak's focus was on the global financial crisis, stating that different versions of market capitalisation brought the fall of capitalism, fuelling the said crisis but unable to deal with it.

"Ironically, it feels that we are at the end of an era," Dato' Sri Nazir Razak continued.

"It feels like something new is emerging. This is the Asian century."

"Changes come, by definition, with friction." Dato' Sri Nazir Razak drew comparison between the Chinese and American way of governance and how the economy was impacted. The Western system advocates freedom whilst the Eastern system involves more regulation and supervision by the government. He further proposed that the introduction of a 3rd system, a combination of the Western and Eastern systems of banking, might be the way to go in terms of economic development.

The future rests on how Asians make the best of it but we are not fully making the best of it yet."

Dato' Sri Nazir Razak suggested that it would not be a good idea to mimic the West when it comes to banking.

In concluding his speech, he stated that "I don't have the answers, nobody does."

However, he went on to say that a subset of Asia is the Association of Southeast Asian Nations ("ASEAN"), and that ASEAN is placed in an opportune position to prosper, as they can communicate with China, India and the West.



He ended by saying that we were living in a time of great change and there was uncertainty of what was lying ahead.

When it comes to banking, look East, not West. The third speaker, prominent lawyer Tommy Thomas, started his speech echoing Dato' Sri Nazir Razak's statement, that there are no answers to what comes next, but with far less subtlety.

'The title foreshadows an open-ended subject which has no boundaries," said Tommy Thomas.

To him, Asia is far more populous and far too diverse for anyone to speculate on what is next for the Asian economic landscape

Tommy Thomas' presentation is centred upon the view that Asia should not adopt the Western banking system, based on the recent and ongoing global financial crisis.

"Why did the crisis start? Why didn't the remedial steps work? When will it end? There are no answers to these questions."

The remainder of Tommy Thomas' speech focused on the weaknesses of the US banking model based on the statistics given, and how Malaysia needed to find a balance between the US economic model and Malaysia's current model.

"Some kind of mixed economy might be the way forward."

But Tommy Thomas was absolutely clear that when it comes to banking matters, the East need not learn from the West.

Bν Tan Iee Tiun and Nizam Bashir









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# Get Real! Make your Facebook Status and Tweets Count!

This topic attracted a full crowd in the small seminar room today, with audience members standing all the way to the far end of the room. The controversial reputation of the speakers may have been part of the attraction, much to the detriment of other parallel sessions

### Activism and social media

Co-founder of legal blawg www.loyarburok.com, Edmund Bon Tai Soon, in a casual half-leather jacket, t-shirt and tight long pants, casually began the session by asking whether the audience thought our government had represented the people sufficiently. He continued his line of questioning by asking the floor if they had RM500, whether they would use the RM500 to go for an Orang Asli trip and help them out, or they would rather save the money for a brand new iPhone.

Bon, as he is affectionately known, engaged the crowd passionately with a tone that shook the hearts and souls of those in the room. He emphasised the extent to which the marginalised, ethnic minorities and middle-class society, which formed the majority of our community, have not been represented.

Bon then pointed out that social media, such as Facebook, Twitter and blogs, has become an effective tool in reaching out to the majority, and to the oppressed and suppressed, and has effectively brought their voices out to the world, if not the nation.

He argued that the media and statutory bodies have on many occasions tried to influence and manipulate people formally or informally. However, we have not used social media to influence government legislation and policy-making enough.

Bon further stressed that he does not believe that democracy happens once every 5 years: the peoples' voice must be heard every day. He hoped there will come a day when people can tweet petitions to the government and petitions can no longer be ignored and thrown into a bin.



Following that, Bon went on to question the role of a lawyer. Pursuant to section 42(1)(a) of the Legal Profession Act 1976, the objective of the Malaysian Bar is to uphold the cause of justice without regard to its own interest or that of its Members, uninfluenced by fear or favour.

In the midst of the current contentious issues faced by Malaysia, Bon urged lawyers not to use social media tools to post frivolous, or even discouraging, comments, but to take positive actions to actively voice out the inequality, suppression, abuse of human rights and injustice that occur on a daily basis. Bon also compared Malaysia with other countries that have local assemblies, town halls and courts that try governments.

### Twitter, the educational tool?

Datin Paduka Marina Mahathir, active on Twitter with approximately 7,000 followers, educated the crowd on cyberspace culture and how to build an effective outreach to the public.

Datin Paduka Marina opined that people will "see" you online, as people follow you on Twitter and this can be a tool to educate people, and an opportunity to set good examples for them. This will help build an online personality.

### Democracy a failure?

The intense debate continued when Art Harun, who blogs at art-harun.blogspot.com, commented that democracy has not really failed, but is now in a state of flux thanks to people becoming more complacent and reluctant to pose tough questions for actions that the government could take.

Art put forward the argument that most people do not want to be seen as "non-mainstream", and said that it was an "administered reality" that has caused people to be complacent. Art also postulated to the crowded house that online activism is in essence selective activism, lacks structural hierarchy and does not have organisational impact on real activism. Online

activism, according to Art, is not a threat to national security

The forum ended with an observation by Lee Shih, the session moderator. He said that although online tools (ie social media) may be an effective tool to reach out to people, it is nothing compared to having the crowd in the room, and feeling the passion of the people. Indeed it was a room filled with a lot of people. Hopefully the enthusiasm, evidenced by the massive turnout, would be translated into real activism.

By Andrew Ang Yu Hui & H R Dipendra

## **Impact of ASEAN-China Guidelines for Co-operation** in the South China Sea on **Boundary Disputes**



The implementation of the ASEAN-China Guidelines for Cooperation in the South China Sea ("Guidelines") in July last year was heralded as a milestone in the area of oil and gas production in the region. However, many in the industry have expressed their skepticism about the potency of the Guidelines in resolving territorial disputes in the South China Sea. This session took place with this background in mind.

The session was moderated by Ms Faizah Jamaludin, a partner who heads the Oil and Gas Practice Group at Skrine. The panelists were two individuals with unrivalled knowledge of the topic: Mr Leonardo

Bernard, a Research Associate at the Centre for International Law at the National University of Singapore, and Ms Maria Antonina M Mendoza-Oblena, who is the First Secretary and Consul, Head of the Philippine Embassy's Political Section.

Ms Faizah Jamaludin commenced the session by remarking that the Guidelines had failed to provide a the boundary disputes in the South China Sea. She indicated the recent standoff between a Philippine warship and two Chinese vessels in the Scarborough Shoal strongly suggested it.

Mr Leonard Bernard set out the background of the territorial disputes over the South China Sea. Each of the five claimants to the islands of the South China Sea is a signatory of the United Nations Convention on the Law of the Sea ("UNCLOS"). Article 121 draws a distinction between "an island" and a "rock". He said this was a significant distinction because a portion of land recognised as an island would attract a 12-nautical mile territorial zone protection from its coastal areas. It was in this context that Mr Bernard remarked that many of the parcels of land that China claims to be "islands" are in fact "rocks" under UNCLOS.

Mr Bernard concluded his segment by stating that there is some difficulty in applying the terms of the UNCLOS to the present disputes over the South China



Sea as the sovereignty of many of the islands in the region has yet to be established.

The second speaker, Ms Maria Antonina M Mendoza-Oblena, said that the root of the dispute in South China Sea is the overlapping territorial claims of the surrounding sovereign states in the region. She feels one of the most crucial weaknesses of the Guidelines is the lack of an adequate enforcement mechanism, hence the ethical conduct of parties in the South China Sea cannot be ensured. She concluded her presentation by explaining the Philippines Government's proposals for a solution to the disputes over the South China Sea, and outlined the concepts underpinning the Philippines' idea of the Zone of Peace, Freedom, Friendship and Cooperation ("ZoPFFC"). The ZoPFFC proposes to clearly segregate the disputed areas of the South China Sea from the areas that are

not in dispute. The proposal aims to encourage specific collaborative and cooperative activities by the five countries that are involved in the disputes over the region

The session culminated in a question-and-answer segment where Mr Bernard expressed his agreement with the proposals advanced by the Philippine Government in respect of the suggested cooperative activities between the disputing nations. He added that joint development of a solution is the only viable way the present problems over the South China Sea could be resolved.

By Gregory Das and Fahri Azzat

# Intellectual Property: Intellectual Property, Trends, Issues and Challenges of the 21<sup>st</sup> Century



A highly-engaging and informative session on the topic of trends and issues in intellectual property ("IP") by a panel of three very qualified speakers in the intellectual property field saw an extensive discourse, not only from a local viewpoint, but also the impact of such trends and challenges from different jurisdictions.

The first speaker, Ms Audrey Yap Su Ming, a partner in Yusarn Audrey, Singapore spoke on the Singaporean perspective of trends and issues in intellectual property and described the intellectual property scene as an "ecosystem involved with different stakeholders playing different roles".

She described the trend now to be where businesses use IP management to deploy IP resources to create competitive and innovative designs which, in turn, support the business. Also, the current trend is moving away from an insular system towards a structure that is more collaborative and involving a global market.

"These changes have resulted in a focus on IP ownership. IP is increasingly seen as an investable asset, and not as cost," she added

A growth in the importance of IP rights in Asia and ASEAN, and an explosion in purchasing power, have also resulted in a market for high-quality and highvalue-added products. The outcome of this business trend is a greater willingness by foreign investors to invest and establish research and development facilities in ASEAN, thus generating more creative and innovative products.

"With this comes an influx in IP rights. This is evident as the development of IP. Singapore is seeing an upward trend in patent filing," she said.

In ending her speech, she stressed, "Adaptability is the key to handling the changing landscape of intellectual property and to allow us to ride the waves of change".

Next was Ms Linda Wang, a partner in Tay & Partners, country and be distributed, and then a crackdown is who observed that many of the trends in Malaysia are initiated to tackle the problem. common across the globe.

However, she pinpointed five main areas that Malaysia will have to deal with to face the IP of the 21st century head-on. The five issues are the IP legislative framework in Malaysia, delivery of services by agencies tasked with the protection of IP rights, internet piracy, border control measures, and public apathy.

"Without a proper legislative framework, we cannot move towards a knowledge-based economy. Many areas of IP are still not protected, and without such laws in place, investors will not be willing to invest in IP for obvious reasons," said Linda.

On delivery of services, Linda noted that while the IP Courts are making good progress in hearing cases promptly, other bodies like Intellectual Property Corporation of Malaysia ("MyIPO") need to up their game as too much time is taken in resolving objections in filing for rights. Moreover, a lack of Standard Operating Procedures and trained officers in Ministry of Domestic Trade, Co-Operatives and Consumerism has resulted in low successful prosecution rates.

Piracy is no longer viewed in a traditional sense involving books and compact discs, because internet piracy is on the rise. Linda was quick to point out that mobile device piracy, in particular, is a peculiar problem in Malaysia where users illegally download content to their mobile phones for nominal payment. She viewed this as a serious and growing problem that will not help

"The Government must allocate resources to develop expertise to detect and combat online piracy."

Linda lamented that what is done today is to allow pirated and counterfeited products to come into the

"The problem has to be nipped in the bud. Border control measures must be implemented, so as not to allow the pirated products to come into the country at all." she said

Lastly, Linda noted with disappointment that a high tolerance for piracy among Malaysians has created the market for piracy and a lack for respect for IP. "Education is of utmost necessity to change the mindset of Malaysians. Society must be taught to appreciate the value of IP and to see how wrong it is to condone piracy, and schools are the best place to start."

The last speaker, Professor David Llewelyn, Professor (Practice) and Deputy Dean, School of Law, Singapore Management University, and a Professor of Intellectual Property Law in King's College London, took the stage by debunking 10 myths about IP.

He then pointed out that it was important to value IP and to not shy away from the challenges of defending one's IP rights.

Also, David drew attention to the important concept of moving from copiers to innovators. He illustrated with a simple example of how Lego came about as a result of copying another person's idea, simply because it was not protected in other parts of the world besides England

"While it was acceptable to copy and then go on to innovate the product or idea, it is necessary to learn how to use creativity and to strategise in dealing with IP," David said

By Sheelaa Ragavan and Kevin Kam

## What Relevance Do Trade Unions Have in the Business Sector Today?

The moderator of the session, Ms Selvamalar Alagaratnam, a partner in Skrine, commenced by setting the tone of the session, stating that the discussion would address the impact of trade unions on laws, and whether these unions remain relevant in today's business world. She then introduced the panel speakers.

The moderator posed a question on how trade unions have contributed to the development of laws both domestically and abroad. Mr Bartlomiej Raczkowski, a partner from Raczkowski i Wspólnicy, a law firm in Poland, explained that trade unions play an important part in the legislative process in some countries, through lobbying political parties, or by becoming part of a tripartite commission, as in Poland. The general rule is that no law shall be brought to Parliament without having first been discussed within the on, consisting of delegates fro trade unions, employer associations and government

Mr Nantha Balan, a partner in Zul Rafique & Partners, stated that trade unions have been at the forefront of spearheading and making demands of governments over the years, and this has borne fruit with the emergence of two major reforms: a minimum retirement age, and the minimum wage act, both of which are to come in force next year. Mr A Navamukundan, Executive Secretary of the National Union of Plantation Workers, agreed with Mr Nantha Balan, and went on to add that though the membership ratio has declined, they still remain as strong pressure groups, constantly safeguarding the rights and interest of their members, and even non-members and other groups enjoy the fruits of their labour.

Mr Bartlomiej Raczkowski further added that the culture of trade unions in European countries is that each trade union representative commonly works



the short-term goals rather than the sustainable long term. Mr A Navamukundan retorted by saying that it is important the short term is not compromised because if it is, the livelihood of the average worker would be compromised.

The next issue deliberated was whether trade unions in Europe still play a part in protecting members' rights. Mr Bartlomiei Raczkowski stated that the role of trade unions in Europe differs dramatically according to the democratic and communist influence over the individual countries. In the past, Western Europe was democratic whilst Eastern Europe was mostly under communist influence. Thus, the trade unions in the former traditionally had a stronger voice than in the latter. This is because in a democratic country, trade union representatives will speak for the members when the members want them to do so, whilst in the

toward their own individual goals and are interested in communist climate, the representatives will speak only when it suits them.

> The moderator then shared her experience of when a client inquired if a trade union would get deregistered if the members of the union, numbering more than 100 the intended merger as well. Mr A Navamukundan's at the point of registration, dwindled to 35.

Dr Nagiah Ramasamy, Senior Lecturer from the Department of Management and Economics of Sunway University Business School, stated that although the Industrial Relations Act makes the threshold requirement of 50 + 1 seem simple to achieve, in reality, it is much more difficult to register a trade union. In fact, it may take many months before a union can be officially registered. Mr Nantha Balan also added that just like for a meeting, the required quorum has to be reached only at the beginning of the meeting before it can commence. However, many

people do leave during the meeting and often very few are left during the voting on any resolution, but the votes and the meetings are still declared valid. Thus, a trade union is the same and will be recognised until its last member remains.

A question posed for discussion was, "Can the voice of a trade union be so strong that it can harm businesses?" The example given was when the trade unions had affected the unbundling of shares between AirAsia and Malaysia Airlines ("MAS").

Mr Nantha Balan explained briefly the background of the unbundling of shares, stating that it was intended to benefit both parties. However, MAS unions took umbrage as they felt that an outsider was coming into MAS to do a mass restructuring, and that layoffs might follow. They protested and were successful. resulting in AirAsia backing out. He concluded by stating that many feel that the unbundling of shares is a management issue, but in this case, the unions were clearly strong. Dr Nagiah Ramasamy added that blaming the unions alone would be unfair, because many viewed that there were political aspects to view was that the whole episode reflected the lack of communication between management and the union members before the unbundling of shares, and that this authoritative view should now be discouraged.

The session ended by Mr Bartlomiej Raczkowski providing an explanation about the struggles of the unions and the people of Poland to oust the communist takeover of Poland in the 1940s. He gave a personal insight into the hardship and suffering experienced by the Polish people, as he had been a teenager at the time.

By Sandesh Kabir Singh and Jeremiah Gurusamy

## **International Commercial Arbitration: Perspectives** from the Four Corners of the Globe

Moderated by Dato' WSW Davidson, a Consultant at Azman Davidson & Co, the session saw a panel of distinguished arbitration practitioners from different corners of the globe speak on the challenges encountered in international commercial arbitration.

### Challenges to the enforcement of arbitral awards: The new dawn

The first speaker, Ng Jern-Fei, a Malaysian practising as a barrister in the Essex Court Chambers, UK, began by presenting the case of Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan ("Dallah") regarding conflicting judgments from the UK Supreme Court and an International Chamber of Commerce tribunal sitting in Paris.

Ng explained that essentially, *Dallah* is about: a) the question of whether a losing respondent to a jurisdictional challenge in arbitration can apply to set aside or challenge an arbitral award, and b) whether a losing respondent, who had not applied to set aside the award, is nonetheless entitled to do so by resisting enforcement in other jurisdictions

The UK Supreme court had held (in gist) that it is open to an enforcing court to review the tribunal's determination on jurisdiction. Ng quoted Lord Mance who had said "...the Tribunal's own view of its jurisdiction has no legal or evidential value when the issue at hand is whether the tribunal had any legitimate authority in relation to the government at all..."

Ng further explained on how the principles in Dallah apply in a Model Law jurisdiction such as Malaysia, in relation to an award by a tribunal seated within the jurisdiction in which enforcement is sought.

Next, Ng presented a recent case in Singapore of Astro v Lippo which tested the extent to which one ca apply the *Dallah* principle. The central issue was whether Lippo was entitled to resist enforcement

of the awards on the basis that the tribunal lacks the jurisdiction to make them, despite the fact that Lippo had not applied to set them aside in the first place. Judgment in this case is currently pending.

Ng ended his presentation with a brief summary on the drafting history of the Model Law as well as an explanation on waiver and estoppel in arbitration.

Recent developments in the Hong Kong courts Yang Ing Loong, a Singaporean who is a partner and Global Coordinator at Sidley Austin, Hong Kong, next focused on state immunity and the courts' attitude in arbitration

Yang stated that when Hong Kong reverted to Chinese sovereignty in 1997, there was a lacuna, as arbitral awards made prior to that were no longer subject



to the New York Convention, and vice versa. In 2000, after extensive consultation, both governments agreed on the Arrangement of Reciprocal Enforcement of Arbitral Awards between Mainland China and Hong Kong.

He then presented a few cases, including a Congo case where a fund known as FG Hemisphere bought over some arbitral awards from a Yugoslav claimant that had obtained the awards from the Democratic Republic of Congo. The central issue in that case was whether state immunity applicable in Hong Kong was one of restrictive immunity, as was the case prior to Hong Kong's return to China, or whether it was absolute immunity, as used by China.

Yang said that it was eventually decided that Hong Kong now only applies absolute immunity. The controversy regarding that case was whether that approach

undermines the independence of Hong Kong as an attractive place for arbitration.

Emergency arbitrator and interim orders The third speaker was Chan Leng Sun, a Senior Counsel practising at Baker & McKenzie.Wong & Leow in Singapore, who is originally from Seremban, Malaysia. His presentation focused on interim orders by emergency arbitrators. According to him, the need often arises to obtain urgent relief in circumstances such as the need for preservation of evidence. However, setting up a tribunal may take some time.

Chan also said that one reason arbitration might be preferred over going to court is the cost of the latter, and concern over whether there is an effective iudiciary.

According to Chan, the allowance for an emergency arbitrator also presented some issues. One significant issue raised was whether an award made by an emergency arbitrator is enforceable

Chan then wrapped up his segment with a comparison between the Singapore International Arbitration Centre Rules, the International Arbitration Act and the Malaysian Arbitration Act 2005.

By Melissa Sasidaran and Ieremiah Gurusamy

## **Economic Transformation: The Sun is Shining and** the Roses are Blooming

Dato' Sri Idris Jala is of course synonymous in the nation's mind with PEMANDU, GTP and ETP (the Performance Management and Delivery Unit of the Federal Government, and their Government and Economic Transformation Plans, respectively). He currently serves as Chief Executive Officer of PEMANDU, and is a Minister in the Prime Minister's Department.

He came out of the blocks and into his slides, showing the rationale, figures and milestones achieved so far under the GTP and ETP. He softened up the audience (or riled them up, depending on which football club you support) by revealing he was a Chelsea fan, and that without being united under one coach, they would not have been European champions last season. Likewise, a united Malaysia was necessary to not only grow the economy but also achieve equitable income distribution.

He explained that initiatives like improving urban public transport and building more low-income housing may not directly boost the economy, but were equally important to achieve equitable growth in Malaysia. Executive summaries, slides and whole briefings were available for the public to educate themselves better on the government's initiatives to take our country to the next level on the unit's website at www.pemandu.gov.my.

On education, his team had discovered that only 60% of students had pre-school education, yet our current Primary One education system assumes that students have had such preparation. This handicaps the "other" 40% who have not had pre-school education. The team had also gone on to put schools into different bands (ranked "one" for the best schools, and "seven" for the worst schools) based on their performance, so they have data to improve both underperforming schools and teachers, and then take remedial steps. On crime, Dato Sri' Idris Jala trumpeted how 500 cases of crime being reported daily had been reduced to 421, and relied on this as proof that our streets are safer these days. It must be said that this analysis did not seem to have been very well-received, judging by twitter reactions during the speech.

He went on to explain the National Key Economic Area ("NKEA") projects like the Refinery and Petrochemical Integrated Development ("RAPID") scheme at Pengerang,



and the Regional Oil Storage & Trading Hub. He was of the view that the law industry is a part of the overall equation, along with IT, fashion, consulting, engineering, construction, healthcare, advertising and many more service industries, as part of the Business Services National Key Result Area ("NKRA").

He ended with two insightful quotes:

"One of the most tragic things I know about human nature is that all of us tend to put off living. We are all dreaming of some magical rose garden over the horizon instead of enjoying the roses that are blooming outside our windows today." - Dale Carnegie



Keep your face to the unshine and you cannot see a shadow.' Helen Keller

In summary, Dato' Sri Idris Iala reminded the audience that for Malaysia to achieve high-income status. we have to aim to be competitive, and we have to stay focused by picking the right industries and supporting them through

During the questionand-answer session. former Malaysian Bar President, Ragunath

Kesavan, asked about the seeming lack of recognition and collaboration for Malaysian professionals – such initiatives. To this, Dato' Sri Idris Jala said he is open to agreed that much more needs to be done to achieve suggestions from the professions on how to broaden their horizons. For lawyers, he suggested outsourcing in-house work within Malaysian companies to our law firms.

Lim Chee Wee, current Malaysian Bar President, then asked two questions, the first being whether there is a need for an Independent Police Complaints and Misconduct Commission ("IPCMC") to get our police force into shape.

Dato' Sri Idris Jala responded by pointing out that the public could assess the performance of their assigned police officers via terminals at police stations and also via SMS, while tracking their police reports online. He pointed to a slide that showed 87% of people who reported in this system were "very satisfied" with the services provided by the police force. Such rating systems have also been introduced in the Selangor Immigration Centres, Dewan Bandaraya Kuala Lumpur and other government bodies, to improve the accountability of officers and these departments in general.

Lim Chee Wee had also asked if a lack in the quality of education was felt elsewhere to the extent it was felt in the legal profession, especially in terms of poor ation skills in both English and Bahasa Malaysia. In response, Dato' Sri Idris Jala admitted there are weaknesses in this regard, but assured the audience that the British Council is offering a hand, and stressed that both languages had to be developed concurrently.

It was a pleasure to hear Dato' Sri Idris Jala, who showed as lawyers, accountants and doctors – under his Unit's a great deal of grace under fire. It was clear that all were "developed nation" status for Malaysia.

By Joachim Leong and K Shanmuga

# **Inspired by Ramli Ibrahim**



Ramli Ibrahim is not an individual who needs any introduction in Malaysia, nor in many parts of the world. The Ministry of Information and Culture has given the Sutra Foundation Chairman the title "Tokoh Orang Hidup" ("Living Idol"), and Ramli is set to receive the Sangeet Natak Akademi Award from the President of India on the 9 Oct 2012.

Ramli is accomplished in ballet, modern and traditional dances, and has nurtured some of the brightest dance talents in Malaysia. It is no hyperbole to say that Ramli has been instrumental in revolutionising dance in Malaysia.

Ramli began his presentation lightly, expressing his incredulity at having been invited, as a dancer, to give a talk to inspire lawyers. However, he perhaps hit the nail on the head when he quipped, "But then again, many lawyers are frustrated performers!"

Ramli begun his journey by studying and dancing the Malay traditional dances. He subsequently poured his

heart and soul into Indian dances. When Ramli returned home in the early 90s, Kelantan had banned the Mak Yong dance and wayang kulit. Ramli decided to champion the preservation of traditional Malay dances. "To ban (these dances) is a form of cultural genocide of the Malays."

Ramli also related his disagreement with the government's stance of appraising the value of traditional dances in terms of ringgit and sen. "When we talk about projecting the identity of the nation, it has to be something more than [ringgit] and sen.

Ramli went on to explain the creativity and allure of dance according to his perception.

"According to the Natvasastra, there is no concept in the universe that cannot be expressed in dance...for a dancer to be still, is death."

"The body of a dancer is the instrument of the dancer. [It] can be an instrument to express anything in the world, even mathematical equations. The body to an Indian dancer is like a temple. Just as a temple has to be beautified and purified to house the god, the body of the dancer also has to be purified."

Ramli went on to state that this concept is no different to the one in Malay dance, whereby the body is looked upon as the "istana" (palace) and the "semangat/ angin" (inspiration/wind) is the metaphor for the ruler of the "istana". The "semangat" has to be in a state in which it can govern the body proper.



Ramli drew a relation between this almost mystic concept with everyday life, where a person would have to be in full control of their body in order to achieve their goals.

Ramli explained that dance is a metaphor, and it becomes transformative for the observer because of its power of suggestion. "The movements in a dance are universal, and it can [explain] even when words become inadequate.

One of the highlights of the evening was when the audience was treated to an improvised performance of dance by one of Ramli's pupils, Guna.

When asked by a delegate whether there were any mental obstacles to overcome by virtue of being a Malay performer doing Indian dances, Ramli responded with a definitive and resounding no.

"I am fully liberated in that sense. I am a very spiritual person but that [such mental obstructions] is not the way religion taught us. So the kind of spirituality that I kind of feel for is to be in connection . . . and dance or movements can [do that]. That is the universal message and that is what I am about."

Ramli was also asked by the Malaysian Bar President, Lim Chee Wee, as to how he had achieved the toned physique that he had. Ramli replied:

"Did you ask Tony [Fernandes] the same question? To be fair Tony also asked me and I answered, it is by suffering. And I told him, Tony, you just don't suffer enough as I do."

Ibrahim theatrically bowed out to a well-deserved standing ovation.

By Tan Shang Neng and K Shanmuga

## **Glamorous Cocktail Reception at the Porsche Centre**



Surely, it can't get any more glam! than having the ILMC 2012's Welcome Cocktail Reception in a luxury car showroom!

Right smack in the heart of Kuala Lumpur, the dinner to welcome all delegates on the opening day of the conference was held at the gorgeous and unlikely venue that was the Porsche Centre, Bukit Bintang.

It was a scene set for a perfect evening. Beautiful, sexy curves were laid bare for all to see (and touch) in the form of the myriad Porsches dotting the two-floor venue. The ladies and gentlemen present were dressed well



enough to get lucky if they needed to, and there was in fact a lucky draw with very attractive prizes (but not, unfortunately, a new car).

The live band entertained, as delegates knocked back some good food and better drinks as they let loose after an eventful day of seminars, inspirational talks and scouring the booths at the "Anything Legal" Exhibition.

The venue boasted an outdoor and indoor setting, as well as an upper floor which had four luxury cars on display.



Even the President of the Malaysian Bar, Lim Chee Wee, knew what was needed and delivered a short and sweet speech, thanking our kind hosts Porsche and Auto Bavaria, and jokingly implored the "fat cats" present that evening to buy one car each.

A marvellous way to end a fantastic first day of the IMLC 2012

By Tan Shang Neng and K Shanmuga

## IMLC 2012 "Anything Legal" Exhibition | Presentations Day 3 | Friday | 28 Sept 2012

Organisation	Presentation Title	Time
Fileforce Sdn Bhd	Transforming Legal Records and Document Management Landscape	10.05am – 10.35am
Legal Manager Software & eLawyer Recruitment	Total Solutions for Legal Profession – Legal Technology & Talent	10.35am – 11.05am
Multimedia University	An Overview of Law Programme in MMU	11.05am – 11.35am
Brickfields Asia College	Upgrading Yourself through the BAC-PLS	3.35pm – 4.05pm
eCabin.com.my	Cloud Computing for Lawyers	4.05pm – 4.35pm

## Whither Freedom of the Press?

To set the scene, the scintillating moderator Jacqueline Ann Surin (Co-Founder and Editor of The Nut Graph) asked the crowd this: Do we have the media we deserve?

### How did we come to this state?

The vast majority of delegates in the hall responded in the negative. So one of the main questions in the session was how we have found ourselves in the state that we are in.

Lawyer Malik Imtiaz Sarwar (Partner Malik Imtiaz Sarwar) attributed this primarily to the situation in which the mainstream media ("MSM") is linked or owned, either directly or indirectly, by political parties, some of which form the government of the day.

"Now, there is nothing wrong with that per se. However, what is happening in Malaysia is that there is a conflict of interest that is immediately set up by the fact that there is a regulatory framework", said Imtiaz.

He explained that this regulatory framework, which covers the award of licences to the MSM for their operations, is managed by the government of the day, which in turn has interests in the MSM themselves. Such a circumstance would remove the objectivity from the relevant authorities' judgments, or introduce an apprehension of bias, at the very least.

R Nadeswaran (Editor, Special and Investigative Reporting, The Sun Daily) however, held a different view.

"The main culprits are the editors. It is the editor who decides what you, the Malaysian public, will read," he said. access to information.

Nadeswaran opined that editors (who are generally perceived as politically-appointed, given the control of newspapers by political parties) continuously second-guess whether an item to be published will be approved by their "political masters". Such a practice encourages self-censorship, geared along political lines, without any express directions from the "political



masters". It is for this reason, Nadeswaran said, that editors are the foremost party responsible for the decline in ethical journalism.

### Can Malaysian Journalists be Ethical in Today's Media Landscape?

"Yes, they can, but with very severe limitations. The whole country and newsroom is against you", Masjaliza Hamzah (Executive Officer, Centre for Independent Journalism) said.

Masjaliza explained that a journalist is often unsure of whether one's editor, union or colleagues would support him when he or she is backed into a corner, especially when the laws and regulations are designed to further limit the freedom of the press and restrict

"Unlike Indonesia and the Philippines, Malaysia does not have laws which protect and help promote the freedom of the press. Even Article 10 (guaranteeing freedom of speech, as enshrined in the Federal Constitution of Malaysia) has been interpreted restrictively at times to place limitations on the freedom of expression," she added.



Imtiaz subsequently identified the various legislation, including regulations, which further restrict or hinder the freedom of the press. In particular, the Printing Presses and Publication Act 1984 still requires the MSM to have a permit from the relevant ministries which can be revoked. Other laws like the Sedition Act 1984 and the Penal Code further create instances whereby the MSM, or even the responsible individuals within, may fall foul of criminal sanctions.

The lack of protection for press freedom and the restrictive nature of many pieces of legislation are seen to contribute to the state we are in.

### Where Do We Go From Here?

"This is fundamentally a rule of law issue," Imtiaz said. "The situation now allows the government to act without reproach or without fair consideration." Imtiaz said that even if the government refuses to make the adequate amendment or legislation to protect and promote press freedom, the judicial system itself could create such a fundamental right. He observed that judges have been willing to make some stunning and positive judgments on civil liberties and rights.

In *Lim Guan Eng v*. Utusan Melayu (M) Bhd (2012) Justice Varghese George Varughese decided that "...[in becoming] a more libera democracy... the courts would have to respond appropriately when the required standards are violated or the right to publish freely are abused".

Imtiaz suggested that judges could look at the constitutional provisions more dynamically, to give effect to the freedom of

the press even if it is not expressly enshrined within the constitution

To a question by a delegate, Imtiaz said that currently, it would seem that suing the MSM might well be the best method to promote ethical and professional journalism.

A poignant suggestion of Masjaliza's was for the creation of an independent and regulatory media council. This will not only remove the government's outright involvement in regulation but also allow the prospective council to impose standards and codes upon its members.

The consensus among the speakers was that we now have a media that we do not deserve, and it is within our power as the electorate to create the political will and force to assert the change that we want.

By Tan Shang Neng and Kevin Kam

## 2<sup>nd</sup> Raja Aziz Addruse Memorial Lecture







## Performance by Temuan Tribe at 4F







## **Today's Schedule**



## **IMLC Delegates' Opinion Poll**

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 until 3:45 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 question can be done until 3:45pm on 28 Sept 2012.

**Questions for IMLC Delegates' Opinion Poll** 

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

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 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.