

MALAYSIA

Malaysia litigation guide



By Elaine Yap and Donovan Cheah
Wong & Partners

WONG & PARTNERS
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The litigation process in Malaysia follows an adversarial system. All Malaysian advocates and solicitors have exclusive rights of audience in the Malaysian courts, except the small claims tribunal and the Syariah courts. For rights of audience before the Syariah courts, advocates and solicitors must obtain a separate qualification. Foreign lawyers are generally not granted rights of audience, unless they are issued with a special certificate for admission by the Attorney General.

Court system

As of early 2009, steps have been taken to improve the efficiency of the court system in Malaysia with the implementation of a new 'fast track' system for case management. The fast track system has been implemented in Kuala Lumpur and Shah Alam, with courts in other jurisdictions being expected to follow suit in due course.

In September 2009, a new Commercial Court was launched in the Kuala Lumpur High Court, equipped with a computerised system that allows for, among others, electronic filing, video recording of trials, and easier monitoring of cases. It is reported that this new 'e-court' system will gradually be implemented to approximately 166 courts in Malaysia.

Interim remedies

There are various interim remedies available to parties in civil proceedings, such as interlocutory injunctive relief, Mareva injunctions (also known as 'freezing orders') and Anton Piller orders. The court may also make various orders in the appropriate circumstances such as:

- an order that a plaintiff provide security for costs;
- an order to restrain a party from pursuing foreign proceedings;
- an order for the detention, custody or preservation of any property which is the subject matter of an action;
- an order for the sale of perishable property; and
- an order for the return of property subject to a lien

Enforcement of judgments

A judgment or order takes effect from the time it is pronounced but can only be enforced upon extraction of a sealed copy of the judgment or order from court. Some of the principal methods of enforcement of judgment debts, or the carrying out of orders of the court, include the issuance of a writ of seizure and sale, garnishee proceedings, insolvency proceedings, charging order on shares or securities, and committal proceedings.

Foreign judgments

Certain foreign judgments are enforceable in Malaysia, by virtue of the *Reciprocal Enforcement of Judgments Act 1958* (REJA). However, before a foreign judgment can be enforceable, it has to be registered. The registration of foreign judgments is only possible if the judgment is for a

monetary sum and was given by a Superior Court from a country listed in the First Schedule of the REJA. Those countries include, for example, the UK, Singapore, New Zealand and India.

If the judgment is not from a country listed in the First Schedule to the REJA, the only method of enforcement at common law is by securing a Malaysian judgment. This involves suing on the judgment in the local courts as an action in debt.

Arbitration

Malaysia's arbitral legislation has seen an overhaul with the passing of the *Arbitration Act 2005*. The *Arbitration Act 2005* is based on, but is not identical to the United Nations Commission on International Trade Law Arbitration (UNCITRAL) Model Law, and was initiated to bring Malaysia in line with modern international practice.

The *Arbitration Act 2005* commenced as from March 15 2006, and the *Arbitration Act 1952* continues to apply to all arbitrations commenced before that date. The *Arbitration Act 2005* is applicable across the board to all international and domestic arbitrations regardless of the rules of arbitral regime selected.

Awards made by an arbitral tribunal, pursuant to an agreement,

Steps have been taken to improve efficiency of the court system with implementation of a new 'fast track' system for case management

are final and binding on the parties. The *Arbitration Act 2005* provides that the mode of enforcement of awards is by application in writing to the High Court, and is recognised as binding and enforceable by entry as a judgment. However, the High Court has the discretion to refuse the recognition or enforcement of awards in certain stipulated circumstances.

ADR

Malaysian parties remain relatively unaware of, and do not commonly avail themselves to, alternative dispute resolution (ADR) methods. This is due principally to their lack of knowledge, experience and understanding of the mediation process. It is likely however that mediation and conciliation will also gain momentum as disputing parties become more sophisticated and cognisant of ADR methods.

The Malaysian Mediation Centre (MMC), based in Kuala Lumpur, was established by the Malaysian Bar Council with the objective of promoting mediation as a means of ADR. The MMC only accepts commercial matters but intends to expand its scope of services to cover civil matters at a later stage.

Recommended firms at a glance

BANKING & FINANCE
Tier 1
Adnan Sundra & Low
Albar & Partners
Kadir Andri & Partners
Zaid Ibrahim & Co
Tier 2
Shearn Delamore & Co
Shook Lin & Bok
Zul Rafique & Partners
Tier 3
Lee Hishammuddin Allen Gledhill
Shahrizat Rashid & Lee
Skrine
Wong & Partners

DISPUTE RESOLUTION
Tier 1
Lee Hishammuddin Allen Gledhill
Shearn Delamore & Co
Shook Lin & Bok
Tier 2
Skrine
Zul Rafique & Partners
Tier 3
Kadir Andri & Partners
Raja Darryl & Loh
Shaikh David Raj
Sivananthan

CORPORATE/M&A
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Kadir Andri & Partners
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Skrine
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Zul Rafique & Partners
Tier 3
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Wong & Partners

INTELLECTUAL PROPERTY
Tier 1
Shearn Delamore & Co
Shook Lin & Bok
Skrine
Wong Jin Nee & Teo
Tier 2
Tay & Partners
Zaid Ibrahim & Co
Tier 3
Cheang & Ariff
Raja Darryl & Loh
RamRais & Partners
Wong & Partners

Banking & Finance

RECOMMENDED FIRMS

Tier 1

Adnan Sundra & Low

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Skrine

Wong & Partners

Adnan Sundra & Low

Adnan Sundra & Low has a strong banking and finance practice, and has proven itself to be particularly competent on Islamic issuance. The firm's meticulously tailored service, attention to detail and commercial savvy, has made it popular with clients – as has its ability to work to tough deadlines.

Adnan Sundra & Low advised Maybank Investment Bank on two *sukuk musyarakah* (partnership finance) issues: a RM300 million (US\$85 million) issue of Islamic bonds with detachable warrants and a RM300 million Islamic commercial paper/MTN programme.

In another headline deal, the firm advised Malayan Banking engineer on a RM6 billion rights issue of ordinary shares, the largest in Malaysian corporate history. The firm also acted for RHB Investment Bank Berhad on a RM600 million issuance of hybrid Tier 1 capital securities.

Within the 16 strong banking and finance department, Deepak Sadasivan is particularly well thought of, and is praised for his innovative approach to problem solving.

Albar & Partners

Albar & Partners compliments its outstanding debt capital markets practice with a flourishing banking and finance team. The firm is hard working and knowledgeable, inspiring confidence from clients on matters ranging from simple-but-time-sensitive mandates to the most complex structures.

In capital markets, the firm represented joint lead arrangers Kuwait Finance House Malaysia and Bank Islam Malaysia on the establishment of a bank-guaranteed

Islamic *ijarah* (capital leasing) MTN programme of up to RM500 million for AirAsia.

The firm has a strong project financing practice too, acting for the lenders on a US\$3.8 billion project financing for government-awarded consortium the MMC Gamuda Joint Venture. This was to develop a double-track railroad project in Malaysia. The consortium sought RM2.4 billion (US\$666 million) through a club deal, rather than through syndicated financing, and allowed the securities to be shared evenly between the three conventional and Islamic finance facilities.

Another project finance deal involved advising the financiers in *Syariah*-compliant total-financing package of RM777 million (US\$213 million) for the acquisition and development of Lot B in Kuala Lumpur Sentral, Malaysia's largest transit hub.

Kadir Andri & Partners

Kadir Andri & Partners offers expert advice on banking and finance issues. Recent work includes advising RHB Islamic Bank on a RM140 million (US\$39 million) *ijarah* (capital leasing) term facility. This was an Islamic leasing operation borrowed by Eden from Stratavest to finance the purchase of land and construct a Libaran power plant in Sabah. It was the first structuring of an Islamic *ijarah* financing facility relating to a power plant involving the retirement of Islamic bonds issued for the project financing, though the programme was later withdrawn by Stratavest.

Kadir also acted as domestic counsel to Labuan offshore company Titan Capital on its refinancing of US\$333 million banking facilities. The firm also represented CVC Asia Pacific, the south east Asian arm of CVC Capital Partners, in the country's largest privatisation and largest acquisition by a global private equity firm in 2008. This was the RM4.9 billion (US\$1.54 billion) purchase of gaming company Magnum.

Practice heads Abdul Kadir Kassim and Eliathamby Sreesanthan are both prominent members of the Malaysian legal community, practising in banking and capital markets respectively. Adrian Chair is also considered to be one of the market's leading lawyers.

Zaid Ibrahim & Co

Zaid Ibrahim & Co made some improvements to its already impressive banking and finance team in 2008, recruiting banking partner David Lee Kim Meng from Singapore firm Allen & Gledhill. Kim Meng joins a firm lauded by clients for its extensive expertise in Islamic finance, and its wide-reaching network of offices.

The firm advised CIMB Investment Bank and Standard Chartered Bank Malaysia on the RM1 billion (US\$285 million) trust certificate programme by the Islamic

Development Bank. This was the first issuance of ringgit Islamic securities by a supranational and the first AAA-rated ringgit issuance.

ZICO also advised CIMB Bank on another first: an unlisted debt issue structured for retail distribution. CIMB's US\$1.1 billion offer of capital securities was stapled to an offer of subordinated notes made by a wholly-owned subsidiary of the company.

Two of the firm's banking partners, Chin Sook Kwan and Lilian Liew, are commended as market leaders. Both are highly active for the firm, with Liew head of banking and finance.

Shook Lin & Bok

Shook Lin & Bok's banking and finance capability is well established among the market's leaders. Jal Othman is particularly well regarded by clients who value his hard work and expert advice.

The firm advised AMMB Holdings in the establishment of an executive share scheme of up to 15% of the issued and paid-up ordinary share capital of the holding company, which required amendments to the company's memorandum of association.

Shook Lin & Bok also acted for AmInvestment Bank in its offering of 20 million US-style cash settled call warrants over ordinary shares of China Coal Energy Company. And the firm advised the same client on the offering of 28 million US-style cash settled call warrants over ordinary shares of Hong Kong Exchanges & Clearing.

Zul Rafique & Partners

Zul Rafique & Partners has an outstanding reputation as a provider of banking and capital markets related services. Clients single out the firm's creativity on transactions as its main strength, but it is also known for being able to overcome challenges and meet tough deadlines. As a result, the firm is mandated on the largest and most complex deals.

In one standout deal, the firm advised CIMB and Standard Chartered Bank Malaysia as joint lead arrangers on the first property securitisation in Malaysia. The asset-backed programme involved the purchase of various commercial properties. The firm also advised on the first acquisition of properties by the issuer.

Zul Rafique also represented Standard Chartered Malaysia as the lead arranger of the first senior subordinated MTN programme by a foreign issuer. The initial offering of RM3.5 billion (US\$996 million) of senior and subordinated notes was made by Korean-incorporated subsidiary, Standard Chartered First Bank. The firm was also principal Malaysian law adviser to the issuer.

Loh Mei Mei is highly regarded for her knowledge relating to both banking and capital markets.

Lee Hishammuddin Allen Gledhill

Lee Hishammuddin Allen Gledhill's banking and finance practice is led by Kumar Kanagasigam. The firm is very active in the market, particularly in restructuring and insolvency. The firm is advising Malayan Banking Berhad on their rights under a RM482 million (US\$137 million) debt restructuring agreement entered into between various lenders, including Malayan Banking Berhad, and Moccis Trading.

Skrine

Skrine's banking and finance capabilities, though eclipsed by its corporate practice, is still highly regarded by clients who describe it as efficient and professional. In March 2009, the firm secured a landmark decision for Bank Islam Malaysia Berhad. The decision stated that Bai Bithaman Ajil (BBA) contracts were valid and binding as a mode of Islamic finance.

Wong & Partners

Wong & Partners' banking and finance team advises clients on complex financial matters and is particularly well regarded for its work in infrastructure projects, both at home and abroad. The practice, led by Azizul Azmi Adnan, has advised clients across a range of areas including power, telecommunications and transport. The firm also has expertise in relation to Islamic finance.

Other active firms

ARSA Lawyers

Led by the inimitable Datuk Dr Abdul Raman Saad, Abdul Raman Saad & Associates (more popularly known as ARSA Lawyers) is commended by peers and clients for its pioneering efforts in promoting Islamic finance both locally and globally. Celebrating 30 years of practice, the firm held a brand launching ceremony (for the ARSA Lawyers brand) on August 3 2009 for which the Honourable Deputy Prime Minister, Tan Sri Dato Muhiyiddin Yasin provided a keynote address.

Azmi & Associates

With a standout reputation in the market for its construction and real estate work, Azmi & Associates also offers a solid financial and corporate practice. The firm advises international clients regularly and rounds out its core areas as foreign investment, corporate and commercial, M&A, Islamic banking, general banking, capital markets, venture capital, dispute resolution and litigation, IP, IT and biotechnology, energy and real estate and construction.

Particularly the team's efforts in real estate, finance, construction, insurance and tax has gained it a strong following of domestic and overseas lenders and borrowers on their real estate financing needs. Azmi Mohd Ali and Zuhaidi Mohd Shahari lead this construction and real estate team, which recently was involved in a \$2.2 billion loan facility transaction for a government owned company. The team advised the company on the loan which was to finance the construction of a major infrastructure project in northern Malaysia.

Azim Tunku Farik & Wong

Azim Tunku Farik & Wong offers specialised legal advice for litigation, commercial, and banking and conveyancing work. Founded in 1985, the firm additionally covers insurance, corporate, securities, and IP law. The team comprises approximately thirty lawyers including partners Encik Zainal Azim, Tunku Farik Bin Tunku Ismail and Wong Hok Mun.

Chooi & Co

A full-service local firm, Chooi & Co offers a reputable financial and corporate practice for domestic and foreign clients. Active on numerous cross-border transactions, the firm acts on deals ranging from banking, financial services, and M&A to corporate, capital markets and conveyancing. In addition to these areas, the firm provides quality counsel on dispute resolution and IP, TMT, family, employment and criminal law. Chooi Mun Sou, Azman Bin Othman Luk and Moy Pui Yee are notable partners of the firm and leading lawyers in their respective fields.

Jacob Rabindranath & Co

Jacob Rabindranath Krishna is the principal at this small Kuala Lumpur-based firm.

Lee Choon Wan & Co

Lee Choon Wan & Co is a solid full-service firm offering financial and corporate legal services. The firm's noted strength is in the capital markets, having substantial experience on IPOs, debt restructuring and advising on a number of products and instruments. Key partners are Lee Choon Wan and Debbie Choa.

Naqiz & Partners

In January 2010, Naqiz & Partners will celebrate five years of practice. Despite the tough market conditions, the firm worked on three IPOs in 2009. And for DCM work, the firm advised OSK Investment Bank Berhad on potential default and security arrangements in relation to bonds issued by Englotechs Berhad. But it is in the unit trust space that the firm really excels and is considered something of

an upstart. The practice is led by deputy managing partner Tan Hon Yik and includes Khairul Ismail and Jeremiah Gurusamy.

Shahrizat Rashid & Lee

Shahrizat Rashid & Lee provides a comprehensive range of legal services including a stellar banking and finance practice. Its practice areas include capital markets, debt restructuring and corporate reorganization, corporate banking, commercial litigation, construction, corporate and commercial, IP, privatization projects, technology and real estate and property development. The firm is allied with UK firm Eversheds and has an impressive record of handling sophisticated cross-border work, particularly in project financing. Key partners include Loo May Pearl, Komala Veloo, Premilla Ann David and Dato'Shahrir Abdul Jalil.

Corporate/M&A

RECOMMENDED FIRMS

Tier 1

Kadir Andri & Partners

Shearn Delamore & Co

Skrine

Zaid Ibrahim & Co

Tier 2

Albar & Partners

Lee Hishammuddin Allen Gledhill

Shook Lin & Bok

Zul Rafique & Partners

Tier 3

Adnan Sundra & Low

Wong & Partners

Kadir Andri & Partners

Kadir Andri & Partners is as strong in corporate M&A as it is in banking and finance. The firm is regularly mandated by the most prestigious companies for complex, high-value transactions.

One example was the deal representing DRB-Hicom Berhad in its US\$371 million disposal of 20.2% of the equity shareholding in EON Capital Berhad to Primus Pacific Partners 1 in June 2008. The deal allowed DRB-Hicom Berhad to exit from the conventional banking business while Primus Pacific 1 could enter the Malaysian banking sector.

Another high-profile deal was CIMB Group's acquisition of a 51% interest in the equity of PT Bank Lippo Tbk from Santubong Investments. The firm also worked on the subsequent merger between Bank Lippo and PT Bank CIMB Niaga Tbk. The deals, worth US\$572 million, completed in October 2008 and were led by Eliathamby Sreesanthan.

Tan Kong Yam is another of the firm's leading lawyers and headed the aforementioned DRB-Hicom Berhad deal. Kadir Andri & Partners' corporate M&A practice is led by the equally capable Abdul Kadir Kassim.

Shearn Delamore & Co

Shearn Delamore & Co has the expertise and resources to act on big deals and the firm demonstrated this with aplomb this year. In one of its headline deals, the firm advised both Bank of America and Merrill Lynch as local counsel in Malaysia on the banks' global merger, which completed in January 2009.

The firm also advised Tasek on the planning and legal due diligence for its proposed acquisition of Hong Leong Asia's building materials business in Singapore, Malaysia and Indonesia for US\$223.5 million (both parties subsequently agreed to terminate the transaction in November 2008).

As Malaysian counsel to ST Microelectronics, the firm advised the company's wireless semiconductor division, STMicroelectronics Wireless, on its joint venture with the mobile platform branch of Ericsson, known as ST-Ericsson.

Grace C G Yeoh leads the corporate practice, ably assisted by a six-strong team of partners.

Skrine

Skrine's corporate department is one of the most highly recommended in the Malaysian market. As such, the firm is present on high-value and innovative deals.

Recent work includes being instructed by German firm Gleiss Lutz to advise Robert Bosch, the world's largest supplier of automobile components, on the sale of the Blaupunkt brand car radio business to Munich industrial holding company Aurelius. As well as documenting the Malaysian aspects of the deal, Skrine helped to set up a new company to make the purchases and to obtain business transfer licences.

The firm was also instructed by Slaughter and May to act as Malaysian counsel to Alliance & Leicester on Banco Santander's acquisition via a scheme of arrangement. The deal was worth £1.2 billion (US\$1.9 billion).

The firm comprises a number of the market's most sought-after corporate practitioners. Janet Looi and Quay Chew Soon are both singled out by clients for their responsiveness

and deep knowledge of corporate law. Meanwhile, practice head Chen Kah Leng is equally well regarded.

Zaid Ibrahim & Co

Zaid Ibrahim & Co's corporate M&A department is led by Lim Kar Han. The practice has earned its top-tier ranking by acting on some of the largest deals in the market.

In June 2008, Sharon Tan and Idahani Ismas Ismail advised Saudi Telecom on its US\$3 billion acquisition of a 25% interest in Maxis Communications. This was done through parent company Binariang GSM.

In May 2008, the firm also helped Germanischer Lloyd AG's subsidiaries acquire 75.1% of the shares in Trident Consultants Far East, which held 49% of shares in Trident Consultants. The US\$19million deal was led by Wan Kai Chee.

Albar & Partners

Albar & Partners' two-partner corporate M&A group covers M&A, corporate advisory, private equity, and restructuring and insolvency.

The firm has been busy on both cross-border and domestic M&A deals. One example was the US\$680 million merger between Bank Niaga TBK and PT Bank Lippo TBK. The deal was completed in October 2008 and created Indonesia's fifth largest bank, Bank CIMB Niaga. It was the first banking merger under the Central Bank of Indonesia's single presence policy.

Albar & Partners has also acted for Al-Hadharah Boustead *Reit* (fund), the world's first Syariah compliant real-estate investment trust, in December 2008. One aspect of the mandate involved the RM188.8 million (US\$54 million) acquisition and lease of new plantation assets by the fund. The deal comprised the purchase of the Malakoff Estate for RM105.5 million, as well as the Bebar Estate for RM88.3 million.

Lily Tan Chea Li, who heads the practice along with Syed Zaid Albar, acted on both deals.

Lee Hishammuddin Allen Gledhill

Ng Leong Huat heads Lee Hishammuddin Allen Gledhill's M&A group and has experience in M&As, corporate structures and schemes, and public issues and listings.

Lee Hishammuddin Allen Gledhill took part in two large privatisations by way of selective capital exercise (SCR) in 2008. The first was a RM350 million (US\$99.5 million) deal for MTD Capital Berhad and CIMB Investment Bank, with the firm advising clients on the transaction and financing structure for the SCR. The second was also for MTD Capital Berhad and CIMB Investment Bank, and concerned the privatisation of Metacorp Berhad. That deal was worth RM150 million.

The firm also advised Reliance Pacific Berhad on the acquisition of travel and leisure companies in Hong Kong, Australia and Thailand. The deals were worth RM45 million.

Shook Lin & Bok

Shook Lin & Bok has a well respected and very active corporate M&A department. The practice combines a deep knowledge of the law with sound commercial sensibilities to provide top-end clients with a comprehensive service.

Recent work includes advising Hong Leong Investment Bank, a wholly-owned subsidiary of Malaysia-listed HLG Capital, on its RM75 million (US\$21 million) acquisition of the equity interest of SBB Securities. The firm acted for the same client on its RM65 million acquisition of the assets and liabilities of Southern Investment Bank. The CIMB Group was the seller in both cases.

The firm also advised Hume Fibreboard on the RM170 million disposal of its medium density fibreboard-related activities to Evergreen Fibreboard (Nilai), a wholly-owned subsidiary of Evergreen Fibreboard Berhad, in September 2008.

Partner Patricia David acted on both deals and is picked out by the market as one of the leading M&A practitioners.

Zul Rafique & Partners

Zul Rafique & Partners' corporate practice is led by Jerry Ong, a highly respected M&A practitioner.

In October 2008, Ong advised Mubadala Development Corporation and Global Capital and Development as consortium leaders on the subscription of 60% shares in Global Capital and Development. This was the company that entered into a master concession and land development agreement in relation to certain parcels of land in the Iskandar development region.

Ong was also present on the deal advising OME Management in its €553.8 million (US\$784 million) purchase of the interests in the Starkstrom-Geratebau Group from Kajo Neukirchen and HCP Capital Group.

Adnan Sundra & Low

Adnan Sundra & Low is a popular choice for corporate M&A deals. In June 2009, a Wong Chin Chin-led team advised Orix Investment and Management Pte on its investment in two Malaysian companies operating biomass power plants. Advice included legal due diligence on these companies.

Wong & Partners

Baker & McKenzie associate firm Wong & Partners has

the capacity to advise large clients on both domestic and cross-border transactions. The corporate practice is the firm's largest, and in one transaction it advised on three public takeovers under the Malaysian Takeovers & Mergers Code 1998.

Other active firms

ARSA Lawyers

Led by the inimitable Datuk Dr Abdul Raman Saad, Abdul Raman Saad & Associates (more popularly known as ARSA Lawyers) is commended by peers and clients for its corporate M&A practice. Celebrating 30 years of practice, the firm held a brand launching ceremony (for the ARSA Lawyers brand) on August 3 2009 for which the Honourable Deputy Prime Minister, Tan Sri Dato Muhiyiddin Yasin provided a keynote address.

Naqiz & Partners

The corporate M&A practice at Naqiz & Partners is jointly led by managing partner Syed Naqiz Shahabuddin and deputy managing partner Tan Hon Yik. Providing a broad client base with a very personalised approach, and a flexible fee structure, the firm has worked on a number of automotive deals, and has access to a growing clientele investing into Indonesia in the oil, gas and plantation sectors. For example, the firm advised Mamee-Double Decker (M) Berhad on its 60% acquisition of an Indonesian oil palm plantation company. The deal closed in August 2009, which was just one month after the firm launched Jakarta member firm Bastaman Enrico as part of a strategy of establishing 'best friends' around the region.

Dispute Resolution

RECOMMENDED FIRMS

Tier 1

Lee Hishammuddin Allen Gledhill

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Kadir Andri & Partners

Raja Darryl & Loh

Shaikh David Raj

Sivananthan

Lee Hishammuddin Allen Gledhill

Lee Hishammuddin Allen Gledhill's dispute resolution practice belongs in the top tier in Malaysia. Housing an impressive list of clients, the practice covers the full remit of dispute resolution services including commercial litigation, arbitration, insurance, employment and regulatory related disputes.

Over the last year, national airline Malaysia Airlines instructed the firm in an arbitration case in Switzerland for a German contract relating to ground handling services at Frankfurt-Hahn airport. The cancellation of the contract resulted in a €60 million claim for wrongful termination. The same client later sought advice from the firm on a suit for US\$35 million against the government of Maldives. This related to contracts entered during a joint venture period between the Government of Maldives and Naluri and is, at the time of writing, still pending.

Domestically the firm acted for Kijal Resorts against PTD Kemaman Terengganu to set aside a land acquisition that threatened the eco-tourism project at Awana Kijal. This is worth an estimated RM250 million (US\$72 million). Head of department and partner Rosli Dahlan is also involved in another high profile matter, with the firm acting for Resorts World to defend a claim made by Panji Selera and Maurivau that the Genting Road trespassed into their land.

Shearn Delamore & Co

Shearn Delamore & Co's dispute resolution practice can look back on a satisfying year. Robert Lazar's department kept itself busy with a number of high profile disputes and a large amount of well respected clients. Lazar appeared as counsel for bondholders in the Court of Appeal recently. The court ruled in favour of the bondholders on the prospects of a conversion exercise pursuant to a redeemable convertible bond issue. Lazar and team also acted for the trustees of another bond exercise in a contentious suit brought by bondholders who alleged a breach of duty on the part of the trustees. Cheng Lie Navigation, a Taiwan based subsidiary of French company CMA CGM, was represented by Shearn Delamore & Co in an action for fraud. Cheng Lie Navigation wants to recover losses suffered by the carrier group.

A large Malaysian telecommunications company was defended by partners Rabindra Nathan and Nad Segaram in the first statutory derivative action in the High Court. The procedure was started by a former minority shareholder under the new provisions in the Companies Act 1965. Another high profile matter was when partner Shanti Mogan acted for a group of companies that specialise in subsurface consultancies in the oil and gas industry in protecting their confidential information. That case is ongoing.

Shook Lin & Bok

The litigation practice at Shook Lin & Bok is headed by Sarjit Singh Gill, who also heads the banking practice. The practice covers the full spectrum of litigation and alternative dispute resolution services but is particularly strong in its traditional area of banking and finance. Other key high class litigators include banking and finance specialist Vinodh Coomaraswamy and David Chan.

Recent work includes roles on the Metramac case, which covered issues from a contractual dispute relating to a toll road project, and the Lina Joy appeal, which went before the Federal Court.

Shook Lin & Bok is also well known for its arbitration practice, particularly in the oil and gas sector.

Skrine

Skrine has managed to maintain a stable, solid tier two position despite fierce competition from other Kuala Lumpur-based firms. Partner Vinayak Pradhan heads the division and is involved in many cases.

Partner Leong Wai Hong advised Sime Darby Plantation on a dispute with ex-workers, which involved them making an application for leave to appeal to the apex court. This was against a decision by the Court of Appeal in affirming a High Court judgment against the ex-workers for delivery of vacant possession of the workers quarters. Skrine managed to resist the leave application in 2008.

Other work includes partner Leong Wai Hong's ongoing representation of Universal Trustee, which has been sued for breach of duties as trustee and administrator of an estate. Partner Siva Kumar Kanagasabai represented Ivory Quest in a matter against RHB Securities. The RM600 (US\$170 million) case ended in November 2008. And Kanagasabai also advised Malaysian insurers American International Assurance (AIA) and American Home Assurance (AHA) on the local incorporation of their businesses in Malaysia.

The firm is also representing Padiberas Nasional Berhad in its appeal against a large termination benefit claim by 190 former employees. And Skrine is representing a leading Japanese consortium that was awarded a project by the Malaysian government for the design, construction, completion and commissioning of a solid waste thermal treatment plant with a value of RM1.5 billion (US\$427 million).

Zul Rafique & Partners

The dispute resolution practice at Zul Rafique & Partners includes the deadly duo of Wilfred and Cecil Abraham, with the latter recently involved on Internet libel cases for News Straits Times Press (Malaysia) Berhad.

A reflection of the practice's standing in the market is its

regular instruction by the Government of Malaysia on various matters. This includes on the arbitration side of the practice.

Other key personnel include Kuhendran Thanapalasingham and Shahul Hameed Amirudin, while other key clients include Sarawak Shell Berhad.

Raja Darryl & Loh

Raja Darryl & Loh deserves its respectable tier three position. It houses a relatively modest sized dispute resolution practice, which is headed by partner Darryl Goon. The firm successfully defended Ernst & Young insolvency practitioner Lim Tian Huat in a trial involving a claim against him for negligence and breach of duty. Partner Mark La Brooy worked on the case, which related to 'trading-on' and continuing to operate a business in receivership. Other major clients include ExxonMobil, FSBM Holdings, The Medical Protection Society, United Overseas Bank and Lonpac Insurance.

Other active firms

ARSA Lawyers

Led by the inimitable Datuk Dr Abdul Raman Saad, Abdul Raman Saad & Associates (more popularly known as ARSA Lawyers) is commended by peers and clients for its dispute resolution practice. Celebrating 30 years of practice, the firm held a brand launching ceremony (for the ARSA Lawyers brand) on August 3 2009 for which the Honourable Deputy Prime Minister, Tan Sri Dato Muhiyiddin Yasin provided a keynote address.

Cheah Teh & Su

A mid-sized firm with 11 partners, Cheah Teh & Su was established 20 years earlier in 1989 and specialises in litigation and corporate work. In addition to alternative dispute resolution, its litigation department is divided into two groups: corporate litigation and contentious disputes. Under the former category the team has handled numerous cases involving bank recoveries, fraud investigations, white-collar crime, employment disputes, minority shareholder actions, insolvencies, insurance disputes, trade finance disputes, property contracts, partnership disputes and commercial issues. Contentious disputes includes employment disputes, defamation, breach of confidence, contempt and IP. The firm's corporate offering handles MBOs, M&As, joint ventures, new business start-ups, venture capital and general corporate advice.

Intellectual Property

RECOMMENDED FIRMS

Tier 1

Shearn Delamore & Co

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Zaid Ibrahim & Co

Tier 3

Cheang & Ariff

Raja Darryl & Loh

RamRais & Partners

Wong & Partners

Shearn Delamore & Co

Shearn Delamore & Co's intellectual property division has maintained its dominance in the market and belongs firmly in the top tier in Malaysia. The firm was winner of Asialaw's Intellectual Property Awards for Malaysia in 2004, 2005, 2006 and 2007, and was named Malaysia IP Firm of the Year in 2006 and 2007 by Managing Intellectual Property. Co-headed by managing partner Wong Sai Fong, the department can look back on a successful year for an impressive list of clients.

Shook Lin & Bok

The intellectual property practice at Shook Lin & Bok falls within its technology, media and telecommunications department. Known for its strength on IP disputes, the firm is also particularly capable on anti-counterfeiting and anti-piracy as well as licensing and franchising. Partner Connie Loo has advised multinationals and SMEs in the pharmaceutical, publishing, logistics and consumer goods industries on the protection of IP and trade secrets.

Skrine

Skrine is one of the dominant players in the field of IP in Malaysia. The six partners manage to obtain a significant market share each year and the firm's client list is notable. In August 2008, Smart Glove Holdings sought the firm's advice on a complaint by Tillotson Corporation filed in the International Trade Commission regarding alleged patent infringement. Another high profile matter was partner Khoo Guan Huat's work for Winthrop Pharmaceuticals

when it successfully obtained judgment for a declaration that the Winthrop atorvastatin does not infringe Pfizer/Warner Lambert's patent for atorvastatin, which is also called Lipitor.

Other work includes representing Telekom Malaysia and Telekom InfoMedia when both companies were plaintiffs against Buying Guide and Super Pages in relation to the infringement of telephone directories. German car manufacturer BMW turned to Skrine for advice when it was a plaintiff in an action against BWork Hoehcsteistung and BWork Specialist for trade mark infringement and passing off.

Meanwhile, partner Khoo Guan Huat and team represented pharmaceutical company Sanofi-Aventis as plaintiff against Dabur Pharma for patent infringement. The patent related to a pharmaceutical process to produce an oncological drug and Skrine obtained an interim injunction against Dabur restraining it from selling the product. The trial continues in October 2009.

Wong Jin Nee & Teo

The IP practice at Wong Jin Nee & Teo is one on the rise and being watched closely by peers and clients alike. Housing a strong technology bent to its practice, the five-partner team was joined in 2008 by Yean Yean Lim. Recent work includes acting for The Monarch beverage in a long-running dispute over licensing and distribution of its carbonated drink Kickapoo Joy Juice. Other key litigation clients include Abercrombie & Fitch, Intel, Leo Pharma and Timberland.

Tay & Partners

Tay & Partners managed to maintain its second tier position with ease. It is one of the few IP and technology practice groups in Malaysia headed by a woman, the respected partner Linda Wang. Partner Lim Pui Keng left the firm this year, but associate Oan Suet Yen joined.

Wang and team represented the Recording Industry Association of Malaysia (RIM) in filing claims against a large telecommunications company in Malaysia. The matter was in relation to license fee rates for the use of recordings and music, such as caller ringtones.

Another high profile mandate was advising the owner of Le Coq Sportif trade mark, while Wang was also involved in a dispute between Nestle and Nescafe. Tay & Partners also handle portfolio trade mark filing work for the Starwood group (Westin, Le Meridien, St. Regis and the Sheraton hotels), for KRISPY KREME, LG and the Sa Sa International Group. Patent work has been carried out for Kimberley-Clark, the US Gypsum Company and the Toyota group.

Zaid Ibrahim & Co

Pauline Khor was recruited in early 2008 from Shearn Delamore & Co, but now heads the IP department at Zaid Ibrahim & Co. The firm, which has a strong alliance with Singapore based Allen & Gledhill, did a lot of work in 2008 for Pfizer and its subsidiaries in relation to patents over the blockbuster drug Lipitor. Another high profile client is Sime Darby, with the firm managing its entire IP portfolio worldwide.

Zaid Ibrahim & Co does similar work for Dutch electronics manufacturer Philips, taking care of all of its Malaysian IP work. Walt Disney and Mars Inc have also decided to do all their IP work with the firm.

Other new recruits to the practice include Tracy Hah Yan Shan and Sukhjit Kaur Gill from Shearn Delamore & Co, while senior associate Vasanthi Rasathurai left in February 2009.

Cheang & Ariff

In September 2008, partner En Mohd Ariff Yusof left Cheang & Ariff to become a high court judge. Meanwhile, three new associates joined partner Cindy Goh Joo Seong. The resulting team represented two Australian companies on an application for rectification of a trade mark registered by local incorporated company Keylargo Industrial – with the High Court allowing the rectification procedure to go ahead.

Other work includes advising UBS in a court of appeal case where it tried to rectify a trade mark that was allowed by the courts, and representing Japanese company Kenwood Corporation in conducting two simultaneous raids on counterfeit walkie-talkies at seven Kuala Lumpur shops. The firm also acted for Nissin Food Products when it obtained successfully a statutory declaration from two local noodle manufacturers to cease Nissin's mark.

J&J Denholm sought advice from Cindy Joo Seong in a passing off legal suit against a Malaysian company for using the trade name 'Denholm' as well as Denholm's trade marks. The judge eventually ruled that the Malaysian company could no longer use the name and the trade marks.

Raja Darryl & Loh

Raja Darryl & Loh can look back on a satisfying year with IP department head Chew Phye Keat involved on a number of significant cases. For example, he initiated and operated a campaign for Business Software Alliance (BSA) to create awareness among Malaysian business entities for the need to legalise software used within their organisations.

Chew Phye Keat's team also assisted a pharmaceutical multinational in a patent litigation matter. This involved

initiating proceedings against a Malaysian distributor of generic pharmaceutical products to prevent the distribution of a drug that was protected by a Malaysian patent. Raja Darryl & Loh advised one of the country's largest telecommunications companies on its recent regional re-branding exercise.

Sugha Chinasamy joined the firm as an associate in June 2008, after Lim Yoke Yuen had left in May of the same year.

Wong & Partners

Baker & McKenzie member firm Wong & Partners is one of the most internationally focused firms in Malaysia, and its IP team works for an impressive list of clients including Apple, Google, Sony, L'Oreal, Malaysian Airlines and Chevron. The Danone Group was added to that list in January 2009 when it instructed the firm to manage its entire trade mark and design portfolio.

Key mandates over the last 12 months include advising The Clorox Company in relation to two television broadcasters' complaints against Reckitt Benckiser. Meanwhile Chevron turned to the firm when defending a broadcasting advertisement concerning the 'unbeatable cleaning power' of Techron in a complaint by Shell.

Elaine Yap was made partner this year, while experienced partner Chew Kherk Ying advised DHL in successfully obtaining a permanent injunction against an infringer using the name 'DHL' as part of its corporate brand. He also represented Apple in a domain name dispute for the domain name www.apple.com.my. The Kuala Lumpur Regional Center for Arbitration ruled in favour of Apple.

Other active firms

Abdullah Chan

Abdullah Chan's modestly sized IP division is headed by Tai Foong Lam. It advised Malaysian Biotechnology Corporation (MBC) in an acquisition of an exclusive worldwide license outside the field of oncology for nanotechnology that had been researched in Paris to fight cancer. Other clients include DiGi Telecommunications, Genting Berhad, Jardine Matheson, UMW and NZ New Image.

Naqiz & Partners

Managing partner Syed Naqiz Shahabuddin heads the IP practice at Naqiz & Partners, which includes fellow partner Eric Chin and two associates. Naqiz is a domain name panel member of WIPO, and was one of the very first individuals in Malaysia to practice domain name cases. Recent work includes advising Genting Berhad on UDRP proceedings in relation to the client's claim over domain names gentingcasino.com and gentingpoker.com. WIPO ruled in favour of the first in March 2009, but the latter case is still pending a decision.

Raslan Loong

The small IP department of Raslan Loong, led by Loong Caesar, managed to pick up a few good cases this year. It advised a Malaysian franchisee on the acquisition of the franchise rights for a very large Asia Pacific franchise operation. Jeffrey Tan advised a Malaysian consultancy firm on the protection of the contents of a very public and high profile website. Other clients include Twinkle Toes, Ansa House, Sebong Rubber, Mcren Oceanus Holding and Edaran Otomobil Nasional.

Other notable areas of law – recommended firms

Further information available online at www.asialawprofiles.com

CONSTRUCTION & REAL ESTATE
Tier 1
Azmi & Associates
Cheang & Ariff
Jeff Leong Poon & Wong
Lee Hishammuddin Allen Gledhill
Nik Saghir & Ismail
Raja Darryl & Loh
Shahrizat Rashid & Lee
Shearn Delamore & Co
Shook Lin & Bok
Skrine
Zain & Co
Zul Rafique & Partners

TAX
Tier 1
Shearn Delamore & Co
Tier 2
Azman Davidson & Co
Lee Hishammuddin Allen Gledhill
Nik Saghir & Ismail
Raja Darryl & Loh
Wong & Partners
Tier 3
Geraldine Yeoh Arjunan & Associates
Raslan Loong
Skrine
Zaid Ibrahim & Co

IT, TELCO & MEDIA
Tier 1
Haryati Deepak
Skrine
Tier 2
Jeff Leong Poon & Wong
Lee Hishammuddin Allen Gledhill
Tay & Partners
Wong & Partners
Zaid Ibrahim & Co
Tier 3
Raja Darryl & Loh
RamRais & Partners
Shahrizat Rashid & Lee