

## **CENTRE FOR BANKING AND FINANCE LAW**



# **Dispute Resolution and Insolvency in Islamic Finance: Problems and Solutions**

**19 September 2013, Thursday**

2:30pm to 5:30pm

Registration begins at 2:00pm

Seminar Room 3, Level 3, Block B

Faculty of Law, National University of Singapore

(Bukit Timah Campus)



***Practice Area: Banking and Finance, Corporate/Commercial***

***Training Level: General***

***CPD hours awarded based on 100% attendance: 2.5***

## Islamic Finance and Secular Legal Systems

It is a truism that Islamic finance is based on the Shariah. However, neither the Shariah nor Islamic finance has its own legal system, so the application and enforcement of Islamic finance depends on the secular law of nation states. A particularly important aspect of this situation is that disputes have to be adjudicated through the national system, which usually means the secular courts. The results of some recent cases resolved in this way have led to a considerable degree of controversy. For example, some commentators have criticised the English courts for refusing to adjudicate Shariah issues, while others have criticised the Malaysian courts for doing just that. Other solutions have been proposed, such as arbitration and alternative dispute resolution, in order to sidestep the problems associated with court-based methods. In like manner, Islamic finance transactions may also have to exist and operate within the context of conventional insolvency laws, which were not designed for Islamic finance and had not been developed with Islamic finance in mind.

### Aims of the Workshop

In this workshop we will consider the dispute resolution issue by looking at the general background to the problem, the situation in England, Malaysia and arbitration/ADR. On the question of the impact and relevance of the insolvency regime in relation to Islamic finance, the Singaporean insolvency regime will be examined. Some potential solutions will also be explored and examined.

### Programme

2.00 – 2.30	Registration, coffee & welcome	
2.30 – 3.00	Dispute resolution & insolvency in Islamic finance: general background  Islamic finance dispute resolution in England	Nicholas Foster
3.00 – 3.30	Islamic finance dispute resolution in Malaysia	Aida Othman
3.30 – 4.00	Tea Break	
4.00 – 4.30	The relevance & impact of insolvency in relation to Islamic finance transactions	Andrew Chan & Suhaimi Zainul
4.30 – 5.00	Arbitration/ADR in Islamic finance	Celine Chelladurai, Nicholas Foster & KC Lye
5.00 – 5.30	Q & A and Discussion	Chair: Dora Neo

### Registration

Admission is free. Do register early as seats are available on a first-come-first-served basis.

**[Click HERE to register online.](#)**

### Closing Date of Registration

13 September 2013, Friday, 12.00nn

## Convenors

This seminar is convened by Dora Neo (Director, Centre for Banking and Finance Law, NUS) and Nicholas HD Foster (SOAS, University of London; Visiting Senior Fellow, NUS).

## Presenters

**Andrew Chan** (Allen & Gledhill LLP, Singapore)

Andrew is a Partner at Allen & Gledhill LLP. He has consistently been cited as a leading insolvency lawyer in The Legal 500, Chambers Asia, Who's Who Legal, Best Lawyers International and IFLR1000. Andrew is the General Editor of Law and Practice of Corporate Insolvency, the co-author of Butterworths Annotations of the Singapore Bankruptcy Act and Law and Practice of Bankruptcy in Singapore and Malaysia, and the Consultant Editor of Halsbury's Laws of Singapore on Insolvency. He is the Chairman of the Insolvency Practice Committee of The Law Society of Singapore. In 2011, he received the "Minister for Law Outstanding Volunteer Award" for providing expertise and helping shape insolvency practice in Singapore.

**Celine Chelladurai** (Zaid Ibrahim & Co, Kuala Lumpur, Malaysia)

Celine advises on a broad range of issues in corporate and commercial litigation, construction, engineering and intellectual property litigation matters. Celine has represented both foreign and local clients in many types of litigation and arbitration matters. She is also familiar with the UNCITRAL, ICC, PAM, IEM, and KLRCA Rules of Arbitration, amongst others, and the MYDRP procedure and the related KLRCA rules. Celine has also acted as instructing solicitors in various disputes in East Malaysia. She represents and advises a wide range of clients in litigation and arbitration matters and has appeared in all levels of Courts in Malaysia including the Federal Court.

**Nicholas Foster** (SOAS, University of London; Visiting Senior Fellow, Law Faculty, NUS)

Nick is Senior Lecturer in Commercial Law, School of Law, SOAS, University of London. He was the principal founding editor of the Journal of Comparative Law and has been Co-Director of the Centre for Islamic and Middle Eastern Law, SOAS, a member of the Higher Education Academy's Islamic Studies Project Advisory Board, the Steering Group of the British Association for Islamic Studies and the Advisory Group of the Islamic Law Curriculum Development Project. Educated at Trinity Hall, Cambridge (Law and Arabic) and the University of Aix-Marseille III (French Law), he trained as a solicitor in the City of London and was a practising solicitor for some years. Now a full-time academic, Nick's research interests include comparative commercial and corporate law with special reference to corporate law theory, Islamic commercial law and Islamic finance. His publications include several detailed comparative accounts of specialist areas of Islamic commercial law. His present research work is focused on the transformation of law in the Middle East and the legal aspects of Islamic finance. In the latter field, he has pioneered the idea that a new Islamic financial law has developed and, together with Professor Simon Archer, is working on the nature of this new law and the problems resulting from the lack of a Shariah legal infrastructure to support it. Nick has also been working on an online bibliography in the Law of Islamic Finance and a Working Papers Series in the Law of Islamic Finance. Both projects are now approaching completion. Nick has extensive teaching experience and in 2006 was awarded the SOAS Director's Teaching Prize.

**KC Lye** (Norton Rose Fulbright (Asia) LLP)

KC Lye, a Partner at Norton Rose Fulbright (Asia) LLP, is a dispute resolution lawyer based in Singapore. He specialises in international arbitration and has been involved in a wide variety of contested matters in South East Asia. KC handles high-value disputes from a range of industry sectors, with a focus on energy disputes, aviation disputes and commercial fraud. Equally comfortable acting as counsel, or as solicitor, he has represented clients in arbitration and mediation proceedings in London, Hong Kong and Singapore. KC is cited in the Asia Pacific Legal 500 as a leading individual for dispute resolution, he accepts appointments as arbitrator for both institutional and ad hoc arbitration. KC publishes and lectures extensively on international arbitration and ADR. A Solicitor in England and Wales, an Advocate and Solicitor in Singapore, KC is also a Fellow of the Singapore Institute of Arbitrators and he accepts appointments as arbitrator. He joined the Singapore office of Norton Rose Fulbright in 1999, after an earlier career at the Singapore bar.

### **Aida Othman** (Zaid Ibrahim & Co, Kuala Lumpur, Malaysia)

Aida Othman is a Partner at Zaid Ibrahim & Co. She is also a Director at ZICOlaw Shariah Advisory Services Sdn. Bhd. ("ZICOlaw Shariah"). She specializes in Islamic banking and finance, Islamic capital market instruments and takaful products and operations. She manages ZICOlaw Shariah, a provider of Shariah advisory services in Islamic banking and finance which is licensed by the Securities Commission of Malaysia and approved by the Central Bank of Malaysia. Aida has advised on wide-ranging Shariah and legal matters including on: Shariah compliance and governance for Islamic financial institutions; the structure and documentation for both Islamic corporate and retail financing; the legal and regulatory framework for Islamic financial services; structuring and Shariah compliance issues for sukuk issuance, private equity funds and unit trust funds; Shariah review and Shariah audit of Islamic financial institutions; takaful products and operations; Islamic wealth management and planning. Aida obtained her PhD in Comparative Law and Middle Eastern Studies from Harvard University, United States of America, her LL.M from Cambridge University, England, and a Bachelor of Laws as well as a Bachelor of Islamic Law (Syariah) from International Islamic University, Malaysia. She serves on the Shariah Advisory Board of Syarikat Takaful Malaysia Berhad, a listed company and the first takaful operator established in Malaysia.

### **Suhaimi Zainul-Abidin** (Five Pillars Pte Ltd, Singapore)

Suhaimi is an Adviser at Five Pillars Pte Ltd, the leading Islamic financial advisory company in Singapore. He was previously a partner at Allen & Gledhill LLP, and member of the Firm's award winning Islamic Finance practice. Suhaimi's practice in A&G included advising on a wide range of Islamic financing structures and documentation. He advised on the most innovative and groundbreaking Islamic financing transactions in Singapore, including various acclaimed Islamic financing transactions involving Sabana REIT. Prior to leaving practice, he was named by various legal directories and Islamic Finance magazines as a leading Islamic finance lawyer. He continues to provide Islamic financing structuring advice through his role as adviser at Five Pillars. Suhaimi is currently a director at Quantedge Capital Pte Ltd, a Singapore fund management company; the treasurer at Gulf-Asia Shariah Compliant Investments Association, a non-profit organisation established in Singapore to promote growth in the Islamic finance industry; and a Committee Member of the Services Committee of the Malaysia Singapore Business Council, a government initiated platform for bilateral cooperation in the service sector (including Islamic financial services). Suhaimi graduated from the University of Nottingham with an LLB (Hons) degree. He is a Council Member of the National Arts Council and sits on the Board of Directors of Mendaki Sense Pte Ltd.

## **Chairperson**

### **Dora Neo** (Faculty of Law, National University of Singapore)

Dora is the Director of the newly set up Centre for Banking and Finance Law (CBFL) at the Faculty of Law, National University of Singapore. She teaches international banking law, credit and security law and contract law. She researches in these areas as well as in the liberalisation of trade in services under GATS and other agreements, with a particular interest in financial services. A first class honours graduate from Oxford University, she also holds an LLM from Harvard Law School. She has been called to the English Bar (Gray's Inn) and is an Advocate and Solicitor in Singapore. She has a Certificate in Private Banking from the Wealth Management Institute (Singapore) and a Certificate in Real Estate Finance from the Department of Real Estate, NUS. She is co-author of Ellinger and Neo, *The Law and Practice of Documentary Letters of Credit* (Hart Publishing, 2010).

## **About Centre for Banking & Finance Law (CBFL)**

The Centre for Banking and Finance Law (CBFL) is a new centre at the Faculty of Law, National University of Singapore. The Centre focuses broadly on legal and regulatory issues relating to banking and financial services. It aims to produce research and host events of scholarly value to academics as well as of policy relevance to the banking and financial services community. In particular, CBFL seeks to engage local and international banks, lawyers, regulators and academics in a regular exchange of ideas and knowledge so as to contribute towards the development of law and regulation in this area, as well as to promote a robust and stable financial sector in Singapore, the region and globally.