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CREATING PRECEDENCE

# INTERNATIONAL MALAYSIA LAW CONFERENCE

RESHAPING THE LEGAL PROFESSION, REFORMING THE LAW

Daily Conference News | 24 September 2014 | Wednesday

## Where Have All the Matrimonial Assets Gone?

By Honey Tan Lay Ean

Matrimonial proceedings are not just about divorce, judicial separation, custody and maintenance. One of the hottest contested areas in divorce or judicial separation proceedings is in the distribution of matrimonial assets.

Generally, matrimonial assets are assets acquired during the subsistence of a marriage. This includes monies in bank accounts and the Employees Provident Fund ("EPF"), unit trusts, shares in companies, houses, land, apartments, and cars. In very limited circumstances, assets acquired before marriage and inheritance may form part of matrimonial assets.

The rising global middle class has added another dimension to the fight over matrimonial assets. There are increasing instances of matrimonial assets being kept abroad, whether they be in the name of individuals, or by corporations substantially owned and controlled by one party in a marriage — often without the knowledge of the other party.

So, how does a lawyer assist a client in tracing those matrimonial assets hidden away, especially when they are not kept in Malaysia?

In the session on "Tracing of Matrimonial Assets in Malaysia and Abroad", **Bruce Doyle** from Doyle Family Law, Australia will outline how such matters are dealt with in Australia. His informative

paper, "The Money has Gone to Australia — What Next?", gives invaluable and practical information on how to gather the basic facts in the comfort of your office, using your computer. Unlike Malaysia, in Australia a great deal of information is easily obtained online, and free of charge. Mr Doyle marvels at how information technology is reshaping the legal profession — some of the information now available online was not available only a few months ago. In the "Reforming the Law" section, Mr Doyle shares his analysis of emerging trends and issues in Australian family law.

He notes that private investigators are rarely used in tracing matrimonial assets whereas forensic accountants are more often used when claims on businesses are made, especially when the businesses are of a significant size. He also noted that businesses of a modest size are often valued, if only to show that some claims made by parties are unrealistic.

Finally, he sets out the jurisdictional threshold in property matters in Australia, the advantages of choosing Australian property jurisdiction and the importance of making full and frank disclosure of ownership of assets so that the court can make fair and just orders. It is interesting to note a case he cited, where disciplinary action was taken against a lawyer who had been complicit in



Bruce Doyle



Malathi Das



Kiranjit Kaur Dhaliwal



Honey Tan Lay Ean

withholding information of a material change in his client's circumstances which, if known, would have led the court to make a different order.

**Malathi Das**, who hails from Singapore — the Switzerland of the East — is another speaker in this session. She will outline the common tactics used by parties to move assets to third parties, sometimes with the use of false documents. Ms Das will speak about the importance of family law practitioners appreciating financial issues in the context of international law, and share information on the common challenges confronting domestic and cross-border assets and income tracing.

**Kiranjit Kaur Dhaliwal**, a Malaysian family law practitioner, will address the provisions in the Law Reform (Marriage and Divorce) Act 1976, the Divorce and Matrimonial Proceedings Rules 1980 and the Rules of Court 2012, which are used when tracing matrimonial assets. She will include a discussion on applications made to compel third

Tracing of Matrimonial Assets in Malaysia and Abroad | 26 Sept 2014 (Friday)  
Breakout Session 6, Stream A | Taming Sari 3

parties to provide disclosure. Ms Kiranjit will address the efficacy of using professional valuers and accountants to ascertain the value of assets. She notes that once there is some disclosure, further information may be gleaned by studying bank accounts that may point to other undisclosed assets. Ms Kiranjit further notes that forensic accountants are helpful in providing analyses with the information provided to them.

While this session is aimed at family law practitioners, it will also provide an abundance of information and shared experiences that will be invaluable to lawyers who are involved in civil litigation, especially those practising in the area of insolvency law. This lively session will allow ample time for a question-and-answer segment, and interaction between speakers and delegates.

**Honey Tan Lay Ean**, Chairperson of the Family Law Committee of Bar Council Malaysia, will moderate this IMLC 2014 session.

## Business and Human Rights

by Andrew Khoo

Business and Human Rights | 26 Sept 2014 (Friday)  
Breakout Session 8, Stream C | Tun Sri Lanang 1 & 2

On 16 June 2011, the United Nations Human Rights Council endorsed the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework". These Guiding Principles were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie, and his team.

The Guiding Principles recognise the role of business enterprises as specialised organs of society performing specialised functions, and require them to comply with all applicable laws and to respect human rights. These principles apply to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

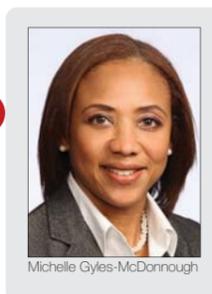
What this means for business enterprises is that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. This requires that business enterprises: (a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

It also requires business enterprises to reflect their

commitment to protect and respect human rights in operational policies and procedures, conduct human rights due diligence and undertake human rights impact assessments of their business operations. Business enterprises are also to have effective remedy and redress mechanisms in place to address breaches of human rights in their workplace and business activities.

Why should this matter to us? For one thing, the responsibility to uphold, promote and protect human rights does not rest solely with governments. Non-state actors, which include business enterprises, also have a role to play in ensuring that human rights are not violated. The same is true for government-linked enterprises, which perhaps have a greater responsibility because of their ownership links with the state.

How has this overall framework been implemented in Malaysia? What is the level of knowledge of and compliance with these Guiding Principles in Malaysia? Four speakers, all women, will take us through the session simply entitled "Business and Human Rights". **Michelle Gyles-McDonnough**, the United Nations Resident Coordinator for Malaysia, will kick the session off by giving an overall view and international perspective of the genesis and development of the Guiding Principles. As concurrent United Nations Development Programme ("UNDP") Resident Representative, Michelle will also be able to share from the



Michelle Gyles-McDonnough



Professor Dato' Dr Aishah Bidin



Long Seh Lih



Nor Azimah Abdul Aziz

perspective of business and human rights and how it assists in the process of economic development.

This will be followed by a presentation from **Professor Dato' Dr Aishah Bidin**, who is a Commissioner of the Human Rights Commission of Malaysia ("SUHAKAM"), Professor of Corporate and Insolvency Law, and Dean of the Faculty of Law at the National University of Malaysia (Universiti Kebangsaan Malaysia, "UKM"). She will speak on efforts by SUHAKAM to disseminate knowledge and information about the Guiding Principles to business enterprises and other stakeholders in Malaysia.

**Long Seh Lih**, Co-Founder of the Malaysian Centre for Constitutionalism and Human Rights ("MCCHR", perhaps more popularly known as Pusat Rakyat LoyalBurok) will weigh in on the work done by MCCHR, and what can be done by non-governmental organisations in general, in advancing public awareness in the area of business and human rights. Seh Lih brings with her a wealth of experience, having previously worked for SUHAKAM and for the United Nations in Afghanistan and Timor-Leste.

With the Companies Commission of Malaysia ("CCM") currently in the process of amending the Companies Act 1965 to include corporate social responsibility reporting obligations in the annual report and other regulatory disclosures as part of the law, it is timely for business enterprises in Malaysia to sit up and take note of their ever-increasing obligations and responsibilities in an expanding rules-based globalised business world. **Nor Azimah Abdul Aziz**, Director of the Corporate Development and Policy Division at CCM, will provide input on how the regulatory environment is changing to recognise, incorporate and reflect this new thinking.

**Andrew Khoo**, Co-Chairperson of the Human Rights Committee of Bar Council Malaysia, will moderate this IMLC 2014 session.



Andrew Khoo

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**DAY 1 | 24 September 2014 | Wednesday**

07:30 - 09:00 Registration | Ground Floor, Registration and Info Counter  
 09:00 - 09:15 Introduction | Taming Sari 1, 2 & 3  
 09:15 - 09:30 Welcoming Address by **Christopher Leong**, *President, Malaysian Bar* | Taming Sari 1, 2 & 3  
 09:30 - 10:00 Opening Address by **The Right Honourable Tun Arifin Zakaria**, *Chief Justice of Malaysia* | Taming Sari 1, 2 & 3  
 10:00 - 11:00 Keynote Address: **The Practice of Law: A Vocation Survives Amidst Globalisation** | Taming Sari 1, 2 & 3  
 Speaker: **The Honourable Geoffrey Ma, GBM**, *Chief Justice of the Hong Kong Court of Final Appeal*  
 Moderator: **Steven Thiru**, *Vice-President, Malaysian Bar; Partner, Shook Lin & Bok*

11:00 - 11:30 Coffee Break | Exhibition Area

**11:30 - 12:45 Plenary Session 1 | Taming Sari 1, 2 and 3**  
**The Federal Constitution of Malaysia after 50 Years – What the Future Holds**

Speakers:  
 1. **Dato' Dr Cyrus V Das**, *Managing Partner, Shook Lin & Bok; Past President, Malaysian Bar*  
 2. **Tommy Thomas**, *Partner, Tommy Thomas*  
 3. **Dr Azmi Sharom**, *Associate Professor, Faculty of Law, University of Malaya*

Moderator: **Firdaus Husni**, *Advocate & Solicitor, Chooi & Co*

12:45 - 13:30 Networking Lunch | Taman Mahsuri  
 Sponsored by Malaysian Current Law Journal and SCC Online



**13:30 - 14:45 Breakout Session 1**

**Stream A | Taming Sari 1 & 2**  
**Litigation & Dispute Resolution**

**Lifting the Corporate Veil: Maxim, Mystery or Myth?**

**Speakers**

- The Right Honourable Lord Robert Walker of Gestingthorpe**, *United Kingdom*  
*Retired Justice of the Supreme Court of the United Kingdom*
- Lim Koon Huan**, *Partner, Skrine*
- Dr Josh Wilson SC**  
*Senior Counsel, Owen Dixon Chambers West, Australia*  
*(unable to attend; paper only)*

**Moderator**

**The Honourable Justice Dato' Mary Lim Thiam Suan**  
*Judge, High Court of Malaya*

**Stream B | Taming Sari 3**  
**Corporate & Commercial**

**The International Financial Reporting Standards – Impact on Legal Advice**

**Speakers**

- Dato' Mohammad Faiz Azmi**  
*Executive Chairman, PwC Malaysia*
- Datuk Dr Nik Norzrul Thani Nik Hassan Thani**  
*Senior Partner, Zaid Ibrahim & Co*
- Dato' Azmi Mohd Ali**  
*Partner, Azmi & Associates*

**Moderator**

**Gunasegaran Singaravelu**, *Partner, John Ang & Guna*

**Stream C | Chulan View\***  
**International Law & Public Interest**

**Wealth Protection and Preservation**

**Speakers**

- Eason Rajah QC**  
*Barrister, Ten Old Square Chambers, United Kingdom*
- Tim Cartwright**, *Director, Hawksford, United Kingdom*

**Moderator**

**George Pathmanathan**, *Consultant, Naqiz & Partners*

*\* Chulan View is located on the 13<sup>th</sup> floor of The Royale Chulan Kuala Lumpur.*

**15:00 - 16:15 Breakout Session 2**

**Stream A | Taming Sari 3**  
**Litigation & Dispute Resolution**

**Directors' Duties and Commercial Risk-Taking**

Joint Session with the Australian Bar Association



**Speakers**

- Mark Livesey QC**, *President, Australian Bar Association*
- YM Tunku Dato' Mahmood Fawzy Tunku Muhiyiddin**, *Independent Director in several companies*
- Robert Low**, *Partner, Ranjit Ooi & Robert Low*
- Sivaneindiren Selvanandam**  
*Partner, Cheah Teh & Su*

**Moderator**

**Ira Biswas**, *Partner, Chooi & Company*

**Stream B | Taming Sari 1 & 2**  
**Corporate & Commercial**

**GST and the Legal Profession – What You Need to Know**

Session Sponsor: BDO



**Speakers**

- Ng Swee Weng**, *Senior Advisor, Accounting & GST, BDO Malaysia*
- Jeff O'Connell**  
*Executive Director, Tax & GST, BDO Malaysia*
- S Saravana Kumar**, *Partner, Tax, GST & Private Clients, Lee Hishammuddin Allen & Gledhill*

**Moderator**

**Datuk DP Naban**  
*Senior Partner and Head of Tax, GST & Private Clients, Lee Hishammuddin Allen & Gledhill*

**Stream C | Chulan View\***  
**International Law & Public Interest**

**Environmental Law: Private Law Remedies and the Role of Government in Enhancing Environmental Protection and Management**

**Speakers**

- Colin McCaul QC**, *Barrister, Thirty Nine Essex Street Chambers, United Kingdom*
- Stephen Tromans QC**, *Barrister, Thirty Nine Essex Street Chambers, United Kingdom*
- YB Elizabeth Wong Keat Ping**, *Member, Selangor State Legislative Assembly for Bukit Lanjan*

**Moderator**

**Roger Chan Weng Keng**, *Partner, Chan Weng Keng & Associates*

*\* Chulan View is located on the 13<sup>th</sup> floor of The Royale Chulan Kuala Lumpur.*

16:15 - 16:45 Coffee Break | Exhibition Area

16:45 - 17:00 Arrival of Guests for 3<sup>rd</sup> Raja Aziz Addruse Memorial Lecture

**17:00 - 18:00 3<sup>rd</sup> Raja Aziz Addruse Memorial Lecture | Taming Sari 1, 2 & 3**

**Inspirations from Raja Aziz Addruse: Morality and the Rule of Law**

Speaker: **Yang Amat Mulia Tunku Zain Al-'Abidin ibni Tuanku Muhriz**, *Founding President, Institute for Democracy and Economic Affairs ("IDEAS")*

**18:15 WELCOME COCKTAIL RECEPTION | TAMAN MAHSURI**

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**IMLC 2014 Online Survey | Complimentary Passes to be Won!**

Delegates are encouraged to participate in the daily IMLC 2014 online survey.

All registered delegates will receive an SMS and email each day, providing a link to the survey form for the day.

Fill in the survey form for the IMLC 2014 sessions you attended, and stand to win a complimentary pass for Bar Council Continuing Professional

Development ("CPD") events. We have five passes, worth RM200 each, to give out daily!

Don't forget to enter your three-digit code (printed on your IMLC 2014 delegate name tag) on your survey form each day so that we can contact you if you are one of the lucky winners!

# The Lex10 Journey: Creative Destruction for Law Firms

With technology allowing greater strides to be made in different industries, the focus on the mind of the **founder and CEO of LEX10, Ng Sheau Feng**, was what technology could do for the legal community.

His story is a simple one that has allowed his innovative streak to come to the fore.

Armed with a degree in Microelectronics and Computer Science, Sheau Feng had a vision to make a mark in the world of technology. He worked in various private and multinational organisations, picking up critical skills along the way such as creative and innovative thinking, marketing, finance, technical know-how including handling of hardware and development of software, and understanding how business works in general.

His window of opportunity opened when he was contacted by a law firm in Sungai Petani that was interested to have access to a simple technology solution for the administration of client particulars, which the partner of that firm had seen done in law offices abroad.

Curiosity kicked in and Sheau Feng decided to invest time to understand the mechanics of operating a law firm. His vision on the use of technology led him to create one of the first web-based applications in Malaysia that allowed users to create, manage and store client records and case data. This was in 1997.

At that time, most law firms were still less technologically-inclined, and this was reflected in the way law firms were managed and administered. This presented Sheau Feng a chance to influence and create change, and he saw a need to create a generic system that would allow law firms to move away from the paper-centric, bulky and burdensome structures of client and file management (particularly in conveyancing matters) to a lighter, easily accessible digital system.

In 1998, Sheau Feng joined a German-Malaysian joint venture company involved in handling a sports management system for many international events. As Chief Operating Officer, he had extensive exposure to web technology, and this exposure was an affirmation that web applications would be the way forward.

Shortly after that, Sheau Feng decided that it was time to venture out on his own and to



carve a niche for himself in the ICT industry. The question was what, where and how.

"I chose the legal industry, because I wanted to find a niche professional market, and after reviewing the various options available, I decided that this would be the direction I would take since I already had experience with a law firm. Additionally, my research indicated that there was a specific need to be met in the legal industry, particularly in developing the technology to transform the way law firms are run and managed, and to help law firms migrate to a modern and efficient digital approach. I believed I had an edge because of my earlier exposure to how law firms operate," Sheau Feng revealed.

His decision to venture into this area was mainly driven by his desire to innovate the way law firms operated, and the prospect of creating a comprehensive automated system was alluring.

On choosing this path, Sheau Feng shared: "I did not want to be just another entrepreneur; I wanted to be a renegade entrepreneur. A renegade entrepreneur develops a concept which was propounded by economist and political scientist Joseph Schumpeter called 'Creative Destruction'. It means one that would fundamentally destroy the old structures and replace it with something entirely new and innovative. An example of this is the digital camera, which has totally revolutionised the photography world."



Of course, once Sheau Feng started developing his idea for the legal industry, he found that it was, in general, impervious to technology! While he had a clear understanding about how to improve the efficiency of the operations of law firms by the use of technology, he now faced an uphill task in creating a system that would be acceptable to law firms.

Back then, the Multimedia Development Corporation ("MDeC") was aggressively encouraging local technology companies to innovate so that they could go international. Sheau Feng grabbed this golden opportunity, approached them, presented his idea which was subsequently accepted, and he was allowed to attend a series of seminars on a range of topics that emphasised how to secure funding for this project.

This was a new ball game for Sheau Feng. There was constant exposure to investment and consulting programmes funded by MDeC on business analyses, marketing strategies, marketing potential and a host of other areas. All participants and their business plans were rigorously reviewed and their product proposals evaluated.

"I received high ratings from Deloitte Singapore and Global Innovation Research Centre for the feasibility of my plan," said a very-pleased Sheau Feng. He next came up with a prototype of his project and test ran that with selected law firms.

Sheau Feng further explained: "In 2007, MDeC launched a pre-seed grant. The selection would be made from amongst the 200 companies that had participated in all the different programmes. The showcasing of the concept had to be perfect. There were three internal selection processes and presentations were made to representatives

from the top technology and investor firms in Malaysia. My project was selected out of the 200 companies as one of the five 'Batch 0' recipients!"

Once this was achieved, Sheau Feng had to set up a new company to fulfil all the requirements of the grant. In 2009, LEX10 was awarded one of the top seven projects in the MSC Malaysia Pre-Seed Fund Programme.

When asked about the origins of the name "LEX10", Sheau Feng clarified that "LEX" means law in Latin, and "10" is significant in technology as it reflects the bits and bytes ie 1 and 0, hence the name and birth of LEX10. "The idea was that this was a union of both the legal and technology worlds, and I wanted to bridge the gap between the two with my innovation," explained Sheau Feng.

"'10' also signifies perfection, and if you pronounce 'LEX10' quickly, it sounds like 'let's dance'. Our tagline is 'Innovate for Peace of Mind' — you can only really dance when you have peace of mind, and that is what I wanted this solution to do — to provide law firms with peace of mind so that they can focus on what they need to do," mused Sheau Feng.

Sheau Feng ended with these words: "This project and the last seven years of my life dedicated to it, is not about money. Yes, I want to earn a living, but my objective is not wealth. I want to change the landscape, to make a real difference."

**To be continued tomorrow. Watch this space!**

**LEX10**

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