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RESHAPING THE LEGAL PROFESSION, REFORMING THE LAW

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Speaking Truth to Power: Raja Aziz Addruse, a National Hero (and a Great Constitutional Lawyer)

By Chin Oy Sim and Joe Chin

"I am not a lawyer. Thank God," quipped **Yang Amat Mulia Tunku Zain Al-'Abidin ibni Tuanku Muhriz** to appreciative chuckles from the audience, as he kicked off the 3rd Raja Aziz Addruse Memorial Lecture, entitled "**Inspirations from Raja Aziz Addruse: Morality and the Rule of Law**", delivered at the International Malaysia Law Conference ("IMLC") 2014 at The Royale Chulan Kuala Lumpur, on 24 Sept 2014.

The Founding President of the Institute for Democracy and Economic Ideas ("IDEAS"), and son of the reigning Yang Di-Pertuan Besar of Negeri Sembilan, characterised the lecture as "the longest lecture of [his] life in front of an intimidating audience", but it lived up to the title and found resonance with the listeners, who expressed their support and approval with intermittent rounds of loud applause.

The lecture proper had been preceded by introductory remarks by Christopher Leong, President of the Malaysian Bar, who described Tunku 'Abidin as, among others, a prolific writer on current affairs and social issues; the author of a book for the Installation of the Ruler of Negeri Sembilan and who led a project to revitalise the State Anthem; an Eisenhower Fellow; and a recipient of the Rotary Young Integrity Award.

Mr Leong also provided a brief overview on Raja Aziz Addruse ("Ungku, as most of us fondly and respectfully called him")'s background, and insight into the genesis of the "oft-cited motto of the Bar 'without fear or favour'", which he noted had been initially used in the editorial in the Bar's October 1969 issue of *Insaf*, with Ungku at its helm as editor. The Memorial Lecture series had been instituted after Ungku's demise, elucidated Mr Leong, by the Malaysian Bar in collaboration with The Honourable Society of Lincoln's Inn Alumni Association of Malaysia in October 2011, to "honour one of our most respected and distinguished Presidents". Subsequent Memorial Lectures would feature in the biennial IMLC.

> "In such times we miss Raja Aziz. His moral courage, leadership and reasoned voice of calm would pierce through the turbulence to educate us all."

As Tunku 'Abidin put it, Raja Aziz was "rightly best-known for three things: for being elected thrice to the presidency of the Bar Council; for founding the country's first human rights NGO; and for dealing with profound constitutional issues either through his cases, writing or speeches".

But Tunku 'Abidin's first recollection of the man was not his unparalleled *curriculum vitae*. It was of "Uncle Aziz", a family friend whose vital role in the nation's democracy became evident to Tunku 'Abidin in his teenage years. Raja Aziz was first and foremost a man whose integrity, honour and morality were in abundance. He had turned down several offers of Datukships because, in his own words, "You don't need a title to 'be someone'".

Building on this apt anecdote, Tunku 'Abidin reflected on how the low level of confidence in the system of conferment of honours in Malaysia is indicative of a general air of malaise regarding the health of national institutions and our democracy.

To delve into the causes of this state of affairs, Tunku 'Abidin examined our constitutional setup

by considering various tenets and perspectives of constitutionalism expounded by prominent thinkers ranging from AV Dicey, Friedrich Hayek and Lord Bingham to the more recent Ronald Dworkin, Jeffrey Jowell and Trevor Allan, to exemplify and convey how deep, nuanced, complex and controversial constitutional law is. In reference to the very nature of law, he questioned, "Does legislation that fails to fulfil [the criteria of providing order and clarity] not deserve to be regarded as law?" He observed that law must be placed in its proper context, as it does not operate in a vacuum but "should reflect society's ideals and values, clarifying them and providing order to societal morality. . . morality is personal but the law must be universal".

Raja Aziz did not favour Dicey's view that the sovereignty of Parliament was paramount and even the judiciary was subject to Parliament. Tunku 'Abidin spoke about how Raja Aziz believed instead in the supremacy of the Constitution and had opposed the 1988 amendments to Section 121 of the Federal Constitution as compromising the independence of the judiciary, and how Raja Aziz had in 2007 famously said, "[The Constitution] means nothing to me at the moment, because it can be changed at any time." Raja Aziz was a firm believer that fundamental rights provided by the Constitution formed part of its basic structure and could not be abrogated.

> "[W]hile Raja Aziz rejected all offers of Dato', he certainly lived up to the style of "Yang Mulia". But it is the name "Addruse" that we must ensure endures as an inspiration of steadfast morality."

The audience members visibly sat up and took (even greater) notice when Tunku 'Abidin postulated that:

> . . . the basic structure of our Constitution is under threat today with regards jurisdiction of courts, religious issues and the relationship between Peninsular Malaysia and Sabah and Sarawak. Even more dangerously, there are those who have deliberately reinterpreted basic premises of our Constitution, citing key articles out of context as justification. Raja Aziz, as a staunch defender of the Constitution as it was understood by those who drafted and adopted it, would be appalled.

To illustrate how Raja Aziz was fearlessly vocal in expressing his views on a myriad of topical constitutional, human rights and public interest issues, Tunku 'Abidin spoke charismatically of Raja Aziz's thoughts on the independence of parliamentarians, stifling of press freedom, the constitutional amendments in 1993 that removed the legal immunity of the Rulers, the mandatory death penalty, the police killings of the late 1990s, right to freedom of belief, conversion of children to Islam by one spouse, and detention without trial, as well as of his "long-held distaste for the Sedition Act".

Time and time again, Raja Aziz spoke truth to power.

Tunku 'Abidin then painted a disquieting picture of Malaysia's current social and political climate and culture, which are beset by polarisation, patronage and corruption, and institutional destruction, and questioned the hope for rule of law and morality under such circumstances. He labelled the belief that a change of the governing political party will bring about real change as "unmitigated fantasy", which drew cheers of agreement. According to him, "[W]e need to cajole political forces into a consensus, to re-forge a shared understanding of the Constitution, the rule of law, and the separation of powers."

Tunku 'Abidin made several references to the Sedition Act and its current (mis)use, and noted Raja Aziz's point about the "elasticity" of the definition of 'seditious tendency'". Earlier he had remarked that Raja Aziz had shown him how no issue is beyond debate and had proved that even the most contentious and provocative subjects could be explored calmly yet comprehensively. Tunku 'Abidin advocated the submission of a complete draft of the National Harmony Bill to Parliament as soon as possible so that both sides — those who support as well as those who oppose the Sedition Act — would be assuaged.

As Tunku 'Abidin began drawing his evocative and compelling lecture to a close, he encouraged his listeners to take comfort in the continuing contestation between the Parliamentary and Constitutional supremacy. "Like many of you, I pray that the battle that Raja Aziz fought throughout his legal career can still be won — but only if the Malaysian judiciary successfully asserts its independence, and wins respect from the people."

On a lighter note, he concluded, "If I have committed sedition, then God help us all — though I can count on 701 Members of the Malaysian Bar [who supported the Bar's motion to repeal the Sedition Act at its recent EGM] to assist." [Uproarious laughter].

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Global Trends in the Legal Profession: the Drivers and the Disruptors

By Soo Siew Mei

The 3rd plenary session entitled "**Global Trends in the Legal Profession: the Drivers and the Disruptors**" was moderated by **Chew Seng Kok**, Partner of Zaid Ibrahim & Co, who recognised the timeliness of IMLC 2014's theme — "*Reshaping the Legal Profession, Reforming the Law*" — which is inspired by the challenges in changing the landscape of the legal profession. In his own words, Mr Chew affirmed that he is a firm advocate for change and liberalisation.

The speaker, **Tony Williams**, Principal of Jomati Consultants LLP in the United Kingdom, approached this subject by looking at two particular areas that affect global trends, ie the drivers and the disruptors. The drivers of global trends cover **(1) regionalisation and globalisation, (2) regulation, (3) the knowledge economy** and most importantly, **(4) client demands.** While the disrupting elements of global trends cover **(1) the effective use of technology, (2) new business methods, (3) cheap communication costs** and **(4) new entrants.**

The Drivers of Global Trends

Mr Williams pointed out that since the global financial crisis in 2008, and with regionalisation and globalisation, the trade flow of goods, capital and know-how has shifted at unprecedented levels. Furthermore, the Internet provides accessibility to new markets, market information and customer demands.

Another driver of global trends is regulation. The regulators have become better resourced and more assertive, especially in Western economies.

He noted the large scope with regard to regulation, as well as its potential extraterritorial impact, and remarked that a successful law firm is dependent on its understanding and navigating the regulatory maze.

The next driver of global trends is knowledge economy, to which Mr Williams highlighted that intellectual property is the most valuable asset of many of the world's leading companies. Reference was drawn to the Chinese Internet-based e-commerce business, Alibaba, to show that technology has created broad and fantastic opportunities. However, it can also lead to titanic legal battles such as that between Apple and Samsung. In an era of information overloaded, one of the challenges is how to protect, use, and prioritise information and materials. He also reminded the audience that it is important not to forget how essential continuous innovation has become, and that the digital world enables countries to leapfrog technologies to adopt the best solutions, such as mobile banking.

He next emphasised that client demands must not be ignored, and stressed the importance of understanding what clients need, and to deliver the legal services, considering that every business expense has to be justified and reduced, with no exception to legal spend.

The Disruptors

After discussing the drivers of global trends, he arrived at the subject of disruptors of global trends that are impacting the legal market.

The first and foremost disruptor is the use of technology. With the use of technology, much legal work can be done effectively, cheaply and comprehensively. However, the downside is that technology risks demystifying the legal profession. Therefore, professionals need to understand how to use it and to stay relevant.

The next disruptor, according to Mr Williams, is the challenge to re-examine new business methods. There is today, an increase in paralegals, contract lawyers, and even shoring and off-shoring lawyers. In determining the business methods, there is a range of things that need to be looked. For this, a much higher level of professionalism is required.

Cheap communication costs have also affected global trends. With its ease of use, the fundamental proposition is to manage and maintain the accessibility of documents and the level of security.

On the issue of new entrants, Mr Williams stated that the traditional partnership model has begun to change. He revealed that in the United Kingdom, there are now law businesses owned by listed companies, private equity, retailers (Co-op) and local authorities. Other countries including Canada, Singapore and Hong Kong are also considering the issue of new entrants.

He next disclosed the next big thing that has developed and would affect the legal profession — the emerging large accounting firms that are also gaining grounds in fields relevant to them. Mr Williams raised the fact that in Asia, PwC has extended its legal offering into Singapore by tying up with a local law firm, Camford Law and is prioritising Japan, Hong Kong and China with interests in South Korea and Indonesia. PwC already has legal teams in Australia (where it recently added leading lawyers), India, Vietnam, Taiwan, Laos, Thailand and the Philippines.

To conclude, Mr Williams acknowledged that the legal profession faces an unprecedented period of change, much of it caused by developments outside the legal profession and outside its control. It is therefore important to ensure that lawyers are not merely legally competent, but also proficient in business and politics, and maintain openness and understanding of what is happening in other jurisdictions and how they can be applied. Last but not least, Mr Williams reiterated that lawyers must understand what their clients need and deliver the legal service.

Liability of Barristers for Negligence — England and Australia

By Syamsuriatina Ishak and Joe Chin

The second plenary session for IMLC 2014 entitled " **Liability of Barristers for Negligence – England and Australia**", was a stimulating presentation by **The Honourable Justice Susan Kiefel AC**, Judge of the High Court of Australia. The session, moderated by past President of the Malaysian Bar, **Ragunath Kesavan**, saw a packed house of the delegates eager to understand the English and Australian perspective on the liability of legal practitioners. Justice Kiefel, a respected luminary with many years of experience in the Australian judiciary, elucidated the audience on the development of law on professional liability in England.

Justice Kiefel began with an examination of professional liability law in England, in particular the ancient immunity available to English barristers, founded on principles of public policy and considerations of the interest of the administration of justice under the cab-rank rule. This rule ensured that all persons, regardless of financial standing, was able to have access to legal representation.

Although this well-established position was upheld under the unanimous decision of the House of Lords in the case of *Rondel v Worsley* [1969] 1 AC 191, the immunity was also argued to "not be immutable". In this case, Lord Reid opined that the barrister "… as an officer of the Court concerned in the administration of justice … has an overriding duty to the Court … which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests."

Justice Kiefel also expounded on the positions held in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC, *Arthur J S Hall & Co v Simons*, and *Saif Ali v Sydney Mitchell & Co* [1978] HL. Following this, in the case of *Ross v Caunters* [1979] 3 AER 580, which applied the general test of negligence in *Hedley Bryne & Co Ltd v Heller & Partners Ltd*, it was noted that a claimant was entitled to rely on the judgment and skills of a professional who professed to possess that specific skill, and undertook to apply that skill to help the claimant. The claimant should also be entitled to claim for a negligent performance of that duty owed.

In a subsequent case of *Arthur J S Hall & Co v Simons*, it was argued that the 200-year long immunity enjoyed by barristers in England was long overdue to be re-examined, especially in view of the widespread dissatisfaction of perception amongst the public. The Courts have since been leaning more towards a different approach with the dawn of the European Convention on Human Rights and, particularly, the Human Rights Act 1998, which emphasises the rights of individuals and the fact that negligence can be committed by all persons, these in addition to the question of barristers' immunity that led to a divide between the question of public policy's sake versus the public confidence on the legal system, a position that is still under debate today.

Justice Kiefer explained that, in any event, it was apparent that at least for criminal proceedings, the English barristers' immunity was not under threat, not due to the practitioner, but rather to protect the administration of justice itself.

The speaker explained that the position in Australia varied slightly, since it did not have a similar governing human rights legislation. In Australia, a barrister's immunity was addressed in a different light, taking into consideration the manifest problems of relitigation or lack of finality of the decision of the Court, should attacking a barrister's performance in litigation be allowed. In fact, the Australian Courts clearly propagated that the nature of the judicial process required that the community at large would benefit from the avoidance of relitigation. This reflected the basic legal tenets of *res judicata* and issue estoppel, besides the argument that, like the contributions of other participants in legal proceedings (such as witnesses, members of the jury and judges) who all enjoyed immunity, there was no reason why this immunity should not extend to barristers who also carried out an essential duty within the justice system.

Her address was followed by a question-and-answer session. In her answer to questions by our very own Bar President, Christopher Leong, and another delegate, Michael from Kuala Lumpur, concerning barristers' immunity in England, Justice Kiefer explained her conclusion that their immunity was not maintained because the English Courts saw no danger in removing a *carte blanche* for professional liability, in light of the cab-rank rule and similarly, higher public policy considerations.

The Right Honourable Lord Robert Walker, retired Justice of the Supreme Court of the United Kingdom, next posed a question regarding the subject of cost orders made against barristers and solicitors, to which Justice Kiefer explained that such sanction by the Australian Court was awarded under rare or exceptional circumstances.

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PRACTICAL DRAFTING AND DEFENDING OF ADJUDICATION CLAIMS

7 Oct 2014
8.30am – 5.15pm
KLRCA Bangunan Sulaiman
Jalan Sultan Hishamuddin
50000 Kuala Lumpur

PRACTICAL COURSE ON THE DRAFTING/FORMULATION, PRESENTATION AND DEFENDING OF ADJUDICATION CLAIMS UNDER CIPAA 2012

INTRODUCTION/OBJECTIVES

Adjudication has recently emerged as the preferred Alternative Dispute Resolution (ADR) method in the engineering & construction industry in many jurisdictions. In Malaysia, Statutory adjudication has been introduced by the Construction Industry Payment and Adjudication Act 2012 (CIPAA) which has been gazetted in June 2012 as Act 746. This Act came into force recently on 15th April 2014.

CIPAA encompasses 'payment' disputes involving essentially Construction Contracts as defined in the Act. Other than issues pertaining to payments, it affords parties the opportunity of adjudicating also 'non-payment' disputes subject to the relevant provisions of the Act.

Practitioners in the Construction Industry are expected to know all the necessary details in the actual implementation of the various provisions of the Act to ensure that their particular claim is properly presented and defended (as necessary). This requires a thorough working knowledge of not only the specific provisions of the Act but also the way the claims, responses & replies are well formulated or drafted so as not to compromise their effectiveness.

With the above points in mind, this Course is aimed at exposing participants to the detailed facets of the drafting or formulation of the various documents required during the pre-adjudication stage as well as the adjudication stage itself so as to make them more aware of the working of same and to prepare them for implementing the same in practice. To this end, the Course will be conducted on a "Workshop" basis with practical problems and scenarios being presented with the active participation of all participants.

PRINCIPAL TOPICS COVERED

- An Overview of the Adjudication Process: Practical Issues
- Preliminary Stage: How to make & respond to a claim per Sections 5 & 6
- Initiating the Adjudication Stage pursuant to Section 8
- How to select & appoint the Adjudicator per Sections 21-23
- Steps in commencing the actual proceedings
- Preparing the various submissions i.e. the Adjudication Claim, Response, Reply, etc. pursuant to Sections 9-11
- Miscellaneous issues i.e. practical scenarios, working tips, etc.

SPEAKERS

Ir. Harbans Singh
Professional and Chartered Engineer, Arbitrator, Adjudicator, Mediator, Advocate & Solicitor (non-practising)

Lam Wai Loon
Partner, Skrine

Chong Thaw Sing
Chartered Arbitrator, Mediator and Adjudicator

Daniel Tan Chun Hao
Proprietor, Messrs Tan Chun Hao

Thayananthan Baskaran
Partner, Zul Rafique & Partners

Samrith Kaur
Managing Partner, Samrith Sanjiv & Partners

CIPAA PRACTICAL COURSE PROGRAMME

8.30am	Registration
8.45am	Welcome Address by Professor Datuk Sundra Rajoo, *Director, Kuala Lumpur Regional Centre for Arbitration*
9.00am	**Lecture on Modules** by Ir. Harbans Singh KS, *Professional and Chartered Engineer, Arbitrator, Adjudicator, Mediator, Advocate & Solicitor (non-practising)* and Lam Wai Loon, *Partner, Skrine*
11.00am	Break
11.15am	**Workshop Session I**
1.15pm	Lunch
2.00pm	**Workshop Session II**
4.00pm	Break
4.15pm	Q&A Session / Review of Workshop
5.15pm	End

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Defamation Laws: Time for Reform?

By HR Dipendra

Does Malaysia need wholesale legislative reform or is it a case of only tidying up the edges? That was the gist of the conversation with the three panellists in a post-lunch breakout session. Moderated by **HR Dipendra**, Partner, Arianti Dipendra Jeremiah, the session began with **Ang Hean Leng**, a defamation law practitioner with Lee Hishammuddin Allen & Gledhill, providing an overview of the Defamation Act 1957 ("Act"). The Act, Mr Ang argued, was developed shadowing the 1952 English Defamation Act. While the United Kingdom has moved by leaps and bounds, the Malaysian legislation showed little or no improvements save for what the courts have developed as common law principles.

The introduction of the 2013 English Defamation Act then begged the question: Should Malaysia embark on its own legislative reform?

Arguing for reform, Mr Ang further espoused issues that defamation law practitioners face. First up was whether government-linked corporations or local authorities should be allowed to initiate defamation suits. The celebrated United Kingdom case of *Derbyshire CC v Times Newspapers* (1993) cemented the principle that government-linked corporations or local authorities cannot sue for defamation. The position in Malaysia is less clear. *Lembaga Kemajuan Tanah Persekutuan (Felda) v Dr Tan Kee Kwong* (2013) and Syabas (2012) did not accept the decision of *Derbyshire*. Somewhat fortuitously, the High Court in *Kerajaan Negeri Terengganu v Syed Azman Syed Ahmad* (2013) held that the state government is a public authority with no personal reputation to protect.

Secondly, Mr Ang argued that limitation period for defamation suits should be shortened. In Sabah and Sarawak, the limitation period to bring defamation suits is 12 months but in Peninsular Malaysia, it is six years. It does not make sense to litigate someone's reputation after five years.

Thirdly, the codification of the common law defence known as the "Reynolds defence" or "responsible journalism defence". The Reynolds defence was given approval by the Court of Appeal (written judgments by the second panellist) in *Tony Pua v Syabas* (2012) and *Yong Teck Lee v Harris Salleh* (2014). The Federal Court is now considering the scope of the Reynolds defence in Malaysia having granted leave to appeal both these cases.

The next speaker was **Dato' Anantham Kasinather**, Judge, Court of Appeal (Rtd). He shared his experience on the bench on how defamation cases were treated. In making out a case for reform, the learned Judge said that so long as the judiciary followed common law principles laid down in the English courts, and allowed for its importation via the Civil Law Act 1956, such legal reform may not be necessary. Dato' Anantham also suggested that section 11 of the Act statutorily incorporates the common law operation of the doctrine of absolute privilege.

Touching on the issue of damages, Dato' Anantham expressed fear that the previous trend circa 1995 of mega defamation awards might reoccur and suggested that reform should include statutorily capping damages. Given the propensity for Malaysian courts to ignore English precedents, it may be useful to have legislative reforms.

The 100-odd participants were charmed by the heavyweight presence of **Desmond Browne QC**, Joint Head of Chambers, 5RB, United Kingdom. Having conducted many high profile trials, Mr Browne set out the English position and why the 2013 Defamation Act was necessary. The 2013 English Defamation Act was more than just to "cure" London from being labelled a "libel tourism" centre, but years of lobbying by various stakeholders after the United States legislated the SPEECH Act to counter the enforcement of UK libel judgments meant the passing of a new Defamation Act was inevitable. The legislative approach, Mr Browne espoused, was curious as the common law defences were abolished and replaced with codified defences like truth, honest opinion and publication on a matter of public interest. It remains to be seen how effective these defences are.

Mr Browne went on to explain that the claimant's feelings (often important in assessment of damages) is irrelevant and corporations must demonstrate "serious financial loss" before embarking on a defamation suit. Only two cases have been the subject of the Defamation Act 2014, namely *Cooke Midland Heart Ltd v MGN* (2014) and *Cartus Corporation v Siddell* (2014).

The courts have adopted an approach to suggest that companies suing for defamation must set out precisely how the publication had caused, or was likely to cause, serious financial losses.

Mr Browne further said that reforms are being looked into whereby the costs of litigating defamation suits are managed sensibly. A variable costs protection order is being looked into whereby either party could seek financial protection to conduct their case without the danger of severe financial hardship. If a party was later found to be fundamentally dishonest or have abused the court process, then such protection of costs would be lost.

What next then? It was suggested that the Parliament set up a select committee to help look into defamation law reform. Sivarasa Rasiah, a Member of Parliament who was among the delegates, offered to head this select committee. Both Mr Ang and Dato' Anantham felt that reform was needed and hoped that this would be looked into as soon as possible.

The Three R's: Creating the Future of Our Industry – R-evolutionise the Profession, R-adicalise Lawyers, R-eshape Solutions

By Joachim Xavier

The much-anticipated talk entitled "**The Three R's: Creating the Future of Our Industry – R-evolutionise the Profession, R-adicalise Lawyers, R-eshape Solutions**" began with the moderator, Mah Xian-Zhen of OMESTI Group, cautioning participants that ideas that may at first come across as controversial, may be the very ideas that can change the world in the future.

The Honourable Justice Lee Swee Seng, who was the first speaker, focused his presentation on change that could be introduced to conveyancing practice in Malaysia. The thrust of Justice Lee's presentation was "simplicity, security, speed, skills and satisfaction".

Justice Lee observed that sales and purchase agreements ("SPA") and loan agreements ("LA") have become too wordy, and are drafted in legal language that is difficult to understand and do not resonate with the typical parties to a sale. Further, many of the clauses in such agreements are of little relevance to the parties to the sale, eg clauses relating to bank charges.

Justice Lee suggested that the basic terms found in the SPA and LA be standardised into easily-read terms that are prescribed by statute. Terms which are automatically incorporated by way of statute would go a long way in reducing the SPA and LA into single-page documents that are easily understood by the parties to the sale. Any other terms which are peculiar to the transaction can be annexed to the simplified SPA and LA.

In terms of security in property transactions, Justice Lee touched on concerns surrounding the issuance of titles to the wrong persons, either inadvertently or by reason of fraud. He suggested that an online identification card verification system be introduced so that the identities of the parties involved in the transfer of properties can be accurately ascertained.

Justice Lee was also of the view that more speed can be introduced into matters concerning property transactions. One example he gave was redemption statements that ought to be issued at far quicker rates than what was being done at the moment.

The upshot to all of the above is that lawyers would derive more satisfaction from their legal work. This is because lawyers would be freed up to do work that they really want to do, ie real legal work which the lawyers have been trained for.

Azhar Azizan @ Harun (Art Harun), a lawyer from Messrs Hisham Sobri & Kadir, stunned the participants by starting his presentation with a bold statement that legal practice was a business. He later qualified his statement by saying that the running of a law firm ought to be approached from a business point of view. Mr Azhar hastened to add that what he propounds does not detract from the important role of lawyers to serve the community in whatever way they can, including doing *pro bono* work.

Mr Azhar suggested that firms begin to think about how to outsource certain types of legal work to external parties provided that confidentiality issues are first ironed out with the client. He argued that the outsourcing of legal work is already being practised widely overseas and, to some extent, in Malaysia too. Some examples of work which Mr Azhar suggested could be outsourced include document review, due diligence, litigation support and legal research. There are also senior lawyers, who prefer to act as counsel, who outsource solicitor work to junior lawyers.

Mr Azhar was of the view that outsourcing has its benefits. The first is that outsourcing affords an opportunity for lawyers to specialise in a particular area of law. Secondly, lawyers who receive outsourced work also stand to earn better incomes as they become better known for their specific practice areas.

Looking into the future, particularly in the area of corporate restructuring, Mr Azhar foresaw "one-stop station" entities coming into existence to facilitate corporate restructuring. Although Mr Azhar did not go into details as to how this one-stop station would come into existence, he did say that it would require significant liberalisation of the legal profession and other professions as well. The one-stop station would primarily consist of investment bankers, accountants, lawyers and other professionals who collectively would be able to provide the necessary advice and services for a smooth and efficient corporate restructuring exercise.

The final speaker was none other than **Edmund Bon Tai Soon**, a well-known human rights lawyer who recently set up his own firm, BON Advocates. Mr Bon had previously openly advocated for the revolutionising, liberalising and radicalising of lawyers. He loathed the fact that much has been said about the need for change in the legal profession but very little has actually been done to make that change happen.

To revolutionise the legal profession, Mr Bon argued that access to justice has to be dramatically improved. He was of the view that certain legal services such as SPA, wills, and divorce templates can be made available to consumers rather than have lawyers prepare them. Step-by-step guides written in plain English about the legal process involved would go a long way in helping consumers be better informed. A lawyer would only be involved when it was absolutely necessary.

In terms of liberalising the legal profession, he provided the example of the United Kingdom's Legal Services Act 2007 where major strides were made to liberalise the profession. For example, conveyancing in United Kingdom is now done by licensed conveyancers who are not lawyers.

Finally, Mr Bon advocated for better remuneration for lawyers and argued that this could be achieved if lawyers were paid according to actual work done on a brief rather than a fixed salary, which is often far lower that what the lawyer actually earned for his/her firm. Mr Bon also suggested that the legal education system be overhauled to better prepare new lawyers for the profession.

Directors' Duties: No Risk, No Gain?

By Soo Siew Mei

Introduction

Directors owe a fiduciary duty to act in the best interests of the company as a whole. This session entitled "Directors' Duties: No Risk, No Gain?", moderated by Ira Biswas, Partner at Chooi & Co, covered the general duties of directors in respect of commercial undertaking and risk-taking, particularly when a company is insolvent.

The Position in Australia and Its Recent Cases

Mark Livesey QC, the President of the Australian Bar Association, gave a broad overview of the law concerning directors' duties in an insolvency situation, in particular in Australia.

The test for whether there is a breach of fiduciary duty of the directors is an objective one. Nonetheless, there is no hard-and-fast test for when a director is required to consider the interests of creditors as an aspect of the duty to act in the best interests of the company. All of the circumstances are relevant in this context.

Mr Livesey noted that in 1976, the High Court of Australia first considered directors' duties and creditor protection in the context of insolvency in the case of *Walker v Wimborne*. The outcome of the case was a novel and unorthodox proposition that laid down the need for directors to consider the interests of creditors in the context of insolvency, and as part of the directors' duties to their companies. He also referred to the decision in *Kinsella v Rusell Kinsella Pty Ltd*, and pointed out that the decision may be understood as standing for the proposition that shareholders may not ratify a breach of a director's duties at a time of insolvency, when the interests of creditors intrude.

Mr Livesey next drew to attention that the duty to take creditors' interests into account has been accepted in other common law jurisdictions, such as Canada and the United Kingdom. In view of the statutory duty in Australia to avoid insolvent trading, the directors are required to consider the interests of creditors.

The Position in Malaysia and the Reforms to the Companies Act 1965

Though the basic proposition is that directors are to take into account the interests of creditors in insolvency, there is no codification of such duty *per se* in the Malaysian Companies Act 1965. Both **Robert Low**, Partner at Ranjit, Ooi & Robert Low; and **Sivaneindiren Selvanandam**, Partner at Cheah, Teh & Su, looked into the Malaysian cases and noted that some made reference to the Australian cases, but there was no direct application.

In the context of directors' duties when a company is insolvent, there are two main difficulties: firstly, what is the test of insolvency? Secondly, what is the identification of insolvency? In respect of the ambit of directors' duties, the Malaysian Court has in recent cases applied the Charterbridge test that "an intelligent and honest man in the position of a director of the company concerned could, in the whole of the existing circumstances, have reasonably believed that the transactions was for the benefit of the company."

In most circumstances, the creditors have no direct recourse. In liquidation, any compensation or damages is subject to distribution *pari passu*. Therefore, whether to promote responsible management on the part of the directors, to boost confidence of foreign investors, or to purely protect the stakeholders, the interest of the creditors ought to be safeguarded. In respect of the Companies Bill 2013, even though injunctive relief and damages have been introduced, there has been no pronounced statement that the interests of creditors must be taken into account by directors, in comparison with the position in Australia and the United Kingdom. It is unclear if the position will be made apparent and expressly codified in the Companies Bill 2013.

The Perspective of a Director

YM Tunku Dato' Mahmood Fawzy Tunku Muhiyiddin, an independent director in several companies, gave a practical view of commercial risk-taking in the business world. He began with the phrase "no risk, no gain".

According to Tunku Mahmood, risk management has evolved since the 1980s, and noted the importance of developing risk framework and appetite. Risk management essentially includes five main areas, such as strategic risk (ie balancing the short-term and long-term risks), operational risk (execution-based), compliance risk (regulatory and legislation), and financial risk. However, the list is not exhaustive. He emphasised the importance of directors being mindful of short-term needs and long-term challenges, optimisation and balance, management capacity and capability, and historical track record of success in particular areas.

Tunku Mahmood concluded that risk-taking is absolutely necessary, and ended with these words: "Look at the risk carefully, as the reward can be enormous. However the risk can kill you. Treat risk as your friend. Understand the risk, mitigate if necessary, but don't overdo it, as your returns can be mediocre."

Summary

It is clear from the Corporation Act 2001 (Australia) and the Companies Act 2006 (UK) that provisions for the protection of creditors' interests have been clearly set out. In Malaysia however, the issue of whether codification is required with regard to the protection of creditors' interests, is now left to the legislators.

Embracing the Age of Personal Data Protection

By Tharishni Arumugam

When the Personal Data Protection Act 2010 ("PDPA") came into force on 15 Nov 2013, Malaysia became the first Southeast Asian country to implement personal data protection legislation. With the focus of the law being the right of the individual to have the integrity of their personal data maintained by organisations, it is important for companies that process personal data in commercial transactions to comply with the PDPA.

This session entitled "**Embracing the Age of Personal Data Protection**" saw an engaging discourse on pertinent issues that the implementation of the PDPA has raised. Moderated by **Dato' Thavalingam Thavarajah** of Lee Hishammuddin Allen & Gledhill ("LHAG"), this session delved into the intricacies of complying with the PDPA.

Adlin Abdul Majid, Head of Regulatory and Compliance, LHAG, began by explaining the key concepts of the PDPA, and highlighted the scope of the session, which were discussions on consent, compliance and enforcement. Ms Adlin's introductory speech also highlighted the reason that all companies would have to comply with the PDPA, as the PDPA applies to companies when they engage in the supply and exchange of goods or services. This would mean that companies that engage employees would be obliged to comply with the PDPA, as such engagement involves the supply and exchange of services. Ms Adlin also spent some time exploring the interpretation of "commercial transaction", a unique requirement of the PDPA.

Ms Adlin then jumped right into the discussion on consent under the PDPA. While consent is a major fixture of the PDPA, the fact that it remains undefined in the PDPA has caused divisiveness in application of types of consent under the PDPA. Ms Adlin drew the audience's attention to the relevant provisions of the Personal Data Protection Regulations 2013, and also the Draft Guidelines on Consent released by the Personal Data Protection Commissioner ("PDP Commissioner"), and argued that opt-out consent may not be in line with the provisions of these documents.

The other area that remains contentious in relation to the issue of consent, is that of direct marketing. The PDPA's impact on the direct marketing industry is massive, and the PDP Commissioner has attempted to seek the views of the public on how best to reconcile the provisions on consent with the practicalities of business, with the release of a Consultation Paper on Direct Marketing. Ms Adlin discussed the content of this consultation paper, and highlighted the fact that the paper mentions "explicit consent", which, in the PDPA, is only reserved for processing of sensitive personal data.

Next, **Bahari Yeow Tien Hong**, Partner, LHAG, spoke on the importance of compliance with the PDPA, and a structured framework for compliance. He discussed some of the more prominent cases of data protection breaches and non-compliance in other jurisdictions, such as the Sony PlayStation breach and the Octopus case in Hong Kong. He then lent his expertise on the enforcement process that is involved under the PDPA, which differs from most other legislation that have criminal liabilities. Mr Bahari explained in detail the complaints mechanism provided in the PDPA, and also shed light on the investigations and enforcement process once a complaint is made to the PDP Commissioner.

The final speaker of the session was **Ainul Azlinda Inon Shaharuddin**, Senior Corporate Counsel, Telekom Malaysia Berhad ("TM"). Ms Ainul brought to the table her experience in dealing with PDPA compliance from the in-house industry perspective. As one of the first few companies in Malaysia to begin implementing a PDPA compliance programme, Ms Ainul shared how she dealt with the challenges of internally managing a PDPA compliance programme in TM. She talked about various phases involved in the process leading up to the state of compliance, and how they continue to manage the processing of personal data internally. She noted that the interest of the management in terms of investing into the PDPA compliance programme was largely based on the severe penalties in the PDPA, which not only include fines, but also imprisonment for members of management who are responsible for compliance. Ms Ainul stressed on the importance of an in-house counsel's role in understanding his/her organisation's data process flow, and the thorough research that needs to go in before even beginning a compliance programme. Ms Ainul also mentioned how TM continues to raise awareness of PDPA compliance, both with its employees and its customers.

During the question-and-answer session, one of the issues raised was the current climate of compliance within organisations in Malaysia. Mr Bahari noted that the PDPA has raised some alarm bells, and Ms Adlin added that the biggest challenge in terms of the mindset is the necessary changes that need to be made to long-standing practices in order to reach compliance. The session ended with Dato' Thavalingam noting that organisations should definitely be concerned with the PDPA, and take steps to raise awareness within their organisations.

Corporate Exercises vs Competition Law — Running the Gauntlet

By Debbie Woo

This session entitled "**Corporate Exercises vs Competition Law — Running the Gauntlet**" featured **Dato' Johari Razak, K Shanti Mogan, Ng Swee Kee** and **Anand Raj**, all partners of Shearn Delamore & Co, as well as **Dr R Ian McEwin**, an economist who holds the Khazanah Nasional chair at University of Malaya Malaysian Centre of Regulatory Studies ("UMCoRS").

Dato' Johari began the session by giving an overview of Malaysian competition law and its effects and potential effects on corporate exercises, mergers and acquisitions. He explained that the purpose of the Malaysian Competition Act 2010 ("CA") is to eliminate anti-competitive conduct and agreements.

Ms Mogan then explained the different types of restraints under the CA, including prohibitions against anti-competitive agreements under section 4 of the CA, and abuses of dominance under section 10 of the CA.

Speaking from her experience, Ms Mogan also said that there was no "one-size-fits-all" type of answer as to whether or not an agreement is anti-competitive. The reality of competition law is that there is no one-stage test, and competition law is also not an exact science. She added that an economic analysis may be required to determine if an arrangement has any effect on competition. Another pointer given by Ms Mogan to determine if an arrangement is anti-competitive is to see if the restraint is necessary to enable the parties to achieve a legitimate commercial purpose. Ms Mogan then provided several examples of how certain arrangements, which at first glance appeared to be anti-competitive, were held by the courts to be not anti-competitive.

Mr Ng spoke about the effects of competition law on a due diligence exercise. Mr Ng pointed out that a competition law due diligence process should not be restricted to a review of written contracts but should also include a review of the conduct of employees.

One of the practical issues Mr Ng raised was how much sensitive data a target company should disclose to a potential purchaser (who may often be a competitor in the same market) and how to mitigate the risks of abuse.

One of the possibilities suggested by Mr Ng is for the parties to have a sufficiently wide confidentiality agreement in place and to ensure that any sensitive data is redacted until the parties reach an advanced stage of negotiations. He highlighted that one of the consequences of competition law infringements is that it is not only the entity which contravened the law that is penalised, but also its shareholders and parent company.

Mr Raj then addressed the delegates and started with the proposition that a radical rethink of the traditional approach to due diligence exercises may be required. A due diligence process must sufficiently identify the risks and potential "time bombs" in terms of anti-competitive behaviour by target companies (using the example of an acquisition).

Mr Raj then said that a traditional due diligence exercise would normally focus on written documents and formal arrangements of a target company. However, such reviews are unlikely to detect certain anti-competitive behaviour, for instance the exchange of price-related information or price fixing by executives in social or other settings such as in karaoke lounges, conferences or on golf courses. He emphasised that the traditional due diligence processes in Malaysia today may not be adequate to identify competition law risks.

Mr Raj then gave a quick overview of the competition law regimes in various jurisdictions, such as Australia, China, the European Union ("EU"), Singapore and India, and highlighted that Malaysia is one of the few countries that does not yet have merger control provisions.

Another interesting point raised by Mr Raj was that a number of jurisdictions have criminalised the involvement in cartels. These countries include Australia, some EU member states, Japan, Korea and the United States of America ("USA").

Mr Raj pointed out that Malaysian enterprises may not realise that when they export products to the USA and the EU, they (and their management, executives, etc) may also be subject to the competition laws of the USA and the EU, including criminal provisions for cartel activity. In a number of recent cases, the senior management personnel, directors and executives of large manufacturing companies have been imprisoned in the USA for cartel activity conducted in Taiwan, Japan and other countries, as those companies had all exported their products to the USA market.

Dr McEwin, a well-respected economist and lawyer, then shared his views on the Malaysian competition regime. One of the questions posed to him was whether Malaysia should have merger control laws, to which he answered in the affirmative without any hesitation.

Dr McEwin was of the view that the Malaysian Government would eventually be pressured into enacting merger control provisions as the current provisions are too messy and complicated to address the competition issues in mergers. The process of determining whether or not a merger would have a significant impact on competition, would have to be simplified.

To a question from Mr Raj, Dr McEwin agreed that the lack of merger control provisions in Malaysia is unsatisfactory as, under the law as it stands, mergers may, in certain situations, be challenged under section 4 or section 10 of the CA.

Electronic Discovery and Admissibility of Electronically-Stored Information

By Lee Shih

Alex Tan, Executive Director, Forensic Services of PwC Malaysia; and **Neil Meikle**, Associate Director of Forensic Technology, also from PwC Malaysia, and the **Honourable Justice Glenn Martin AM**, Judge, Supreme Court of Queensland, kept the audience riveted with real-life scenarios and trends in the area of forensic investigations and e-discovery, in the session entitled "**Electronic Discovery and Admissibility of Electronically-Stored Information**".

Overview of Global and Malaysian Trends Influencing Forensic Investigations

Mr Tan provided an overall overview of forensic investigations which involve reacting to a crisis situation, and such situations may involve allegations of bribery, corruption, money laundering or accounting fraud. He mentioned that he is seeing a lot of regulatory action from the United States and increasingly, from the United Kingdom. There is also an increase in the impact of foreign laws, such as the Foreign Corrupt Practices Act and the Bribery Act, in Malaysia.

Next, he highlighted some key findings from the PwC Global Economic Crime Survey 2014, in particular for Malaysia. The statistics from this survey showed that 35% of the respondents have operations in markets having a high risk of corruption, while 38% of respondents believed that it is likely that they will experience corruption. 31% of respondents revealed that they have experienced cybercrime, which is a big increase from 5% in 2011. The survey also disclosed that of those who experienced some form of economic crime, 58% said that the frequency and size of economic crimes has increased. A disturbing fact is that seven out of 10 respondents have lost in excess of US$1 million in the last two years, and alarmingly, 26% have not undertaken a fraud risk assessment in the last two years.

Forensic Investigations and e-Discovery Experiences

Mr Meikle weighed in with his perspective from running the forensic laboratory in PwC Malaysia. He started off his presentation by emphasising that communications and documents are now largely digital. Furthermore, social media is heavily used. In Malaysia for example, 90% of the 18–24 age group use Facebook. Therefore, relevant evidence is likely to be stored electronically in some form or another, and such evidence must be preserved to evidential standards.

In this regard, he stressed on the unbreakable guidelines for forensic investigators set out in the ACPO Principles of Digital Evidence:

Principle 1: No action taken by law enforcement agencies, or by persons employed within those agencies or their agents should change data which may subsequently be relied upon in court.

Principle 2: In circumstances where a person finds it necessary to access original data, that person must be competent to do so and be able to give evidence explaining relevance and the implications of their actions.

Principle 3: An audit trail or other records of all processes applied to digital evidence should be created and preserved. An independent third party should be able to examine those processes and achieve the same results.

Principle 4: The person in charge of the investigation has overall responsibility for ensuring that the law and these principles are adhered to.

Arising from this, Mr Meikle provided an important tip: do not allow IT teams / experts to switch on the machines and browse through the files stored on these machines, as that would undermine the integrity of the evidence and may destroy evidence. When the system is switched on, active or temporary files may be written over.

He next addressed the often-asked-question on how does one recover deleted files from computers and mobile devices. He explained that the act of deleting merely removes the entry from the index but the underlying file is not. Data is lost only if newer files are saved over them. Mr Meikle then showcased the different equipment and software that he uses in the forensic laboratory to retrieve deleted files. The equipment used in his laboratory allows for imaging and preserving of data (both from computers and mobile devices) and recovering deleted files. Keyword searching can then be carried out for files of potential interest.

He also provided pointers on the type of qualifications one could look for in a forensic investigator, ie qualifications such as EnCase Certified Examiner ("EnCE"), Forensic Toolkit ("FTK"), and CISSP.

Information from New Developments and Techniques in Electronic Discovery

Justice Martin started by flagging three developments that have generated a lot more digital information. Firstly, the rise in the use of social media. Aside from data on hard drives or peripherals, there may be information in the public domain. For example, what a Chief Executive Officer ("CEO") says during negotiations on a deal may be quite different from what he/she may say on social media on that same deal. So, the candour in a tweet by an employee could often be very different from the position taken by the company in the deal or in the litigation.

Secondly, the use of cloud data storage which will contain information on equipment not owned by the client. Access to such information may be problematic, in the sense that if a client is in financial difficulties, or if you are acting for a receiver or liquidator of a company, it may be difficult to access those documents on a farm of hard drives, or perhaps in another country. Thirdly, the increasing use of Bring Your Own Device ("BYOD") policies in companies. Companies allow their employees to bring their own device to carry out company work. That may be fine when the relationship between company and employee is a happy one. But if things were to go sour, an employee will not surrender his/her property for any investigation.

Finally, moving to the area of discovery and dealing with large volumes of electronic documents, Justice Martin provided a recent example which may help with the problem of locating and sifting down the relevant electronic documents. He said that a group of senior lawyers would get together, and decide the types of words, terms, images, and exchanges which will be relevant. Predictive coding takes that information, combines them into a mathematical model, and applies it to all the electronic documents. This method then produces a sample set of documents, and lastly, the group of senior lawyers would verify that this method is accurate in collating the relevant types of documents.

09:00 - 10:15 **Breakout Session 6**

Stream A | Taming Sari 3 — Litigation & Dispute Resolution

Tracing of Matrimonial Assets in Malaysia and Abroad

Speakers
1. **Bruce Doyle**, *Accredited Family Law Specialist, Doyle Family Law, Australia*
2. **Kiranjit Kaur Dhaliwal**, *Partner, YN Foo & Partners*
3. **Malathi Das**, *Partner, Joyce A Tan & Partners, Singapore*

Moderator
Honey Tan Lay Ean
Partner, Tan Law Practice

Stream B | Tun Sri Lanang 1 & 2 — Corporate & Commercial

Reporting Obligations of Legal Advisers under the Provisions of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001

Speakers
1. **Abu Hassan Alshari Yahaya**
   Assistant Governor, Bank Negara Malaysia
2. **Andrew Khoo Chin Hock**
   Partner, Andrew Khoo & Daniel Lo

Moderator
Karen Cheah Yee Lynn
Treasurer, Malaysian Bar; Partner, Fatima Tan & Cheah

Stream C | Taming Sari 1 & 2 — International Law & Public Interest

Arbitration: Interim Relief or Long-Term Pain?

Joint Session with the Law Society of Singapore

Speakers
1. **Lok Vi Ming SC**, *President, The Law Society of Singapore*
2. **Edwin Glasgow CBE**, **QC**, *Barrister, Thirty Nine Essex Street Chambers, United Kingdom*
3. **Campbell Bridge SC**, *Senior Counsel and Arbitrator, 7 Selborne Chambers, Australia*
4. **Lim Chee Wee**, *Partner, Skrine; Past President, Malaysian Bar*
5. **Laura Jimenez**, *Senior International Case Counsel, Kuala Lumpur Regional Centre for Arbitration ("KLRCA")*

Moderator
The Honourable Justice Datuk David Wong Dak Wah
Judge, Court of Appeal

10:30 - 11:00 Coffee Break | Exhibition Area

11:00 - 12:15 **Breakout Session 7**

Stream A | Taming Sari 3 — Litigation & Dispute Resolution

The Company Liquidator — The Good, the Bad and the Ugly

Speakers
1. **The Honourable Justice Datuk Nallini Pathmanathan**, *Judge, Court of Appeal*
2. **Rabindra S Nathan**, *Partner, Shearn Delamore & Co*
3. **Ooi Huey Ling**, *Partner, Ranjit Ooi & Robert Low*
4. **Mok Chew Yin**, *Head, Transaction Services and Insolvency, BDO Malaysia*

Moderator
Gopal Sreenevasan
Partner, Sreenevasan Young

Stream B | Tun Sri Lanang 1 & 2 — Corporate & Commercial

The Challenges Facing General Counsel in Cross-Border Regulatory Compliance

Speakers
1. **Mohamed Nasri Sallehuddin**, *Director, Legal, and Head, Corporate & Support Services, Khazanah Nasional Bhd*
2. **Lee Chin Tok**, *Group General Counsel, CIMB Group*
3. **Raj Kulasingam**, *Senior Counsel, Dentons, United Kingdom*
4. **Tan Choo Lye**, *Partner, K&L Gates, Hong Kong*

Moderator
Lee Shih, *Partner, Skrine*

Stream C | Taming Sari 1 & 2 — International Law & Public Interest

Arbitration: Litigating Arbitral Disputes — Challenging and Defending Arbitral Awards

Joint Session with LAWASIA and the Hong Kong Bar Association

Speakers
1. **The Honourable Justice Dato' Mary Lim Thiam Suan**
   Judge, High Court of Malaya
2. **Prashant Kumar**, *President-Elect, LAWASIA*
3. **Kim Rooney**, *Member, Council of the Hong Kong Bar Association*
4. **Dr Gavan Griffith AO**, **QC**, *Barrister, Australia*

Moderator
The Honourable Justice Dato' Varghese George
Judge, Court of Appeal

12:15 - 14:15 Networking Lunch | Taman Mahsuri

14:15 - 15:30 **Breakout Session 8**

Stream A | Taming Sari 3 — Litigation & Dispute Resolution

Modern Appellate Advocacy

Speakers
1. **The Honourable Justice Tan Sri Abdull Hamid Embong**, *Judge, Federal Court of Malaysia*
2. **The Honourable Justice Dato' Mohamad Ariff Md Yusof**, *Judge, Court of Appeal*
3. **The Honourable Justice Dato' Mah Weng Kwai** *Judge, Court of Appeal*
4. **Robert Lazar**, *Partner, Shearn Delamore & Co*
5. **Dato' Bastian Vendargon**, *Partner, Bastian Vendargon*
6. **Ranjit Singh**, *Partner, Ranjit Singh & Yeoh*

Moderator
Alex De Silva
Partner, Bodipalar Ponnudurai De Silva

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

What's Next in Company Law in Malaysia?

Session Sponsor:
Shook Lin & Bok

Speakers
1. **Ivan Ho Yue Chan**, *Partner, Shook Lin & Bok*
2. **Lau Kee Sern**, *Partner, Shook Lin & Bok*

Stream C | Tun Sri Lanang 1 & 2 — International Law & Public Interest

Business and Human Rights

Speakers
1. **Michelle Gyles-McDonnough**, *UN Resident Coordinator for Malaysia*
2. **Khairon Niza Md Akhir**, *Senior Executive, Corporate Development and Policy Division, Companies Commission of Malaysia ("SSM")*
3. **Professor Dato' Dr Aishah Bidin**, *Commissioner, Human Rights Commission of Malaysia ("SUHAKAM")*
4. **Long Seh Lih**, *Co-Founder, Malaysian Centre for Constitutionalism and Human Rights*

Moderator
Andrew Khoo Chin Hock
Partner, Andrew Khoo & Daniel Lo

15:30 - 16:00 Coffee Break | Exhibition Area

16:00 - 17:15 **Plenary Session 5 | Taming Sari 1, 2 and 3**
National Unity and Harmony: Promoting Respect and Strength in Diversity

This session will address the Sedition Act 1948 and the promise to repeal and substitute it with legislation that expressly deals with the promotion and protection of national harmony and unity. It will discuss whether this should be done by the use of legislation. The speakers will also address ways to promote national unity and harmony through legislation and the role the Federal Constitution has to play in this regard.

Speakers
1. **YB Nurul Izzah Anwar**, *Member of Parliament, Lembah Pantai, Kuala Lumpur*
2. **YB Dato' Dr Mujahid Yusof Rawa**, *Member of Parliament, Parit Buntar, Perak*
3. **Datuk Dr Shad Saleem Faruqi**, *Emeritus Professor of Law, Universiti Teknologi Mara ("UiTM")*
4. **Timothy Bruinders SC**, *Barrister, Group 621, South Africa*

Moderator
Syahredzan Johan, *Partner, Ram Rais & Partners*

17:15 - 17:45 **CLOSING CEREMONY | TAMING SARI 1 & 2**
Closing Address by **Steven Thiru**, *Vice-President, Malaysian Bar; Partner, Shook Lin & Bok*

17:45 - 18.00 Closing Remarks by **Brendan Navin Siva**, *Chairperson, IMLC 2014 Organising Committee*

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The Implications of GST on Law Firm Administration

The Goods and Services Tax ("GST") is a consumption tax and its implementation will be across all sectors of the economy. The imposition of GST means that all goods and services, except those exempted by the Minister of Finance, will be subject to this tax.

GST is to be implemented in April 2015. As providers of a variety of legal services to their clients, the legal community will be affected.

A key feature of the GST structure that is set to be implemented in Malaysia is that businesses, including law firms, will be allowed to claim their Input Tax Credit through automatic deductions in their accounting system.

However, Ng Sheau Feng, Chief Executive Officer ("CEO") of LEX10 points out that there is a point of concern, "Are law firms administratively ready for the imposition, calculation, tracking and payment of this tax? Where a firm produces its invoices manually and uses electronic spreadsheets for basic bookkeeping, understanding and calculating the tax payable may become problematic and could result in chaos."

Every law firm must keep their Office Account and Client Account separate, as required by law, and work with their accountants to ensure that the accounts are in order. This can be done annually, and in the past, this has not given rise to any difficulty.

According to the Royal Malaysian Customs Department website, "GST is charged on the value or selling price of the products. The amount of GST incurred on input (input tax) can be deducted from the amount of GST charged (output tax) by the registered person." Further the site explains, "When you charge GST, you need to issue a tax invoice showing the amount of GST and the price of the supplies separately. The tax invoice has to be issued within 21 days after the time of the supply." In terms of when the GST documentation must be submitted, the same site states, "GST returns must be submitted to the GST office not later than the last day of the following month after the end of the taxable period. Taxable period is a regular interval period where a taxable person is liable to account and pay to the government his GST liability. The standard taxable period is on quarterly basis *(with exceptions)*."

Sheau Feng says, "I do understand that there are many concerns about GST and how it is going to impact law firms, administratively and operationally. We are currently working closely with our accounting, audit and taxation partner firm on the details of how our solution can generate GST-compliant invoices and help law firms generate and track their accounts for submission, on a monthly basis, as painlessly as possible. The upgraded module is expected to be ready by the fourth quarter of 2014."

Sheau Feng also unveils LEX10's upcoming accounting product, "Most of the accounting software out in the market are for general purposes and are not suitable for law firms as they do not have a module to handle client accounts. Law firms need a specifically tailored solution that manages the Office Account and Client Account, is GST-compliant, and follows accrual accounting principle. Above all, the solution must not burden law firms' accounting departments, or even increase their cost as far as the implementation of this tax is concerned. It should be so easy that even users without accounting background would know how to use the system and ensure compliance with the law. The LEX10-AccBook is the ultimate answer."

Tel 016-953 0755
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info@lex10.com

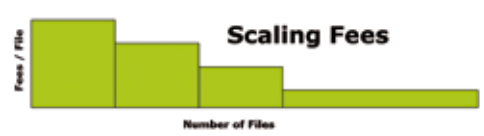
The LEX10 Advantages

Pay-as-you-earn, pay-per-new-file-opened

Our clients do not have to worry about the complicated calculation of "number of client licences" or "number of active users". With our subscription model, clients only pay a nominal fee once in its lifetime for each file opened. This helps maintain healthy cash flow and keeps expenses under control.

Open Source Back-End Architecture

Completely based on open source components, all of LEX-10 Office's back-end software are obtained and can be continuously upgraded to its latest versions, without further investment. The system architecture is capable of supporting tens of thousands of simultaneous user access. Our solution simply scales with our clients as they grow in size.



Scaling Fee

LEX10 practises scale fee structures similar to how legal fees are charged. Ultimately, if clients have the business volume, the average fee-per-file will be lower.

A Web-Based Front-End System

LEX10-Office is a fourth-generation case management system that uses native web-based technology. It ensures rapid implementation, and there is no need to download or install any client software. Users simply log in from their browsers at any computer or mobile devices, regardless of their geographic location, to gain access to the system.

Stability

Emphasis is on stability above all else. LEX10 has records of less than five support calls from one client over its seven years of continuous operation. All data is backed up daily during off-hours. In the event of server hardware failure, the system can be restored to the last backup date, and return to full operation within hours after replacement of damaged components.

Ease-of-use

Enormous effort has been taken from the inception of LEX10-Office to ensure that user interface and logic flow of the solution is easy to understand and use. There is no need for extensive training — everything is self-explanatory and simple. The interface is not designed from a programmer's viewpoint but from a user's perspective. The philosophy of innovating for better user experience holds true in LEX10.

Free Upgrades

LEX10 welcomes all constructive feedback and we take pride in making the solution richer in features, and most effective. LEX10's "Uni-version Policy" ensures that clients are never excluded from newer features after implementation, as all version upgrades are provided free-of-charge. This is because LEX10 treats the relationship with its clients as an equal partnership, and not a purely business relationship of provider and client.

Pre-Launch Announcement of LEX10-AccBook

The GST-Ready Accounting Solution or Law Firms

In conjunction with the International Malaysia Law Conference 2014, LEX10 Sdn Bhd is proud to introduce the LEX10-AccBook, the GST-ready accounting solution for law firms.

LEX10-AccBook works seamlessly with our new GST-ready LEX10-Office 3.0, where client particulars, invoices and payment records generated in the case management system are accessible directly. LEX10-AccBook makes double-entry bookkeeping, and accounting of a law firm, simple. All a user needs to do is choose the type of transaction and enter the payment particulars. LEX10-AccBook automatically produces accurate journal entries and the entries may be ported to appropriate ledgers optionally. These accounting documents can be electronically-linked with participating accounting, audit and taxation firms for your financial year-end auditing. Accounting for law firms has never been so easy.

LEX10-AccBook will be available in the fourth quarter of 2014. The first 100 law firms to subscribe to this new accounting solution together with LEX10-Office, will be entitled to receive early-bird coupon* worth RM500. Invitations to sneak preview presentation are limited and will be available for interested law firms on a first-come, first-served basis. Please reserve your seat with us at www.lex10.com/accbook/preview or send us an email at sales@lex10.com for further information.

** Terms & conditions apply. Please contact us for details.*

LEX10 Itinerary of Events

Talk on Technology for Law Firms (2 CPD Points)

Date	State	Time	Venue	Register with
2 October 2014	Perak	2.00 - 4.00 PM	Perak State Bar	Perak State Bar
21 October 2014	Kuala Lumpur	2.00 - 4.00 PM	Raja Aziz Addruse Auditorium	Bar Council
30 October 2014	Penang	TBC	Bayview Hotel, Georgetown Penang	Penang State Bar
25 November 2014	Kuala Lumpur	2.00 - 4.00 PM	Raja Aziz Addruse Auditorium	Bar Council
16 December 2014	Kuala Lumpur	2.00 - 4.00 PM	Raja Aziz Addruse Auditorium	Bar Council