SOME CURRENT LEGAL DEVELOPMENTS IN MALAYSIA

Below is a brief account of some of the legislation passed by Parliament and the treaties entered into during the period January-October 1990. Recent court decisions of significance during the period are also noted. A brief account of the work of the Regional Centre for Arbitration in Kuala Lumpur is also given. The report concludes with a list of some of the legal conferences/seminars held during the period, together with the paper/s presented.
[For the 'current legal developments' component of the ASEAN section, see p. 391, *supra,* ASEAN Section Ed.]

A. LEGISLATION

1. *National Language (Amendment) Act 1990 (Act A765)*

IN line with the policy of promoting the use of Bahasa Malaysia, the national language, at all levels of the courts in Peninsular Malaysia, section 2 of the National Language (Amendment) Act 1990 has amended section 8 of the National Language Act 1963/67.[1] This section, which deals with the language used in courts, is amended to provide that as a general rule, all court proceedings (other than the giving of evidence by a witness) shall be in the national language. However, the court may, in the interest of justice, order that the proceedings be conducted either partly in the national language and partly in the English language, or wholly in the English language. This amendment is effective from 30 March 1990. Consequential amendments were made to Order 162 of the Rules of the Supreme Court 1980,[2] Order 92 r. 1 of the Rules of the High Court 1980[3] and Orders 1 and 53 r. 5 of the Subordinate Courts Rules 1980[4] to provide for any document required for use in pursuance of these Rules to be in the national language, and that any such document may be accompanied by a translation thereof in the English language. However, any document in the English language may be used as an exhibit with or without a translation thereof in the national language. Although

1 Act 32.
2 PU (A) 33/80.
3 PU (A) 50/80.
4 PU (A) 328/80.

these amendments[5] were gazetted on 29 March 1990, they were administratively brought into effect only on 1 June 1990.[6] The Rules of the High Court 1980 have also been translated into the national language to facilitate the use of the language in the courts. The translated version of the Rules is provided for in *Kaedah-Kaedah Mahkamah Tinggi* 1980.[7]

2. *Federal Constitution (Amendment) Act 1990 (Act A767)*

Article 48 of the Federal Constitution, relating to disqualification for membership of Parliament, is amended by section 2 of the Federal Constitution (Amendment) Act 1990 by inserting a new clause (6) therein to provide for a person, who resigns his membership of the House of Representatives, to be disqualified for membership of the said House for a period of five years beginning with the date on which his resignation takes effect. Section 6 of the Eighth Schedule to the Federal Constitution is also amended to incorporate a corresponding provision as regards membership of the Legislative Assembly for the States to give effect to in their respective Constitutions.[8] The above amendments have effect from 11 May 1990.

The primary objective of the above amendments is to prevent members of the House of Representatives and the respective State Legislative Assemblies from voluntarily resigning their seats before a general election and contesting in by-elections to prove their popularity as this would be a waste of public funds.

3. *Societies (Amendment) Act 1990 (Act A743)*

The Societies Act 1966[9] is amended by section 2 of the Societies (Amendment) Act 1990. This amendment provides for a new Part IA which contains provisions applicable to political parties only. Amongst the provisions is a new section 18B which provides that any election in a political party shall not be invalid by reason of non-compliance with any provision in the party's constitution, rules or regulations, or the participation in such election by a disqualified person if the result of the election would have remained the same had the said provision been complied with, or had that person not participated in the election. However, where the disqualified person is elected to a post in the party, his disqualification is to be given effect to, and a fresh election in respect of that post be conducted as soon as practical.

5 See the Rules of the Supreme Court (Amendment) Rules 1990 (PU (A) 55/90), the Rules of the Supreme Court (Amendment) (No 2) Rules 1990 (PU (A) 78/90), the Rules of the High Court (Amendment) Rules 1990 (PU (A) 56/90), the Rules of the High Court (Amendment) (No 2) Rules 1990 (PU (A) 79/90), the Subordinate Courts (Amendment) Rules 1990 (PU (A) 57/90) and the Subordinate Courts (Amendment) (No 2) Rules 1990 (PU (A) 80/90).
6 See Chief Justice (Malaya) Circular No 2/1990.
7 PU (A) 98/90.
8 Federal Constitution (Amendment) Act 1990, s. 6.
9 Act 335.

In regard to the decision of a political party on the interpretation of its constitution, rules or regulations or relating to the affairs of the party, the new section 18C provides that the said interpretation shall be final and conclusive. It prohibits any court proceedings in respect of the decision and excludes the court's jurisdiction to determine any suit, application, question or proceeding regarding the validity of such a decision.

These new provisions, which came into force on 12 January 1990, seek to ensure that those matters specified therein, being "domestic" in nature, should best be left to the decision of the political party itself.

4. *Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990 (Act A766)*

The above Act which came into force on 3 April 1990 effected a number of amendments to the Dangerous Drugs (Special Preventive Measures) Act 1985.[10] Section 6(1) of the 1985 Act is amended by deleting the words "from the date of such order". The effect of this amendment is that the detention of a person under the 1985 Act, which commences from a date other than the date on which the detention order was made, will no longer be rendered invalid. This amendment is made in response to the decision of the Supreme Court in *Tan Hoon Seng* v. *Minister for Home Affairs, Malaysia & Anor and another appeal,*[11] where the court ruled that such a detention was invalid and unlawful.

Section 6A of the 1985 Act is also amended to provide that where a fresh detention order or restriction order is made after a previous detention order or restriction order is revoked, that fresh order is valid notwithstanding that no fresh report has been submitted under section 3(3) and section 5(4) of the 1985 Act or that that fresh order was made on the same ground as the previous order. Section 11B(2) of the 1985 Act is also amended with the effect that the Minister of Home Affairs has the power to make a fresh detention order by relying solely on the saving provision of the said section read with section 6(1) of the same Act. The amendments to sections 6A and 11B(2) seek to overcome a number of decisions of the High Court made in favour of the detainees.[12] In fact, the Supreme Court had subsequently in *Poh Chin Kay* v. *Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor and other appeal,*[13] ruled in favour of the detainees on the interpretation of these sections. Although the amendments to these sections validating such a detention order had already come into force on 3 April 1990 when the Supreme Court delivered its decision on 3 May 1990, section 5(2) of the 1990 Amendment Act expressly excludes their application to any legal proceeding where the court has

[10] Act 316.
[11] [1990] 1 M.L.J 171.
[12] See, for example, *Wong Ah Kau* v. *Menteri Hal Ehwal Dalam Negeri & Anor and other applications* [1990] 2 M.L.J. 227, *Lim Kean Hong* v. *Timbalan Menteri Dalam Negeri,Malaysia & Anor and another application* [1990] 1 C.LJ. 1161 *and Teoi Guat Meng v. Inspector General of Police & Ors and other applications* 1990 B.L.D. [July] 721.
[13] [1990] 2 M.L.J. 297.

given its final decision before 3 April 1990 or where there is an appeal in respect of such decision.

It may also be noted that the Dangerous Drugs (Special Preventive Measures) Act 1985 has been extended for another five years with effect from 15 June 1990.[14]

5. *Sale of Goods (Amendment and Extension) Act 1990 (Act A756)*

Section 1(2) of the Sale of Goods Act 1957[15] is amended by the above Act by deleting the words "except Malacca and Penang" therein. The effect of the amendment is to extend the application of the Sale of Goods Act 1957, as amended, which now has effect within the states of West Malaysia, excluding Malacca and Penang, to all the states in West Malaysia including the Federal Territory of Kuala Lumpur. This amendment came into force on 23 February 1990. Prior to this amendment, the states of Malacca and Penang had no legislation of their own on the subject of sale of goods, depending for it on English law by virtue of section 5(2) of the Civil Law Act 1956.[16]

6. *Finance Act 1990 (Act 420)*

Amongst the amendments effected by the above Act to the Income Tax Act 1967[17] is the introduction of a new section 60E therein. This section relates to an approved operational headquarters company. An approved operational headquarters company is a foreign-owned multinational company which has its operational headquarters in Malaysia to provide qualifying services, that is, management, technical and other supporting services, credit facilities and research and development work, to its offices and related companies outside Malaysia, and which is approved by the Minister of Finance. The new section provides an incentive to an approved operational headquarters company in the form of a tax exemption on dividends received from a related company outside Malaysia. Any dividend paid out of such exempt dividend income will be equally exempt in the hands of the shareholders. This exemption is applicable for a period of ten years and applies only to a company which is incorporated in Malaysia on or after the coming into force of the section. The above amendment has effect from the year of assessment 1990.

Another amendment is the introduction of a new paragraph (g) in section 6(1) of the Income Tax Act 1967. This new paragraph provides a further incentive to an approved operational headquarters company in that income derived by such a company from the provision of qualifying services is subject to tax at a reduced rate, that is, ten per cent. However,

14 See PU (B) 284/90.
15 Act 382.
16 Act 67.
17 Act 53.

the concessionary rate applies only for a period of five years of assessment which period may be extended by the Minister for a further period not exceeding five years of assessment. These amendments have effect from the year of assessment 1990.

A new section 60D relating to venture capital companies is also introduced. A venture capital company refers to a company incorporated in Malaysia, holding shares in venture companies involved in high-risk ventures and new technology which would promote or enhance the economic or technological development of Malaysia, and which is approved by the Minister of Finance. The new section exempts from income tax, gains accruing to a venture capital company from the disposal of shares in a venture company and dividends distributed out of those gains. However, a venture capital company is not allowed to set-off any loss arising from the disposal of shares against its other income or to carry forward such loss to a subsequent year. This new section also allows as a deduction a portion of certain expenses incurred by a venture capital company, which normally would not be allowable for tax purposes, subject to a maximum of twenty-five per cent of those expenses. These amendments are effective from the year of assessment 1990.

As regards gains arising from the disposal of shares or real property by a unit trust, section 61 of the Income Tax Act 1967 is amended to provide for such gains not to be regarded as income of the unit trust and that any income distributed out of such gains or exempt income to unit holders will not be subject to tax in their hands. This amendment is effective from the year of assessment 1990.

However, the definition of "gain" in section 2(1) of the Real Property Gains Tax Act 1976[18] is amended to ensure that gains accruing to a unit trust from the disposal of real property, which are not chargeable to income tax, are subject to real property gains tax. This amendment is deemed to have come into force on 1 January 1989.

7. *Copyright (Amendment) Act 1990 (Act A775)*

In line with the Government's decision for Malaysia to become a party to the Berne Convention for the Protection of Literary and Artistic Works 1886 (including all acts, protocols and revisions thereto), the above Act amends the Copyright Act 1987[19] to make its provisions compatible with the provisions of the Berne Convention as well as to enable Malaysia to fulfil its obligations, upon becoming a member of the Berne Convention. Section 13(2) of the 1987 Act is amended to provide for as many areas of activities as are permissible under the terms of the Berne Convention which are not subject to copyright control. A new section 59A is introduced to provide more clearly the powers of the Minister of Trade

[18] Act 169.
[19] Act 332.

and Industry to make regulations in order to put into effect Malaysia's obligation to extend copyright protection under the 1987 Act to "foreign works" under a treaty or a Convention or Union relating to copyright, should Malaysia become a party to such a treaty or a member of such a Convention or Union. Section 36(2) is amended to make it an act of copyright infringement for a person to import any article into Malaysia for the purposes enumerated in that subsection, if the importation is without the consent or licence of the copyright owner and the importer knows or ought reasonably to know that the making of the article was carried out without the consent or licence of the copyright owner.

The amendment Act came into force on 1 October 1990 except for the amendments effected by sections 2, 3(a), 3(c), 3(e), 4, 5(a), 10(a), 15, 17, 18 and 20 to 22 thereof, which are deemed to have come into force on 1 December 1987.

8. *Legislation Relating to Labuan as an International Offshore Financial Centre*

To promote and establish the Federal Territory of Labuan as an international offshore financial centre, the following statutes have been introduced for the purpose.

(a) *Offshore Companies Act 1990 (Act 441)*

The Act provides for, *inter alia,* the incorporation, registration and administration of offshore and foreign offshore companies in the Federal Territory of Labuan. Part III of the Act relates to the incorporation, status and name of an offshore company. Part IV relates to the issue of shares and debentures, and the register of charges. Part V relates to the management and the administration of an offshore company. Parts VI, VII and VIII deal with accounts and audit, arrangements and reconstructions and foreign offshore companies respectively.

The Act, which is divided into nine parts, was gazetted on 30 August 1990 and was brought into force on 1 October 1990, *vide* PU (B) 591/90.

(b) *Labuan Trust Companies Act 1990 (Act 442)*

The Act provides for the registration of companies and foreign companies incorporated or registered under the Companies Act 1965[20] to carry on business as trust companies in the Federal Territory of Labuan. These trust companies provide professional, accounting, secretarial, trust and other services to offshore and foreign offshore companies as well as non-residents of Malaysia. Section 3 of the Act requires a company to register under the Act before it can carry on business as a trust company in Labuan.

[20] Act 125.

Section 8 prohibits a trust company from providing service to residents of Malaysia. Sections 12 and 13 deal with the powers of a trust company. Section 23 prohibits any disclosure by a trust company and its officers, servants and agents to any person as to the existence of any particular trust or estate or the identity of any executor or settlor of such trust or estate.

The Act was gazetted on 30 August 1990 and was brought into force on 1 October 1990, *vide* PU (B) 590/90.

(c) *Offshore Banking Act 1990 (Act 443)*

The Act makes provisions for offshore banking business to be conducted in, from and through the Federal Territory of Labuan by offshore banks. Section 2(1) defines "offshore banking business" as the business of taking of deposits and the giving of credit facilities in currencies other than the *ringgit.* Any person who carries on offshore banking business is an "offshore bank". Sections 4 to 14 provide for the licensing and regulation of offshore banking business and persons carrying on offshore banking business. Sections 22 and 23 deal with the protection of the secrecy of information relating to the identity, affairs and accounts of customers of offshore banks licensed under the Act. Section 24 renders any contravention of any provision of the Act a criminal offence. Section 30 provides that the Banking and Financial Institutions Act 1989[21] and the Islamic Banking Act 1983[22] shall not apply to licensed offshore banks.

The Act was gazetted on 30 August 1990 and was brought into force on 1 October 1990, *vide* PU (B) 587/90.

(d) *Offshore Insurance Act 1990 (Act 444)*

The Act provides for, *inter alia,* the licensing and regulation of persons carrying on offshore insurance business and offshore insurance-related activities. Section 5 prohibits any person from carrying on or transacting such business or activities unless that person is licensed under the Act and, in the case of offshore insurance business, that person is an offshore company, a foreign offshore company or a branch of a Malaysian insurer. Sections 16 to 25 deal with the financial requirements and duties of licensees as well as restrictions on licensees. Sections 26 and 27 deal with the transfer of an offshore insurance business and the winding up of an offshore insurer. Section 34 provides that a licensee is not subject to the Insurance Act 1963[23] and the Takaful Act 1984.[24]

The Act was gazetted on 30 August 1990 and was brought into force on 1 October 1990, *vide* PU (B) 588/90.

[21] Act 372.
[22] Act 276.
[23] Act 89.
[24] Act 312.

(e) *Labuan Offshore Business Activity Tax Act 1990 (Act 445)*

The Act makes provisions for the imposition, assessment and collection of tax on offshore business activities carried on by offshore companies in or from the Federal Territory of Labuan. Part II of the Act deals with chargeability to tax. Part III deals with non-chargeability to tax in respect of an offshore company carrying on an offshore non-trading activity. Part IV sets out the provisions for the payment and recovery of tax. Part V deals with the responsibility for compliance of the provisions of the Act.

The Act was gazetted on 30 August 1990 and was brought into force on 1 October 1990, *vide* PU (B) 589/90.[25]

9. *National Land Code (Amendment) Act 1990 (Act A752)*

The above Act, which came into force on 23 February 1990, effected a major amendment to the National Land Code 1965[26] by introducing a new Part Five (A) in Division II, consisting of new sections 92A to 92I, which deals with the disposal of underground land.

Sections 92B to 92D deal with the disposal of underground land below alienated or State land[27] while sections 92E to 92G deal with such disposal below reserved land.[28]

Under the new section 92B, the State Authority is empowered, when alienating State land, to specify the depth up to which underground land below the alienated land may be used, subject to any minimum depth that may be provided for by regulations made under section 92I(2)(b), the use or uses to which the underground land may be put, the conditions subject to which the underground land may be put to such use or uses, and conditions with regard to the construction of any structures within the underground land. The use to be specified may be use which is reasonably necessary to the lawful use and enjoyment of the surface land, or use which is independent of or unrelated to the lawful use of the surface land, any category of land use or any express condition, or a combination

[25] To take account of the provisions introduced by the Act, consequential amendments are made to the Income Tax Act 1967 by the Income Tax (Amendment) Act 1990 (Act A774) which was gazetted on 30 August 1990 and has yet to be brought into force.
[26] Act 56/65.
[27] Alienated land is defined in s. 5 of the Code to mean any land (including any parcel of a sub-divided building) in respect of which a registered title for the time being subsists, whether final or qualified, whether in perpetuity or for a term of years, and whether granted by the State Authority under the Code or in the exercise of powers conferred by any previous land law, but does not include mining land. State land means all land in the State (including so much of the bed of any river, and of the foreshore and bed of the sea, as is within the territories of the State or the limits of territorial waters) other than (a) alienated land; (b) reserved land; (c) mining land; and (d) any land which, under the provisions of any law relating to forests, is for the time being reserved forest (s. 5).
[28] Reserved land is defined to mean land for the time being reserved for a public purpose in accordance with the provisions of the Code or of any previous land law (s. 5).

of such uses. Underground land below the depth specified will remain vested in the State Authority as State land.

However, the State Authority is empowered under the new section 92C to alienate a stratum of underground land below State land, and any underground land which, although below alienated land, is State land by virtue of section 92B(4). The alienation will be under a final document of Registry title. In alienating underground land under this section, the State Authority may specify the use or uses to which it may be put, the conditions subject to which it may be put to such use or uses, and conditions with regard to any works to be carried out within the underground land. The use to be specified may be use which is independent of and unrelated to the lawful use of the surface of the State land.

The new section 92D enables the proprietor of alienated land to apply for the whole or a part of the underground land below the alienated land to be used for a purpose which is independent of and unrelated to the lawful use of the surface land, or to be alienated to him under section 92C. The approval will be subject to conditions for the protection and support of adjoining land and for access from the underground land.

In regard to the disposal of underground land below reserved land, this is dealt with in the new sections 92E to 92G which contain more or less similar provisions to sections 92B to 92D.

10. *Strata Titles (Amendment) Act 1990 (Act A753)*

The Strata Titles Act 1985,[29] which deals with the sub-division of buildings, is amended in a number of respects by the above Act which came into force on 23 February 1990. Amongst the amendments effected is the introduction of a new paragraph (a)(ii) in section 9(1) to accommodate encroachment by any eave, awning and any balcony not forming part of a proposed parcel, which project over a road reserve provided that there subsists a permit or permits issued under section 75A of the National Land Code 1965 in respect of every such eave, awning and balcony. Prior to this amendment, approval for sub-division of a building would not be granted where the building projected beyond the boundaries of the lot in question.

A new condition for approval is introduced in section 9(l)(i) relating to land held for a term of years. Under this condition, an application for sub-division of a building which stands on land held for a term of years will not be approved if the remaining period for which the land is held is less than twenty-one years. This condition is introduced to safeguard the interests of purchasers by ensuring that a developer does not undertake a strata scheme on which the title to the land is about to expire.

[29] Act 318.

Under the new paragraph (j) of section 9(1), approval for sub-division will not be granted if the land on which the building stands is subject to a charge or statutory lien. However, at the stage when an application is made under section 10 for the sub-division of a building, it is permissible for a charge or statutory lien to be registered or created over the land. It is only at the stage when approval is to be granted that the charge or statutory lien in question must be discharged or removed from the land before approval can be granted. This provision seeks to ensure that purchasers acquire the parcels in the sub-divided building free from encumbrances when separate strata titles are issued.

Section 58, relating to low-cost buildings, is also amended by introducing a new sub-section (2A) therein. Under this provision, no building erected in a provisional block shall be classified as a low-cost building; with the result that, in the case of a low-cost building, the concept of phased development[30] does not apply. This provision seeks to ensure that purchasers of parcels in a low-cost building will be issued with strata titles to their parcels so as to avoid the difficulties which may be encountered in the event that the building is left uncompleted.

11. *Free Zones Act 1990 (Act 438)*

The above Act provides for the establishment of free zones in Malaysia for promoting the economic life of the country. In particular, the Act seeks to establish free zones in Malaysia for the purpose of trade and manufacturing industries and to provide appropriate legal provisions for Malaysia to exploit to the best of its ability the economic potentials of duty free zones for the purpose of trade and industrial development including tourism. Under section 3 of the Act, the Minister of Finance is empowered to declare by notification in the Gazette any area as a free commercial zone or a free industrial zone and to define the limits of such zone. The types of activity and operation that may be permitted by the Minister to be carried out in any free zone are prescribed in the First and Second Schedules to the Act.

The Act repeals the Free Trade Zone Act 1971.[31] The Act was gazetted on 10 May 1990 and has yet to be brought into force.

12. *Ports (Privatisation) Act 1990 (Act 422)*

The above Act makes provisions to facilitate the privatisation of the port undertakings of any port authority.

[30] Under this concept, the proprietor of the land is permitted to develop the strata scheme in stages by erecting other buildings for sub-division even after the strata register has been opened. It is not necessary for the whole strata scheme to be completed before sub-division can be effected in respect of a completed block of building.
[31] Act 24.

It provides, *inter alia,* adequate and clear provisions empowering port authorities to transfer or dispose of all or any part of their port undertakings, for the approval by the Minister of Transport of a port privatisation plan and for the licensing and regulation of private port operators.

The Act came into force on 2 April 1990 *vide* PU (B) 198/90.

B. TREATIES[32]

The following are the recent treaties entered into by Malaysia:

(1) *Agreement Between the Government of Malaysia and the Government of the Kingdom of Thailand on the Constitution and other Matters Relating to the Establishment of the Malaysia-Thailand Joint Authority (signed in Kuala Lumpur on 30 May 1990):* This Agreement provides for the establishment and operation of the Malaysia-Thailand Joint Authority, set up for the exploitation of the resources of the sea-bed in the disputed area of the continental shelf of the two countries in the Gulf of Thailand.

(2) *Agreement Between the Government of Malaysia and the Government of the Federal Republic of Yugoslavia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (signed in Belgrade on 24 April 1990):* This Agreement seeks to afford relief from double taxation in relation to taxes in Malaysia and Yugoslavia on income arising from the specified sources in both countries.

(3) Agreement on Economic, Scientific and Technical Co-operation Between the Federal Military Government of the Federal Republic of Nigeria and the Government of Malaysia (signed in Kuala Lumpur on 7 September 1990): This Agreement provides the main framework for co-operation between the two countries in the economic, scientific and technical fields.

(4) *Establishment of Diplomatic Relations with the Republic of Namibia on 21 March 1990.*

C. CASES

1. *Right of Religious Practice of a Non-Muslim Child*

In *Teoh Eng Huat* v. *The Kadhi, Pasir Mas, Kelantan & Anor,*[33] *X,* a minor by secular law, was converted as a Muslim by the first respondent without the knowledge of the appellant, her father, who was a Buddhist.

[32] Source: Ministry of Foreign Affairs.
[33] [1990] 2 M.L.J. 300.

The appellant sought a declaration that he, as the lawful father and guardian of X, had the right to decide her religion, education and upbringing. The High Court found for the respondents and the appellant appealed to the Supreme Court.

The Supreme Court held that in the wider interests of the nation, a non-Muslim minor does not have the automatic right to receive instruction relating to any other religion than his own without the permission of the parent or guardian. The Court took the view that a parent or guardian of a non-Muslim minor has the right to decide the choice of various issues affecting the minor's life, including the right of religious practice of the minor, until he reaches the age of majority. As the law applicable to *X* immediately prior to her conversion was the civil law, the Court held that the appellant was entitled to decide, on behalf of X, her right of religious practice until she reached the age of majority. The declaration was, however, refused as the appeal was only of academic interest in that *X* was no longer a minor and had reached the age of majority.

2. *Jurisdiction of Juvenile Court to Impose Punishment of Caning*

In *Re A Juvenile*[34] the question for the determination of the High Court on a revision was whether punishment by caning could be imposed at the conclusion of a juvenile court case. In the instant case, the magistrate had, at the conclusion of a juvenile court case, personally caned the juvenile eight times in his chambers. In doing so, the magistrate acted under section 293 of the Criminal Procedure Code (FMS Cap 6).

In holding that the magistrate had no power to impose the punishment of caning, the High Court found that nowhere in the Juvenile Courts Act 1947 is there any provision for caning to be carried out nor by the magistrate personally. The Court took the view that the punishment of whipping or caning under section 293 of the Code is to be made on a youthful offender who has been convicted before any criminal court. As the words used under section 12(3) of the Juvenile Courts Act 1947 are "finding of guilt" and "order made upon finding of guilt" and not "conviction" and "sentence" respectively, and as the court before which a juvenile is tried is not a criminal court, section 293 of the Code as it now stands cannot be applied to a juvenile court case.

3. *Conversion to Islam by a Spouse of a Non-Muslim Marriage*

(a) *Whether marriage dissolved*

In *Pedley* v. *Majlis Ugama Islam, Pulau Pinang & Anor,*[35] the plaintiff had earlier married *T* according to Catholic rites. Both the parties were

[34] [1990] 3 M.L.J. 117.
[35] [1990] 2 M.L.J. 307.

practising Roman Catholics. *T* subsequently embraced Islam without the plaintiff's knowledge and consent. Following this, the Kadi Besar of Penang wrote to the plaintiff informing him that his marriage to *T* would be deemed to have been determined under Islamic law if he did not similarly embrace the religion of Islam within the specified period. The plaintiff commenced proceedings in the High Court for a declaration that the conversion of *T* to Islam had not determined his marriage to her according to Catholic rites.

The High Court held that the personal laws of the plaintiff and the civil laws of the country applied to the marriage in question. In this regard, under section 51(1) of the Law Reform (Marriage and Divorce) Act 1976, a non-Muslim marriage is not dissolved upon one of the parties converting to Islam. It merely provides a ground for the other party who has not converted to petition for divorce. The High Court, however, dismissed the application for the declaration as it was purely academic, being a declaration of a mere legal right.

(b) *Right to derivative pension*

In *Eeswari Visuvalingam* v. *Government of Malaysia,*[36] the appellant had married Z according to Hindu rites and the marriage was registered. Z subsequently embraced Islam. Z was a pensioner under the Pensions Act 1980. Upon the death of Z, the appellant applied to the Public Services Department for derivative pension. The application was rejected on the ground that the appellant was not a widow under the pension laws as claimed because she did not convert to Islam following her husband's conversion. The appellant sought declarations from the High Court that she was a "dependant" as defined in section 4 of the Pensions Adjustment (Amendment) Act 1983 and that she was entitled to a derivative pension under section 15 of the Pensions Act 1980. Upon the refusal of the learned judge to grant the declarations sought, the appellant appealed to the Supreme Court.

The Supreme Court found that there was no evidence to show that the marriage between the parties had been dissolved. The Supreme Court took the view that the law applicable to the appellant had always been her own personal laws and the civil laws of the country. The Pensions Act 1980 and the Pensions Regulations 1980 are civil laws of general application and for the purpose of the pension laws, the appellant was certainly a widow of Z. Since the appellant's marriage remained valid under the civil law at the time of Z's death, she was therefore a dependant under the Pensions Adjustment Act 1980 and was entitled to a derivative pension regardless of whether she was a Muslim or a non-Muslim.

36 [1990] 1 M.L.J 86.

4. *Action between Spouses - Whether High Court has Jurisdiction to Adjudicate on Matter*

In *Faridah bte Dato Talib* v. *Mohamed Habibullah bin Mahmood,*[37] the plaintiff obtained a temporary injunction against her husband, the defendant, restraining him from assaulting, harassing or molesting her and members of her family. The parties in the instant case were Muslims. The defendant applied to set aside the injunction and to strike out the plaintiff's action in the High Court for assault and battery against him. The High Court was faced with two issues, namely, (i) whether it had jurisdiction to adjudicate on the plaintiff's action which involved a matter which fell exclusively within the jurisdiction of the Syariah Court and (ii) whether the plaintiff could institute the present action when section 9(2) of the Married Women Ordinance 1957 prohibited a wife from suing her husband in tort.

On the first issue, the High Court held that its jurisdiction to entertain the plaintiff's action which is based on an actionable wrong of assault and battery, is provided for in section 23 of the Courts of Judicature Act 1964. Having regard to item 4 of List I of the Ninth Schedule of the Federal Constitution, the High Court found that actionable wrongs are matters in respect of which Parliament, and not the legislature of a state, may make laws. Accordingly, the actionable wrong complained of in the instant case could not be said to fall exclusively within the jurisdiction of the Syariah Court when the legislature of a state has no power to enact laws relating to such matters. In any event, having regard to the relevant Selangor Islamic Family Law Enactment 1984 and section 45(3) of the Selangor Adininistration of Muslim Law Enactment 1952, such actionable wrong as pleaded by the plaintiff is not within the jurisdiction of the Syariah Court. In regard to the second issue, the High Court took the view that the acts of assault and battery complained of by the plaintiff amounted also to the criminal offences of causing hurt under section 352 of the Penal Code (FMS Cap 45) and criminal assault under section 323 of the same Code. As the plaintiff's action was grounded on criminal offences committed or threatened to be committed against her, section 9(2) of the Married Women Ordinance 1957 did not apply to prohibit the action.

5. *Preventive Detention under the Dangerous Drugs (Special Preventive Measures) Act 1985*

(a) *Detention commencing from a date different from the date of the detention order*

In *Tan Hoon Seng* v. *Minister for Home Affairs, Malaysia & Anor and another appeal,*[38] the appellants were detained pursuant to detention orders issued under section 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985. The appellants challenged their detention

37 [1990] 1 M.L.J. 174.
38 [1990] 1 M.L.J. 171.

on the ground that it was bad as the detention had commenced from a date different from the date of the detention orders. Upon the refusal of the High Court to allow their applications for writs of habeas corpus, the appellants appealed to the Supreme Court.

The Supreme Court held that the words "from the date of such order" in section 6(1) of the Act made it clear that the material date for the commencement of the detention is the date when the order is made and signed by the Minister. On this construction, the period of two years must be calculated from the date the order was made and signed by the Minister and not any other date. As the detention was not in accordance with the Act, it was inconsistent with the fundamental right guaranteed by article 5(1) of the Federal Constitution. For the above reasons, the Supreme Court allowed the applications of the appellants for writs of habeas corpus.

In response to the above decision, the Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990[39] was enacted to ensure that a detention order made under such circumstances will no longer be rendered invalid.

(b) *Whether Minister has power to issue fresh detention order by relying solely on saving provision of section 11B*

In *Poh Chin Kay* v. *Menteri Hal Ehwal Dalam Negeri & Anor and other appeals,*[40] the Deputy Minister for Home Affairs had revoked the detention order or extension order issued under section 6(1) or section 11A of the Act in respect of each of the appellants. The Minister had then issued a fresh order purporting to act in each case under section 11B(2) of the Act. In their applications challenging their continued detention, the appellants contended that there could not be a fresh order made to replace an original detention order which was invalid as there was nothing for the Minister to revoke or to replace under section 11B(2) of the Act. The High Court dismissed the applications of the appellants who then appealed to the Supreme Court. The issue before the Supreme Court was whether the Minister had in law the power to issue a fresh detention order under section 11B(2) read with section 6(1) of the Act and, if so, in what manner.

In allowing the appeals, the Supreme Court held that the use of the words "any order" in section 11B(1) would embrace all orders, valid or invalid, and the word "revocation" includes cancellation of all orders valid as well as invalid. However, if the Minister proposes to make a fresh order under section 6(1), then he must abide by the provisions of section 6(l)(a) and (b) all over again and not merely invoke the saving provision of section 11B. This is because section 11B(1) does not speak of any fresh order and section 11B(2) does not provide for any procedure for a fresh order. The Supreme Court was of the view that this interpretation

[39] Act A766.
[40] [1990] 2 M.L.J. 297.

is in fact fortified by the Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990 which came into force on 3 April 1990. Accordingly, there was no power for the Minister to make a fresh order under section 6(1) by relying solely on the saving provision of section 11B(2) of the Act.

As was noted earlier,[41] the Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990 has been enacted to enable the Minister to make a fresh detention order by relying solely on the saving provision of section 11B(2).

(c) *Whether the Yang di-Pertuan Agong is empowered under the Federal Constitution to grant extension of time for Advisory Board to consider the representations of a detainee and make recommendations after the expiry of the stipulated period of three months*

In *Rajoo s/o Ramasamy* v. *Inspector of Police & Ors*[42] the appellant, who was detained pursuant to section 6(1) of the Act, made representations to the Advisory Board under the provisions of article 151(l)(a) of the Federal Constitution. Owing to a series of events which subsequently took place, the Yang di-Pertuan Agong allowed the Advisory Board extension of time to consider the representations made by the appellant and to make its recommendations. In due course, the Board made its recommendations to the Yang di-Pertuan Agong who confirmed the detention order made against the appellant. The appellant challenged the validity of his detention on the ground that article 151(l)(b) of the Federal Constitution did not empower the Yang di-Pertuan Agong to allow the extension of time after the stipulated period of three months had expired. The High Court decided against the appellant who then appealed to the Supreme Court.

In allowing the appeal, the Supreme Court held that reading article 151(l)(b) as a whole, it is implicit that if any extension of time is to be granted, it should be granted before the expiry of the period of three months because the express injunction therein is that no person shall otherwise continue to be detained. In any event, it is difficult to construe that there is power to extend the time after the expiry of the three-month period when the relevant provision of section 39 of the Interpretation and General Clauses Ordinance 1948 was expressly left out from the Eleventh Schedule to the Federal Constitution.

6. *Damages for Personal Injury*

(a) *Use of direct multiplier in calculating award of damages*

In *Marappan & Anor* v. *Siti Rahmah bte Ibrahim*[43] the respondent suffered severe head injury as a result of a road accident involving her

41 *Supra,* at 76.
42 [1990] 2 M.L.J. 87.
43 [1990] 1 M.L.J. 99.

bicycle and the appellants' motor car. Liability for the accident was agreed to by the parties. In calculating the award of damages for the cost of future care and loss of future earnings, the learned judge had applied the direct multiplier rather than used the annuity tables. In their appeal to the Supreme Court against the awards on quantum, the appellants contended, *inter alia,* that the learned judge had misdirected himself in holding that the direct multiplier should apply in calculating the award of damages.

In dismissing the appeal, the Supreme Court held that the learned judge had not misdirected himself in applying the direct multiplier rather than using the annuity tables in calculating the award of damages. The Supreme Court was of the opinion that there was no necessity for any legislation to repeal the usage of the annuity tables in calculating the award of damages which was more a matter of practice than of law.

(b) *Award for loss of future earnings*

In *Dirkje Pieternella Halma* v. *Mohd Noor bin Baharom & Ors*,[44] the appellant, a qualified registered nurse in Holland, took no pay leave from employment for a period of two and a half years to enable her to go on a world tour. The appellant met with an accident while in Malaysia. A bus belonging to the second respondent and driven by the first respondent had knocked the appellant who was then riding on her bicycle. Liability was admitted by the respondents. The appellant's claim for loss of future earnings was dismissed by the High Court on the ground that it was not proved that she was earning at the time she met with the accident. On appeal to the Supreme Court, the issue was whether the appellant was entitled to a claim for loss of future earnings under section 28A(2)(c) of the Civil Law Act 1956.

Having regard to section 28A(2)(c), the Supreme Court held that it is clear that the intention of the legislature in awarding damages for loss of future earnings is that only the amount that the appellant was receiving at the time she was injured can be taken into account, which means that if the appellant was not receiving any earnings at that point of time, she does not qualify for any award of damages for loss of future earnings. As the appellant was on no pay leave and was not receiving any earnings at the time of the accident, she was not entitled to any award of damages for loss of future earnings. The appellant was, however, entitled to be compensated for her loss of earning capacity in the sum of M$200,000. In the instant case, the appellant had suffered a total loss of earning capacity for the rest of her working life.

7. *Receivership*

(a) *Whether claim of depositors of co-operative society has priority over claim of employees for wages*

44 [1990] 2 C.L.J. 167.

In *Wong Pot Heng & Anor* v. *Zainal Abidin Putih & Anor*,[45] the Co-operative Central Bank Ltd (CCB), as a result of its financial collapse, was placed under receivership under the Essential (Protection of Depositors) Regulations 1986. The appellants, who were the employees of CCB, were retrenched by the respondents, the receivers. On the application of the respondents for directions as to priority of payments, the High Court ruled that immediately after the receivers' liabilities, the CCB deposit liabilities should take priority for payments over employees' liabilities and all other liabilities. The appellants appealed to the Supreme Court contending that their claims for wages should take priority over the claim of the depositors who were mere customers of CCB.

In allowing the appeal, the Supreme Court found that as far as priority of payments is concerned, regulation 13 of the 1986 Regulations provides for only one priority, namely, the expenses, costs and remunerations of the receivers appointed thereunder. Under the said regulation, apart from the specified liabilities, all other liabilities have no priority and must, therefore, rank equally. For the above reasons, CCB*'s* assets must, accordingly, be applied *pari passu* in satisfaction of the depositors' and employees' liabilities subject only to the priority provided by regulation 13.

(b) *Whether claim of Employees Provident Fund Board has priority over claim of receivers for receivership costs and expenses*

In *Chuah Teong Hooi & Anor* v. *Employees Provident Fund Board*,[46] the plaintiffs were the receivers and managers of two companies appointed pursuant to the provisions of the debentures in question. The companies were insolvent and unable to meet all their outstanding liabilities. A direction of the court was applied for to determine the priority for payment between the claim of the Employees Provident Fund Board and the plaintiffs' claim for receivership costs and expenses.

Having regard to the Companies Act 1965, the High Court found that the claim of the Employees Provident Fund Board takes priority over the claim of the debenture holders under a floating charge but not over the claim of the receivers and managers for receivership costs and expenses. However, under section 15(a) and (b) of the Employees Provident Fund Act 1951, the sums due to the Board must be paid first and are not liable to be attached in respect of any claim including the claim by the plaintiffs as the receivers and managers. Accordingly, notwithstanding the provisions of the Companies Act 1965, the claim of the Board takes priority over the claim of the plaintiffs for their costs and expenses.

8. *Sovereign Immunity*

In *Commonwealth of Australia* v. *Midford (Malaysia) Sdn Bhd & Anor*,[47] *X* and *Y,* who were custom officers from Australia, had, with the assistance

45 [1990] 2 M.L.J. 410.
46 [1990] 2 M.L.J. 218.
47 [1990] 1 M.L.J. 475.

of a Malaysian custom officer, raided and seized certain documents from the house of an employee of the first respondent and also from its offices located in a factory. The first respondent subsequently obtained a court order requiring *X* and *Y* to forthwith return all documents seized by them. The order also restrained, *inter alia,* the Commonwealth of Australia (the appellant) from conducting any further illegal searches or seizures on the premises of the first respondent, its employees, agents or partners. The appellant applied to set aside the order on the ground that it enjoyed absolute immunity from the jurisdiction of the Malaysian courts. The High Court dismissed the application of the appellant. In the appeal to the Supreme Court, the appellant contended that the absolute theory of sovereign immunity applied in the instant case as the acts complained of were within the sphere of its governmental or sovereign activity.

In allowing the appeal, the Supreme Court held, *inter alia,* that the position on sovereign immunity in Malaysia is that the absolute theory applied to all actions *in personam,* but that the restrictive theory applied to actions *in rem.* The Supreme Court found that the acts complained of in the instant case were *acta jure imperil* and could not be classified as *acta jure gestionis.* The Supreme Court held further that, in applying the doctrine of sovereign immunity, the Malaysian courts whether in the exercise of its civil or criminal jurisdiction should have by international comity disclaimed jurisdiction in the instant case, especially after the production of the certificate from Wisma Putra stating that the Yang di-Pertuan Agong had recognized the appellant as a foreign state.

9. *Doctrine of Stare Decisis and the Reception of English Common Law*

In *Commonwealth of Australia* v. *Midford (Malaysia) Sdn Bhd,* it was held that the restrictive doctrine of sovereign immunity as developed in the common law after 1956 applied in Malaysia. In so deciding, the Supreme Court relied on the judgment of the Privy Council in *Philippine Admiral (Owners)* v. *Wallen Shipping (HK) Ltd*[48] an appeal from the decision of the Full Court of the Supreme Court of Hong Kong. The Supreme Court took the view that the above judgment of the Privy Council delivered in November 1975 was binding authority in so far as the Malaysian courts are concerned. The Supreme Court was of the opinion that section 3 of the Civil Law Act 1956, which provides for courts in West Malaysia to apply the common law and the rules of equity as administered in England on 7 April 1956, should not be taken to mean that the common law and rules of equity as applied in Malaysia must remain static and do not develop.

48 [1977] A.C. 373.

10. *Contempt of Court*

In *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors* v. *S M Idris & Anor and another application*[49] the applicants filed two separate applications against the respective respondents seeking an order to commit the respondents to prison for contempt of court. The respondents had criticized the decision of the Supreme Court in a case in which the applicants were involved. The applicants submitted that the various statements and speeches made by the respondents went beyond the limits of reasonable courtesy and good faith. In the instant proceedings, the two applications were consolidated and heard by the Supreme Court.

The Supreme Court laid down the principle that whether a criticism of a judgment is within the limits of reasonable courtesy and good faith must depend on the facts of each particular case and that in determining the limits of reasonable courtesy, the court should not lose sight of local conditions. In regard to the language used by the first and second respondents in the first application, the Supreme Court took the view that it might have been intemperate but that it did not amount to contempt of court. In regard to the third respondent in the second application, as there existed a doubt whether the speech made by him amounted to contempt of court, the benefit of the doubt was exercised in his favour. However, the positions of the first and second respondents in the second application were different. Both are advocates and solicitors and should know the law. They are officers of the court and are expected to uphold the dignity of the court and respect for the judges. Having read and considered the speeches of both of them, the court found that they had gone outside the two limits of reasonable courtesy and good faith. The blatant insinuations made by them had scandalized the Supreme Court and brought it into disrepute. As the applicants had proved their case beyond reasonable doubt, the first and second respondents were found guilty of contempt of court. A fine of $5,000 or three months' imprisonment in default was imposed on each of them.

11. *Dealing by Company in Own Shares: Whether Bank Prohibited from Recovering Loans Granted*

In *Chung Khiaw Bank Ltd* v. *Hotel Rasa Sayang Sdn Bhd & Anor*[50] the appellant had granted a loan to *V Sdn Bhd* in 1980 to facilitate the purchase by the third and sixth respondents of the shares of the first respondent. The third and sixth respondents were the directors of *V Sdn Bhd.* The first respondent executed the relevant securities on its assets and properties and the appellant disbursed the loan. In 1982, the appellant granted a further loan to the first respondent, part of which was to be used to pay off *V Sdn Bhd's* earlier debt to the appellant. The securities used were the same securities belonging to the first respondent and its subsidiary. The appellant subsequently commenced proceedings to recover the loans from the respondents. The High Court held that both the loan agreements

49 [1990] 1 M.L.J. 273.
50 [1990] 1 M.L.J. 356.

were illegal and, accordingly, void and unenforceable. The appellant appealed to the Supreme Court.

The Supreme Court held that the loan in 1980 clearly contravened section 67 of the Companies Act 1965 which prohibits a company from giving directly or indirectly, whether by means of a loan, guarantee or security or otherwise, any financial assistance with the object of dealing in the shares of the company or its holding company. The 1980 loan was clearly a loan to deal in the shares of the first respondent. In this regard, section 24(a) and (b) of the Contracts Act 1950 rendered the loan agreement in 1980 void and unenforceable. The 1982 loan was also tainted with the illegality. The securities and guarantees executed in respect of them were equally invalid and unenforceable as being contrary to public policy. In this respect, the trend in common law countries to save commercial contracts and not to strike them down cannot be followed in Malaysia in the light of section 3 of the Civil Law Act 1956 and section 24 of the Contracts Act 1950.

The Supreme Court held further that section 67(6) of the Companies Act 1965 could not be relied upon by the appellant to recover the loan as it was designed to protect the first respondent and no one else. The words "recovering the amount of any loan made in contravention of this section" in section 67(6) can only mean any loan made by the first respondent itself. The appellant was, accordingly, not entitled to recover the loan under section 67(6) of the Act.

12. *Removal of Registrar's Caveat*

In *Public Bank Bhd* v. *Pengarah Tanah & Galian & Anor*,[51] the appellant was the registered chargee of the land in question. A Registrar's caveat was subsequently entered by the Registrar of Land Titles at the request of the Inland Revenue Department to protect the latter's claim for arrears of income tax owed by the registered proprietor. The appellant received the notice of entry of the Registrar's caveat on 20 October 1988. The appellant's request for the caveat to be removed was rejected on 27 December 1988. On 29 January 1989, the appellant filed an appeal to the High Court under section 418 of the National Land Code 1965 against the refusal of the Registrar to remove the caveat. The second respondent, who was the Director-General of Inland Revenue, objected to the application of the appellant contending that it was time barred. The High Court upheld the objection of the second respondent and the appellant appealed to the Supreme Court.

In dismissing the appeal, the Supreme Court held that for the purpose of computation of the three-month period under section 418 of the Code, time runs from the date of communication of the decision of the Registrar to enter the caveat, that is, from 20 October 1988 and not from the date of his refusal to remove the caveat. As the appellant's appeal under section

51 [1990] 3 M.L.J. 100.

418 was entered on 29 January 1989, it was filed out of time and consequently time barred. It has been suggested that the three-month period should run from the date of the refusal of the Registrar to remove the caveat, especially in the light of section 321(3)(a) of the Code.[52] It may be argued that the Registrar has wrongly exercised his discretion in refusing to remove the caveat under section 321(3)(a) where the market value of the land is only sufficient to meet the amount secured by the charge. In such a case, there would be no balance left from the proceeds of sale to meet the claim of the Inland Revenue Department for arrears of income tax due from the proprietor of the land. To allow the Registrar's caveat to remain in such a situation would be to effectively nullify the statutory right of the chargee to recoup his losses secured by the charge.

D. Work of Legal Institutions

This report will only concern itself with the work of the Regional Centre for Arbitration in Kuala Lumpur.[53]

1. *Introduction*

The Centre, which is a non-profit making institution, was established in Kuala Lumpur on 17 October 1978 under the auspices of the Asian-African Legal Consultative Committee, an inter-governmental organisation, in co-operation with and with the assistance of the Government of Malaysia. The Centre has been established with the objective of providing a system for settlement of disputes for the benefit of parties engaged in trade and commerce and investments with and within the Asia-Pacific region. The Centre functions under the supervision of the Asian-African Legal Consultative Committee and is headed by a Director.[54] The facilities for arbitration under the auspices of the Centre can be availed of by the parties who may request for it, whether governments, individuals or bodies corporate, provided the dispute is of an international character, namely, the parties belong to or are resident in two different jurisdictions or the dispute involves international commercial interests. A unique feature of the Centre, apart from being non-profit making, is that it is regional and inter-governmental.

2. *Functions*

Article 2 of the Administrative Rules of the Centre provides that the Centre shall perform the following functions:

52 See Teo, "Registrar's Caveats: of Removal, Limitation and Priority with Secured Creditors" [1990] 2 M.L.J cxxii.
53 Hereinafter referred to as the "Centre".
54 See Administrative Rules of the Centre, arts 3 & 4.

(a) promoting international commercial arbitration in the region;

(b) co-ordinating and assisting the activities of existing arbitral institutions, particularly among those within the region;

(c) rendering assistance in the conduct of *ad hoc* arbitrations;

(d) assisting in the enforcement of arbitral awards; and

(e) providing for arbitration under the auspices of the Centre where appropriate.

3. *Rules for Arbitration*

Where the parties to a contract have agreed in writing that disputes in relation to the contract shall be settled by arbitration in accordance with the Rules for Arbitration of the Centre, then such disputes shall be settled in accordance with the UNCITRAL Arbitration Rules of 1976 with certain modifications and adaptations.[55]

The claimant shall file with the Director of the Centre a copy of the notice of arbitration served on the respondent.[56] The parties shall also file with the Director a copy of any other notice, including a notification, communication or proposal concerning the arbitral proceedings.[57] If the parties have agreed on an appointing authority other than the Centre, they shall inform the Director of the name of that authority.[58] The Director shall, at the request of the arbitral tribunal or either party, make available, or arrange for, such facilities and assistance for the conduct of arbitration proceedings as may be required, including suitable accommodation for sittings of the arbitral tribunal, secretarial assistance and interpretation facilities.[59] The parties shall furnish to the Director copies of the statement of claim, the statement of defence and any amendments thereto which they file with the arbitral tribunal.[60] Unless the parties agree otherwise, the sole arbitrator or the presiding arbitrator shall, at the conclusion of the proceedings, furnish to the Director a complete set of records.[61] The arbitral tribunal shall furnish to the Director a signed copy of the award made by it, whether interim, interlocutory, partial or final. The Director shall render all assistance in the filing or registration of the award when the same is required by the law of the country where the award is made.[62]

The Rules for Arbitration and the Administrative Rules of the Centre allow a great deal of flexibility in the conduct of arbitral proceedings and leave a wide discretion to the parties in regard to (i) the choice of

55 Rules for Arbitration of Centre, r. 1.
56 *Ibid*., *r.* 2(1).
57 *Ibid., r.* 2(2).
58 *Ibid*., r. 2(3).
59 *Ibid*., *r.* 4.
60 *Ibid*., r. 5(1).
61 *Ibid*., r. 5(2).
62 *Ibid*., r. 6.

arbitrators; (ii) the place of arbitration; and (iii) the applicability of the procedural rules. A unique feature of arbitrations administered by the Centre is that under the provisions of section 34(1) of the Malaysian Arbitration Act 1952,[63] the Malaysian courts will not exercise jurisdiction over the conduct of such arbitrations, thus removing the functioning of the arbitral tribunal from the supervisory control of the courts.

For the period covered by the report, three new disputes have been referred to the Centre for arbitration.

Costs of Arbitration

Registration Fee	US$50
Fees for Arbitrators	US$500-US$ 1,500 a day for each arbitrator
	(US$50-US$250 per hour)
	Rates variable with the consent of the parties and arbitrator/s.

Administrative Fees

Amount of Claim (in American Dollars)	Fees
up to 50,000	3% with a minimum of US$500.00
50,000 up to 100,000	1500 + 2% of excess over 50,000
100,000 up to 500,000	2500 + 1% of excess over 100,000
500,000 up to 1,000,000	6500 + 0.80% of excess over 500,000
1,000,000 up to 2,000,000	10500 + 0.40% of excess over 1,000,000
2,000,000 up to 5,000,000	14500 + 0.15% of excess over 2,000,000
More than 5,000,000	19,000 + 0.10% of excess over 5,000,000 up to a limit of US$20,000

63 Act 93.

E. LEGAL CONFERENCES/SEMINARS HELD

1. Title/Theme "Computer Programmes and Software: The Legal Protections and other Recent Trends in Intellectual Property" (held on 17 April 1990, Kuala Lumpur)

   Paper presented: "Intellectual Property Rights and Computers - Developments in the United Kingdom and Western Europe"

2. Title/Theme "Second Asean Law Students' Conference" (held from 17-23 June 1990, Petaling Jaya, Selangor)

   Papers presented: (i) "Towards a Common Law in South East Asia"
   (ii) "Introduction to Malaysian Judicial System"
   (iii) "Justice Delivery System and the Law Schools"
   (iv) "Sources, Nature and Objectives of the Shariah"

3. Title/Theme "Labuan An International Offshore Financial Centre" (held on 18 July 1990, Kuala Lumpur)

   Papers presented: (i) "Changes to the Companies Act"
   (ii) "Key Issues in the New Offshore Banking Law"
   (iii) "Key Issues in the New Offshore Insurance Law"
   (iv) "Income Tax Law on Labuan"

4. Title/Theme "Prevention of Drug Abuse - Possibilities and Limits" (held on 23 October 1990, Kuala Lumpur)

   Papers presented: (i) "Enforcement of Drug Laws - Judicial Procedure and Evidence"
   (ii) "Problems of Enforcing Drug Laws in Malaysia"
   (iii) "Enforcement of Drug Laws in Malaysia - a Legal Practitioner's Viewpoint"

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