

# the *ZRp* brief

Brief: 6/08

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# IFLR

INTERNATIONAL FINANCIAL LAW REVIEW

## ASIAN AWARDS 2008



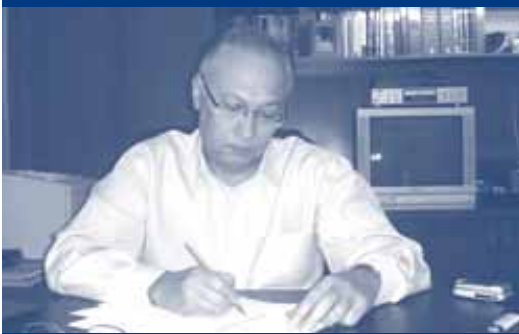
Dato' Cecil Abraham flanked by Ms Loh Mei Mei and Mr Jerry Ong Kok Wah at the IFLR Asian Awards in Hong Kong on 6 March 2008, where ZUL RAFIQUE & partners was declared Malaysian Law Firm of the Year.

ZUL RAFIQUE & partners

# the ZRP brief

## A BRIEF NOTE...

by Dato' Zulkifly Rafique



## National Law Firm of the Year...again!

ZUL RAFIQUE & partners was declared *National Law Firm of the Year 2008* by the International Financial Law Review (IFLR). This is our fourth win, having had our maiden success in 2002 and a hat-trick in 2005 and 2006. The IFLR Asian Awards Ceremony was held on 6 March 2008 at the Island Shangri La Hotel, Hong Kong.

The second award we won this quarter was from the Islamic Finance News for *Malaysia Deal of the Year*. This was based on our involvement in the issuance by MBB Sukuk Inc of USD 300 million subordinated certificates, a transaction which represents the world's first Islamic US Dollar denominated bank capital Sukuk. The Islamic Finance News Awards Ceremony was held on 6 March 2008 at the Mandarin Oriental Kuala Lumpur.

Being recognised by our peers is very euphoric but obtaining two awards in the same month is more than I can ask for. I would like to thank everyone who made this possible.

I hope that everyone at ZUL RAFIQUE & partners will continue to increase our prominence in the legal landscape, whilst bearing in mind never to rest on our laurels. On that note I would like to leave you with some food for thought:

*You're not obligated to win. You're obligated to keep trying to do the best you can every day* – Marian Wright Edelman

## in this issue...

### # BRIEF-FLASH... 2

#### The highlights in this Folder include:

- Blogger Liable for Libel
- Fund-raising Rules Revised
- Industrial Court in the East Coast
- The Year of the Sukuk
- Spam King pleads guilty

### # BRIEFING... 4

#### The articles in our features:

- *Somebody's Watching Me, and I have no Privacy...*
- *Knowledge Management In A Law Firm*
- *Carbon Trading...A Way to Invest*

### # BRIEF-CASE... 8

#### Our Brief-Case contains the following:

- *Telekom Malaysia Bhd v Ramli Akim*  
[2008] 1 CLJ 440, Court of Appeal
- *Shanta Holdings Sdn Bhd v Golden Uni-Consortium Sdn Bhd*  
[2008] 1 CLJ 87, Court of Appeal
- *RHB Bank Bhd v Fauzun Abdul Samad*  
[2007] 9 CLJ 748, High Court

### # BRIEF-UP... 10

#### Legislation Update:

- Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) (Amendment) Act 2007
- Central Bank of Malaysia (Amendment) Act 2008
- Co-operative Societies (Amendment) Act 2007
- Electronic Government Activities Act 2007
- Industrial Relations (Amendment) Act 2007
- Malaysia Co-operative Societies Commission Act 2007
- Trade Unions (Amendment) Act 2007
- Water Services Industry Act 2006

## ✚ BRIEF-FLASH...

- **ASEAN CHARTER TO BE RATIFIED** The instrument has been signed to ratify the ASEAN Charter which was signed by the heads of state of the Association of Southeast Asian Nations (ASEAN). ✚
- **BOARDS TO BE UNIFIED** It was announced at Invest Malaysia 2008 that the Main and Second Boards will be streamlined to cater for more established companies with strong track records. A revamp of the MESDAQ Market will also take place with the aim of expansion to include the listing of both technology and non-technology emerging companies. ✚
- **BLOGGER LIABLE FOR LIBEL** Prominent blogger, Raja Petra Kamaruddin and editors of PKR's Suara Keadilan were ordered to pay a total of RM7 million for publishing libellous material with regard to Universiti Utara Malaysia and Tan Sri Dr Nordin Kardi, its vice-chancellor. ✚
- **FUND-RAISING RULES REVISED** Guidelines to liberalise fund-raising have been revised by the Securities Commission. The revised guidelines which took effect from 12 February 2008 are for the following: equity and equity-linked securities; offering of equity and equity-linked securities for the MESDAQ Market; principal advisers for corporate proposals and due diligence conduct for corporate proposals. ✚
- **'GREEN SHOE' OPTION** The Securities Commission has introduced the 'green shoe' option on 11 January 2008 to enhance the efficiency and competitiveness of the fund-raising process for IPOs in line with international best practices. ✚
- **INDUSTRIAL COURT IN THE EAST COAST** The Industrial Court was opened in Terengganu and the East Coast branch is expected to reduce the number of backlog cases. ✚
- **IQJ TO BE WOUND UP** The Federal Court dismissed the appeal by InventQjaya Sdn Bhd for a stay of execution of the High Court's decision to wind up the company. The decision of the High Court was made in December 2006 where a petition to wind up the company was granted as it owed the Government more than RM240 million. ✚
- **INTERNATIONAL SHARIAH RESEARCH ACADEMY (ISRA)** The International Shariah Research Academy is established with the aim of promoting applied research in the area of Syariah and Islamic Finance. This was announced by Bank Negara Malaysia. ✚
- **LISTING OF TM INTERNATIONAL** TM International is on track for a listing via a simple introduction. The listing is expected to take place within the second quarter of 2008 after the completion of TM's de-merger exercise. ✚
- **NEW GUIDELINES ON UNIT TRUST FUNDS** The Securities Commission has issued new guidelines for the unit trust industry. The guidelines are aimed to provide greater flexibility in structuring more innovative products. ✚
- **NO RIGHT TO LOSS OF INCOME** The High Court ruled that an illegal immigrant has no right to claim loss of income. That was the fate of Indonesian Sukatno Karnen who became paralysed after he was hit by a van in 1996. ✚
- **PAHANG GEARING FOR BIO-TECH** Pahang is getting ready for development of biotechnology and biodiversity plan as a result of the East Coast Economic Region (ECER) master-plan. ✚

- **RAISING STANDARDS** It was announced by Bursa Malaysia Bhd that listing requirements have been tightened to raise the standards of corporate governance of listed companies. The amendments which took effect in January 2008 were aimed at expanding the functions of the audit committee. ✂
- **THE ADDRESS TO HAVE...** Menara Hap Seng with its bold and beautiful appearance is touted to be the latest prestigious address to have in the federal capital. Situated in the Golden Triangle of Kuala Lumpur, it will serve as the headquarters for the public-listed Hap Seng Consolidated Bhd. ✂
- **THE YEAR OF THE SUKUK** 2007 has been helmed as the year of the Sukuk with the issuance of the world's largest sukuk musharakah by Binariang GSM Sdn Bhd. Other sukuk issues include the issuance by Shell MDS in 1990 and the first global sovereign sukuk in 2002. ✂

## FOREIGN FLASH

- **SPAM KING PLEADS GUILTY** Robert Soloway, dubbed the 'spam king' pleaded guilty on 14 March 2008 to mail fraud, fraud in connection with electronic mail and failing to file a tax return. Robert Soloway was crowned 'the spam king' by prosecutors who said he used networks of compromised computers to send out millions of junk emails around the globe. Prosecutors also said that Soloway made hundreds of thousands of dollars from his spamming business. The most serious charge deals with non-electronic mail fraud stemming from his failure to keep promises he made regarding his email marketing software. He faces up to 20 years of imprisonment for this charge alone. Sentencing is expected to take place on 20 June 2008 at the US District Court in Seattle. ✂

- **LEGS ARE OK!** The Supreme Court of Korea has recently acquitted a man, identified as Kim, of charges that he sexually harassed a young woman by taking a picture of her legs on the subway. Kim used a camera in his mobile phone to take the picture of the woman as she sat in front of him. Under the law on sexual harassment, a person guilty of photographing parts of other people's bodies in a way that can cause sexual desire or shame can be jailed for up to five years or fined a maximum of 10 million won. However, the court in acquitting Kim explained that "it is hard to say that the defendant took a picture of a part of another person's body that can cause sexual desire or shame". ✂
- **LIBEL TERRORISM PROTECTION ACT** New York has decided to protect her state's authors and publishers from what is known as "libel tourism" after the New York Court of Appeals ruled in December 2007 that the state's laws did not protect Rachel Ehrenfeld, an American author, from a possible bid by a Saudi businessman to enforce a summary judgment issued by the High Court in London. The Act would allow the New York courts to declare that a foreign judgment was unenforceable if the courts decided that the libel laws in foreign jurisdictions did not protect freedom of speech and the press to the same extent as the laws in New York and the US. ✂



From left: *Lim Xiao En, Natalia Kamarudin and Mohd Nubairi Samsuddin (Pupils)*

## BRIEFING...

### GENERAL

#### **SOMEBODY'S WATCHING ME, AND I HAVE NO PRIVACY...**

Some of you may remember those lines from Rockwell's famous song – *Somebody's Watching Me*, penned in 1984.

Although the song and accompanying music video had a humorous slant to it, there is a serious note underlying the phrase, especially in light of recent incidents involving spy cameras and secret recordings of a person's most private and intimate moments.

In this article we examine the legal framework concerning the issue of privacy in this country and the extent of effectiveness of these laws.

**IS THERE A RIGHT OF PRIVACY IN MALAYSIA?** To a large extent, there is no right of privacy in Malaysia. This was illustrated in the High Court case of *Ultra Dimension Sdn Bhd v Kook Wei Kuan* (2004).

In that case, the complainant was one of several kindergarten pupils photographed by one of Ultra Dimension's members of staff at an open area outside the kindergarten. Kook complained, among other things, that in so doing, Ultra Dimension had invaded his privacy. Undoubtedly, the subsequent employment of that photograph and the resulting unsolicited attention must have disconcerted Kook, but could Ultra Dimension have been said to have committed an invasion of his privacy with those actions?

**WHAT IS PRIVACY?** The judge in *Ultra Dimension* interpreted the nature of privacy as 'the right to be left alone and live free from all

intrusions by others'. The concern is that privacy is not a recognised legal concept in Malaysia or England, and consequently, there is no legal definition. Since there is no right to privacy, accordingly there is no right of action for breach of a person's privacy. The right of privacy is also not envisaged or protected by the Federal Constitution, unlike fundamental rights such as that of life and personal liberty. In *Ultra Dimension*, the court held that Kook did not have the right to institute an action against *Ultra Dimension* for invasion of privacy rights.

In a more recent case of *Dr Bernadine Malini Martin v MPH Magazines Sdn Bhd* (2006), the High Court took a similar approach when it dismissed an action brought by a doctor who claimed that her photograph was misused by the publisher of FEMALE Magazine in a bridal promotion. Although the decision was unfavourable to the doctor, the High Court did admit that to have published the photographs of the doctor without her consent was an invasion of her privacy but that "it is unfortunate for the plaintiff, that the law of this country, as it stands presently, does not make an invasion of privacy an actionable wrongdoing."

**ALTERNATIVE REDRESS** Despite the general rejection by Parliament and the courts of a general right to privacy, present law accords privacy some protection in specific respects.

- *By way of an existing tort*

Redress may be derived from other established causes of action – in this regard, where the facts surrounding the invasion of privacy fall within the boundaries of an existing and recognised tort and so giving rise to a cause of action in that existing tort. The pursuit of such a cause of action is, however, confined to the framework of that tort, and does not actually set up a unique action in privacy.

To illustrate, the court in *Ultra Dimension* considered whether the facts in the case did fall within the confines of the torts of defamation or nuisance. It was held not to be so with regard to defamation as the court was of the view that Ultra Dimension did not do anything which lowered the reputation of the complainant (in the estimation of right thinking members of society generally). Neither could resort be made to the tort of nuisance as Ultra Dimension did not unlawfully interfere with the complainant's use or enjoyment of the land or some right over, or in connection with it.

In similar vein, although there is no general right of privacy, statutory legislation also affords a measure of protection in other forms.

- **Criminal sanctions**

An 'invasion of privacy' in specific situations may attract criminal sanctions. Take the example of a neighbour who enters one's home without permission and installs therein a secret spy camera. Firstly, an offence of house trespass would have been committed under section 448 of the Penal Code. Secondly, the installation of the secret spy camera would offend section 509 of the Penal Code, which is reproduced below:

Whoever, intending to insult the modesty of any person, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such person, or *intrudes upon the privacy of such person*, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

It is interesting to note that an intrusion of privacy is explicitly punishable under section 509 and this is reminiscent of the case of *PP v Ahmad Bakhtiar Abdul Kayoom* (2004) where the accused was charged under both sections 448 and 509 of the Penal Code and was not only found guilty of trespassing into the complainant's apartment but also of

intruding upon the privacy of Malaysian actress and model, Nasha Aziz, by installing a closed-circuit camera to spy on her with the intention of tarnishing her integrity and causing her shame.

- **Other legislation**

In 1998, Parliament approved the Communications and Multimedia Act which has several sections on telecommunications privacy – namely section 234 which prohibits unlawful interception of communications. There is also reference to privacy issues in the Computer Crimes Act 1997 which outlaws eavesdropping, tampering with or falsifying data and sabotage through computer viruses and worms.

The Banking & Financial Institutions Act 1989 inter alia prohibits disclosure in any manner (with certain exceptions) of information and documents relating to the affairs or account of a customer.

Other legislation which contain some elements of privacy include the Private Hospital Regulations 1973 and the Child Act 2001.

**CONCLUSION** Should there be introduction of legislation in Malaysia to specifically make invasion of privacy a civil wrong, for which an action for damages may be brought? Much debate and academic ink has been expended on whether the Personal Data Protection Act should be hastened in light of intrusions into the personal privacy of individuals.

Whilst we mull over that issue, we should also perhaps take stock of the statutes that contain provisions which in fact pave the way for an invasion of privacy of the individual. ✍️

## GENERAL

### KNOWLEDGE MANAGEMENT IN A LAW FIRM...

Knowledge Management (KM) is a practice which involves the ongoing exercise of identifying, collating, storing, managing and disseminating of data and information important to a particular sector. Having a central body mainly dedicated to handling this is important especially to large corporations with many departments handling specific portfolios, so that knowledge can be used to bridge any divide or gap between the departments.

**WHAT IS KM** KM is about initiatives rather than a subject matter. It generally encompasses habits/ practices on one hand and enablers on the other.

Conducting a knowledge audit or sketching a knowledge map should be a curtain raiser to the implementing of KM initiatives. A knowledge map should ideally indicate the knowledge flow in an establishment and from that map, the knowledge gaps should be identified to enable the relevant persons to fill in those gaps.

It is imperative to inculcate the habits before investing in the enablers. There is an array of KM habits which include knowledge creation, knowledge discovery, knowledge sharing and knowledge managing. In a law firm the most challenging appears to be knowledge sharing. There are several reasons for the lack of sharing in a legal environment, the one most cited is that it is time-consuming. It was once said that "Knowledge is Power" but there has been a paradigm shift recently to power being associated with knowledge sharing instead.

Knowledge sharing is imperative in implementing KM initiatives simply because of the volume of tacit knowledge that resides within a person. Tacit knowledge is the


knowledge that people carry in their minds. It is considered valuable because it provides context for people, places, ideas and experiences.

Once the habits are in place, investment should then be made in KM enablers. Some of the enablers include human capital and infrastructure but the enabler most associated with KM is technology. Hence, it is a common misconception to equate KM with technology although the relationship between the two is very close. One of the most common KM enablers is a document management system. A document management system is, in very elementary terms, an online filing cabinet which is used to create, store, retrieve and distribute knowledge.

**THE BENEFITS OF KM** A KM department helps an organisation by identifying the important knowledge/ information required by them, and how best to utilise the knowledge to obtain optimum value. As a central body easily accessible by every department, the KM department has the best opportunity to disseminate knowledge to all. At best, the KM department is a one-stop centre that streamlines information and directs or handles queries from within the organisation and also from external parties, whilst collating and disseminating knowledge to those within the organisation.

As the knowledge is already identified and stored, there is no fear of loss of knowledge when a person retires or resigns. Knowledge is already retained within the database to be accessed and shared.

The benefits of KM may not be tangible but its significance cannot be denied. Malaysia's Vision 2020 is all about turning the country into a knowledge-based economy. In the Prime Minister's own words:

As we move into this new, and challenging... knowledge management becomes increasingly critical and fundamental for survival and self sustenance. 

## ENERGY & UTILITIES

### **CARBON TRADING... A WAY TO INVEST**

Under the Kyoto Protocol, developed nations that have ratified the treaty are committed to reduce their greenhouse gas (GHG) emissions by 2012 to 5.2% below their 1990 levels.

In order to reduce GHG emissions, developing countries can either opt to restructure their operations to cut carbon dioxide emissions or buy carbon credits from companies or developed nations that have spare carbon credit allowances under the Clean Development Mechanism (CDM) scheme. This is provided for under Article 12 of the Kyoto Protocol 1997.

Malaysia is a signatory to the Kyoto Protocol and since 2002, 22 companies have applied for the Kyoto Protocol's certified emission reductions (CERs). As at March 2007, two of the 22 registered CDM projects had sold 320,000 tonnes of CERs valued at less than RM10 million, and most CERs generated in Malaysia are from biomass plants.

As explained by Azman Zainal Abidin, deputy director for policy analysis and research management at the Pusat Tenaga Malaysia (a non-profit organisation administered by the Ministry of Energy, Water & Communications), companies that fail to achieve their reduction targets can either buy carbon credits to fulfil their quota or support projects that reduce emissions in developing countries such as Malaysia via CDM.

Carbon credits generated by these projects are then sold in return for a reduction of greenhouse gases in Malaysia and revenue – a “double bonus”, said Azman. One carbon credit is equivalent to the emission of one tonne of carbon dioxide and every greenhouse gas has a different global warming potential (GWP), which indicates

how much heat it absorbs in relation to one tonne of carbon dioxide. For example, nitrous dioxide absorbs heat 310 times more efficiently than carbon dioxide.

Azman believes that through CDM, companies can do their bit for the environment even though their motives may not be driven by love of the country or environment.

As a developing country with ample agricultural and natural resources, Malaysia stands to be a significant beneficiary as we foresee CER creation gaining prominence in Malaysia in the near future. And we expect CER trading to increase up to 2012, with the Pusat Tenaga Malaysia estimating that the country has up to 100 million tonnes of carbon credit potential, which translates into RM4.8 billion in potential revenue.

The most obvious beneficiary of CER trading in Malaysia is the plantation sector, particularly oil millers, with 395 operating oil mills potentially raking in RM252 million of yearly income from three typical projects: composting of empty fruit bunches (EFB) and palm oil mill effluents; biogas recovery from effluent to energy; and conversion of biomass (palm kernel shells, EFB) to energy, followed by potential beneficiaries such as power, manufacturing, waste management, forestry, oil and gas, and transportation sectors.

To encourage corporations to go green, the Malaysian government has exempted carbon credit income from tax from 2008 to 2010.

Vijay Shankar Murthy (consulting firm Frost and Sullivan's industry manager on technical insights for Asia Pacific) explains:

When companies introduce CDM projects to their businesses, they would have to buy machinery or carry out operations that emit less carbon dioxide. That would give them excess carbon credit that can be sold to other companies who need the credit. The cost of going green could then be compensated.

So, go green with carbon trading! 



## BRIEF-CASE...

**CONTRACT** – Term loan facility – Whether plaintiff must terminate facility to be entitled to payment by defendant – Requirement of notice of termination


**RHB BANK BHD V FAUZUN ABDUL SAMAD** [2007] 9 CLJ 748, High Court

**FACTS** The plaintiff, a financial institution, granted the defendant a term loan facility of RM2,000,000. Upon a drawdown notice by the defendant, the plaintiff made full payment. The plaintiff subsequently contended that the defendant had breached the terms of the facility agreement when he failed to make monthly repayments, and issued a letter of demand claiming RM2,280,332.81 together with interest.

**ISSUE** Whether the plaintiff, prior to the expiry of the facility, must first terminate the facility so as to be entitled to payment by the defendant.

**HELD** In dismissing the plaintiff's case, it was held that as there were precise and explicit provisions as to the requirement of giving notices of termination and demand in the facility agreement, the plaintiff will only be entitled to demand the amount outstanding after serving a notice of termination to the defendant. The case of *Fui Lian Credit & Leasing Sdn Bhd v Kim Leong Timber Sdn Bhd & Ors* (1991) made it clear that if required by the agreement, notice is essential in determining the agreement. In the present case, no such notice was provided.

In the words of Abdul Alim Abdullah JC:


The submission by the plaintiff's counsel that the filing of the suit herein is in itself to be construed a demand or termination of the facility is inconceivable against the background of the express terms of the facility agreement and the authorities cited above. 

**ADMINISTRATIVE LAW/ LABOUR LAW** – Quantum of backwages – Whether ought to be limited to 24 months – Industrial Court Practice Note No. 1 of 1987

**TELEKOM MALAYSIA BHD V RAMLI AKIM** [2008] 1 CLJ 440, Court of Appeal

**FACTS** The respondent, an employee of the appellant, had brought an action for constructive dismissal against the appellant in the Industrial Court. The Industrial Court awarded the respondent monetary compensation in the form of backwages from the date of dismissal to the last date of hearing (which amounts to 53 months of salary) and loss of future earnings (an additional 57 months of salary). The appellant applied to the High Court for judicial review to quash the Industrial Court award but the application was dismissed. Hence, the present appeal.

**ISSUE** The issue for consideration was whether the award of backwages should be limited to 24 months in line with the Industrial Court Practice Note No. 1 of 1987 (Practice Note).

**HELD** In allowing the appeal, the Court held that although the quantum of backwages is very much at the discretion of the Industrial Court and that the Practice Note is merely a guideline, there were no justifiable circumstances here to warrant the departure from the Practice Note as this would cause undue variation to the existing process of awarding and assessing backwages. It was unfair for the Industrial Court to award the respondent full backwages without limiting it to 24 months as it had the effect of punishing the appellant for the delay caused by the Minister who only referred the case to the Industrial Court more than two years after the dismissal. Hence, the award of backwages ought to be reduced to 24 months in line with the Practice Note. 

**COMPANY LAW** – Acquisition of minority shares – Whether application filed before expiry of 3 months' notice under s. 180(3)(b) Companies Act 1965 premature

**SHANTA HOLDINGS SDN BHD V GOLDEN UNI-CONSORTIUM SDN BHD**  
[2008] 1 CLJ 87, Court of Appeal

**FACTS** Pursuant to a share acquisition exercise, the respondent company acquired 90.1% of the paid-up shares of the transferor company at RM2.05 per share whilst the remaining 9.9% of the shares was held by the appellant company. The appellant was prepared to sell the shares only at RM5.50 per share. After serving on the appellant a notice pursuant to section 180(3) of the Companies Act 1965, the respondent, before the expiry of 3 months, filed an application to the High Court for a declaration to acquire the appellant's entire shareholding. The court allowed the application. On appeal, the appellant contended that the respondent's application was premature.

**ISSUE** Whether the application for acquisition filed before expiry of 3 months was premature.

**HELD** In dismissing the appeal, it was held that the objection raised by the appellant that the respondent should have delayed in filing its application was an attempt to get the respondent to buy the shares at the higher price.

This objection served no purpose as the respondent was ready and willing to acquire the shares and the appellant was also prepared to part with the shares although at a higher price. ❧

**CIVIL PROCEDURE / ISLAMIC BANKING**  
– Summary judgment – Islamic Banking - *Bai Al Inah* facility – Default – Whether sum claimed too exorbitant – Contract – Certainty of contract – Doctrine of *estoppel*

**BANK KERJASAMA RAKYAT MALAYSIA BHD V PSC NAVAL DOCKYARD SDN BHD** [2008] 1 CLJ 784, High Court

**FACTS** The plaintiff bank, by virtue of an Islamic banking facility (*Bai Al Inah*) granted to the defendant, purchased certain quoted shares from the defendant for a cash consideration of RM15 million and sold the same to the defendant for a purchase price of just over RM23 million. The defendant repaid the sum owed till August 2004. As a result of the default, the plaintiff sued the defendant for an amount of RM15,418,147.41, and also applied for summary judgment of the claim pursuant to Order 14 Rules of the High Court 1980. Summary judgment was refused and hence, the plaintiff's appeal.

**ISSUE** The issue for consideration was whether the quantum claimed was exorbitant and should be litigated.

**HELD** In allowing the appeal, the court held that the defendant had failed to show the relevance of citing the principles held in *Affin Bank Bhd v Zulkifli Abdullah* (2006), in which the amount claimed was exorbitant and had included unearned profit. In this case however, there was no issue of unearned profit as the facility had matured. Even if it is true that the amount due was more than what would be incurred under its conventional counterpart, the defendant entered into such agreement by its own free will and would be in a position to make a choice diligently as compared to for example, an individual borrower. ❧

## BRIEF-UP...

### **BANK KERJASAMA RAKYAT MALAYSIA BERHAD (SPECIAL PROVISIONS) (AMENDMENT) ACT 2007**

No  
A1293

*Date of coming into operation*  
**1 January 2008** (except para 3(b), sections  
4 and 5)

*Amendment*  
**Sections 2, 3, 7, 14, 24** and **First Schedule** 

### **BILLS OF EXCHANGE (AMENDMENT) ACT 2007**

No  
A1314

*Date of coming into operation*  
**1 February 2008**

*Amendment*  
**Sections 74A** and **86**

*Incorporation*  
**Sections 74B** and **74C** 

### **CENTRAL BANK OF MALAYSIA (AMENDMENT) ACT 2008**

No  
A1328

*Date of coming into operation*  
**8 February 2008**

*Amendment*  
**Sections 30A** and **43** 

### **CO-OPERATIVE SOCIETIES (AMENDMENT) ACT 2007**

No  
A1297

*Date of coming into operation*  
**1 January 2008**

*Amendment*  
**Sections 2, 5, 6, 10, 12, 13, 14, 17, 18, 18A, 19,  
22, 23, 24, 25, 31, 32, 35, 36, 37, 38, 39, 40, 42,  
43, 44, 45, 46, 50, 51, 52, 53, 54, 55, 57, 58, 59,  
60, 61, 62, 63, 64, 65, 66, 69, 70, 71, 72, 73, 74,  
75, 77, 79, 80, 81, 82, 83, 86, 87, 91, 92** and **93**

*Incorporation*  
**Sections 10A, 10B, 17A, 19A, 34A, 42A, 44A,  
44B, 52A, 54A, 69A, 69B, 69C, 69D, 84A, 85A,  
86A, 86B, 93A** and **Schedule**

*Deletion*  
**Sections 3, 20, 29, 49, 71A, 71B, 71C** and **89** 

### **MINERAL DEVELOPMENT (AMENDMENT) ACT 2008**

No  
A1327

*Date of coming into operation*  
**25 January 2008**

*Amendment*  
**Sections 53, 55** and **63** 

**WEIGHTS & MEASURES  
(AMENDMENT) ACT 2007**

No  
**A1309**

*Date of coming into operation*  
**1 February 2008**

*Amendment*  
**Sections 2, Part II, 9, 10, 12, 25, 25A, 27A, 29  
and 34A**

*Incorporation*  
**Section 8A**

*Deletion*  
**Sections 3, 4, 5, 6, 7, 8, 33, 34, First Schedule  
and Third Schedule** 

**FARMERS' ORGANIZATION  
(AMENDMENT) ACT 2007**

No  
**A1295**

*Date of coming into operation*  
**1 January 2008**

*Amendment*  
**Section 35**

*Deletion*  
**Sections 33 and 34** 

**FISHERMEN'S ASSOCIATIONS  
(AMENDMENT) ACT 2007**

No  
**A1294**

*Date of coming into operation*  
**1 January 2008**


*Amendment*  
**Sections 2 and 11**

*Deletion*  
**Sections 34, 35 and 36** 

**MALAYSIA CO-OPERATIVE  
SOCIETIES COMMISSION ACT 2007**

No  
**665**


*Date of coming into operation*  
**1 January 2008**

*Notes*  
An Act to provide for the establishment of the Malaysia Co-operative Societies Commission and for matters incidental thereto and connected therewith. 

**WATER SERVICES  
INDUSTRY ACT 2006**

No  
**655**

*Date of coming into operation*  
**1 January 2008**

*Notes*  
An Act to provide for and regulate water supply services and sewerage services and for matters incidental thereto. 

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*There's always a way - if you're committed.*  
– Anthony Robbins

## ELECTRONIC GOVERNMENT ACTIVITIES ACT 2007

No  
680

*Date of coming into operation*  
**1 January 2008**

### Notes


An Act to provide for legal recognition of electronic messages in dealings between the Government and the public, the use of electronic messages to fulfill legal requirements and to enable and facilitate the dealings through the use of electronic means and other matters connected therewith. 

## NATIONAL MEASUREMENT SYSTEM ACT 2007

No  
675

*Date of coming into operation*  
**15 February 2008**

### Notes

An Act to provide for uniform units of measurement based on the International System of Units, the establishment of measurement standards and measurement traceability and the coordination of Malaysia's national measurement system, and for matters connected therewith. 

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*The most important thing in communication is to hear what isn't being said.* – Peter Drucker

## NATIONAL PRODUCTIVITY CORPORATION (INCORPORATION) (AMENDMENT) ACT 2008

No  
A1329

*Date of coming into operation*  
**21 February 2008** 

## INDUSTRIAL RELATIONS (AMENDMENT) ACT 2007

No  
A1322

*Date of coming into operation*  
**28 February 2008**

### Amendment

**Sections 2, 2A, 5, 8, 9, 10, 12, 13, 16, 19B, 20, 22, 23, 23A, 27, 29, 30, 33, 38, 40, 54, 56, 61, 62 and Schedule**

### Incorporation

**Sections 2B, 10A, Part IXA, 60A and Second Schedule**

### Deletion

**Sections 15 and 51** 

## TRADE UNIONS (AMENDMENT) ACT 2007

No  
A1324

*Date of coming into operation*  
**28 February 2008**

*Amendment*

**Sections 2, 3, 4, 10, 15, 19, 26, 28, 31, 32, 37, 38, 49, 56 and 63**

*Incorporation*

**Sections 40A, 50A and 68A** 

**GUIDELINES/RULES/  
PRACTICE NOTES ISSUED BETWEEN  
JANUARY AND MARCH 2008  
BY BANK NEGARA MALAYSIA/  
SECURITIES COMMISSION/  
BURSA MALAYSIA SECURITIES BHD/  
FOREIGN INVESTMENT COMMITTEE**

**BANK NEGARA MALAYSIA (BNM)**

- Guidelines and Circulars Listing in relation to Banking – *Date Issued: March 2008*

**Capital Adequacy**

**Financial Reporting**

**Anti-Money Laundering**

**Prudential Limits & Standards**

- Guidelines and Circulars Listing in relation to Insurance & Takaful – *Date Issued: March 2008*

**Capital Adequacy**

**Anti-Money Laundering**

**Prudential Limits & Standards**

- Guidelines and Circulars Listing in relation to Development Financial Institutions – *Date Issued: March 2008*

**Financial Reporting**

**Anti-Money Laundering**

**Prudential Limits & Standards**

**SECURITY COMMISSION (SC)**

- Guidelines on Securities Borrowing and Lending – Tax Guidelines on Securities Borrowing and Lending – In relation to Interpretation of Exemption Orders
- Guidelines on Collective Investment Schemes – Guidelines for the Appointment of Related-Party Trustees – *Revised Edition: 3 March 2008*
- Guidelines on Collective Investment Schemes – In relation to Foreign Collective Investment Schemes – Guidelines for the Offering, Marketing and Distribution of Foreign Funds – *Revised Edition: 3 March 2008*
- Guidelines on Collective Investment Schemes – Prospectus Guidelines – *Date Issued: 3 March 2008; Effective Date: January 2008*
- Guidelines on Collective Investment Schemes – In relation to Unit Trust Advertisement and Promotional Material – *Date Issued: 3 March 2008*
- Guidelines on Collective Investment Schemes – In relation to Marketing and Distribution of Unit Trust Funds – *Date Issued: 3 March 2008*
- Guidelines on Collective Investment Schemes – In relation to Unit Trust Funds – *Date Issued: 3 March 2008*
- Guidelines on Prospectus – Part 3: Procedures for Registration – *Revised Edition: 22 February 2008*
- Public Exposure of Prospectuses – *Date Issued: 22 February 2008*
- Guidelines on Due Diligence – In relation to Due Diligence Conduct for Corporate Proposals – *Effective Date: 1 February 2008*
- Guidelines on Principal Advisers – In relation to Principal Advisers for Corporate Proposals – *Effective Date: 1 February 2008*

- Guidelines on Prospectus – Prospectus Guidelines – Amendments in relation to the Update to Chapter 13 of the Prospectus Guidelines – *Effective Date: 1 February 2008*
- Guidelines on the Offering of Equity and Equity-Linked Securities for Main Board / Second Board and the MESDAQ Market – *Effective Date: 1 February 2008*
- Guidelines on Bonds – In relation to the Offering of Asset-Backed Securities – Practice Note 1 : Specific Requirements and Disclosure of Information on Primary Collateralised Loan Obligations Transactions – *Effective Date: 28 January 2008*
- Guidelines on Issue / Offer of Securities – Capital Markets and Services (Price Stabilisation Mechanism) Regulations 2008 – *Date Issued: 11 January 2008*
- Guidelines on Securities Borrowing and Lending – *Amended as at 11 January 2008*
- Guidelines on Take-Overs & Mergers – The Application of the Malaysian Code on Take-Overs and Mergers 1998 in relation to Over-Allotment Option and Price Stabilisation Mechanism – *Effective Date: 11 January 2008*
- Guidelines on Licensing – In relation to the Application for Establishment of a New Stockbroking Company – *Date Issued: 8 January 2008*

## **BURSA MALAYSIA SECURITIES BERHAD (BMSB)**

- Amendments to the Listing Requirements for Main Board / Second Board – In relation to the Introduction of the Capital Markets and Services (Price Stabilisation Mechanism) Regulations 2008 – *Date Issued: 25 February 2008*

- Amendments to the Listing Requirements for the Main Board / Second Board and the MESDAQ Market – In relation to Corporate Governance and Other Areas – *Effective Date: 28 January 2008*

## **FOREIGN INVESTMENT COMMITTEE (FIC)**

- Guidelines on the Acquisition of Interests, Mergers and Take-Overs by Local and Foreign Interests – *Effective Date: 1 January 2008*
- Guidelines on the Acquisition of Properties by Local and Foreign Interests – *Effective Date: 1 January 2008*
- Bumiputera Controlled Public Listed Companies – *In force since February 2007*



Tang Ai Leen (Partner - Property & Infrastructure)

## ✦ ZRp IN-BRIEF...

The ZRp Brief is published for the purposes of updating its readers on the latest development in case law as well as legislation. We welcome feedback and comments and should you require further information, please contact the Editors at:

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Prior to joining ZUL RAFIQUE & partners in 2002, she was handling conveyancing and corporate matters and advised on sale and purchase of residential and commercial properties, leases and tenancies, sale and purchase of shares and assets, joint ventures as well as shareholders' agreement.

She joined ZUL RAFIQUE & partners as a legal associate in the Mergers & Acquisitions division in 2002 and was involved in a number of corporate transactions including advising on the listing of companies on Bursa Malaysia Securities Berhad and restructuring and re-listing of PN 4 companies on Bursa Malaysia Securities Berhad. She was also involved in mergers and acquisitions of insurance companies as well as various business acquisitions and share sale transactions.

A person with big dreams and aspirations, Mun Lai rarely rests on her laurels when she is free, preferring instead to travel to different parts of the world to enjoy different cultures and food. She also reads as much as she can after work, and indulging in music and literature is a big part of her interest. 53