



NEWSLETTER

Advocates Association of Sarawak, Kuching Branch.

2009 Issue 1

10th February 2009

EXTRAORDINARY GENERAL MEETING HELD ON 16th NOVEMBER, 2008

An Extraordinary General Meeting of the Kuching Branch was convened on Sunday, 16th November, 2008 at 3.00 pm by the branch committee on the written requisition of six ordinary members. The only agenda of the EGM was to discuss and if necessary pass a Resolution on the recent Court of Appeal's Decision given on 7th November, 2008 allowing West Malaysian lawyers to appear in Appeal cases originating from Sarawak and taking away the rights of the Sarawak Advocates to appear when the Appeal cases are fixed in West Malaysia.

The decision which led to the convening of the EGM, was given on 7th November, 2008 in the case of **Dato' Ting Cheuk Sii v Datuk Hj Muhammad Tufail bin Mahmud (Civil Appeal No Q-02-724-2007)**, wherein the Court of Appeal, comprising of the Honourable Justices Dato' Gopal Sri Ram, Datuk Wira Haji Mohd Ghazali bin Mohd Yusoff and Tengku Dato' Baharudin Shah bin Tengku Mahmud, ruled that the Advocates Ordinance of Sarawak has not extra-territorial effect, and that the rights of audience before the Court of Appeal sitting at Putra Jaya is governed, not by the Ordinance, but by the Legal Profession Act 1976, thus enabling West Malaysian lawyers to appear before the Court of Appeal sitting at Putra Jaya, in cases originating from the courts in Sarawak.

After much debate and deliberation by those in attendance, the EGM resolved to put forward five motions for approval before the Annual Delegates Conference, with the objective of protecting and ensuring the preservation of the exclusive rights of all Sarawak Advocates to appear in Appeal cases originating from Sarawak courts, no matter where such cases are fixed for hearing. The motions to be put before the Delegates Conference are as follows :-

1. That the Advocates Association of Sarawak intervene in the Appeal before the Federal Court against the decision made by the Court of Appeal in Civil Appeal No Q-02-724-2007 given on 7th November, 2008. All costs of and incidental thereto is to be borne by the Advocates Association of Sarawak.
2. That the representatives of the Advocates Association of Sarawak meet and strongly urge the President of the Court of Appeal that in exercising his powers under Section 39 of the Courts of Judicature Act, 1964, he must take into consideration the provisions of the Sarawak Advocates Ordinance read in light of the Malaysia Agreement and Inter Governmental Report by fixing the hearing of any appeal that arises out of the High Court of Sabah and Sarawak not at Putrajaya or anywhere outside the State of Sarawak.
3. That the Advocates Association of Sarawak call for a permanent panel of Court of Appeal and Federal Court Judges be stationed in the State of Sarawak and to set up Court of Appeal and Federal Court Registries in Kuching, Sarawak to hear appeals from the Courts in Sarawak.
4. That the Advocates Association of Sarawak shall petition, for the clearance of any doubt, the Honourable Prime Minister of Malaysia, Chief Minister of Sarawak, the Chief Justice of Malaysia, Chief Judge of Sabah and Sarawak and any other executive, legislative and judicial bodies, to ensure the protection of exclusive rights of the Advocates from Sarawak to appear in the Court of Appeal and Federal Court sitting in any place other than Sarawak for cases originating from Sarawak.
5. In the event the Federal Court upholds the decision of the Court of Appeal, the Advocates Association of Sarawak will call for the Courts of Judicature Act, 1964 to be amended and/or apply to the Federal Court to confirm the validity of the previous decisions or orders that were given by the Court of Appeal and Federal Court sitting at Putrajaya or Kuala Lumpur or anywhere outside Sarawak entertaining the appeal arising out of the Courts in the State of Sarawak and no party shall have any right to challenge the decisions or order made by the Court of Appeal and/or Federal Court sitting outside the State of Sarawak entertaining an appeal from the Sarawak Courts.

The Annual Delegates Conference was held on Saturday, 22nd November, 2008 at 10.00 am. at the Ultimate Professional Centre. The said motions were unanimously approved by the Delegates Conference.

On 22nd January, 2009, the Federal Court granted leave to appeal against the said decision of the Court of Appeal. The hearing of the said Federal Court appeal is fixed on 10th March 2009 in Kuching at 9.30 a.m. The Association have been invited by the Federal Court to attend the said hearing and submit the views of the Association on the questions relating to the exclusive rights of Sarawak Advocates to appear in the Court of Appeal sitting in Petra Jaya or in any place other than Sarawak for cases originating from Sarawak.

URGENT HEARING FOR COURT OF APPEAL MATTERS

The Chief Judge of Sabah and Sarawak has informed the Kuching Branch Committee that, in cases where an urgent hearing of any matter before the Court of Appeal is necessary, an application in writing may be made to the Chief Judge of Sabah and Sarawak who will convene a special panel of the Court of Appeal to hear the matter in Sarawak.

MEETING WITH SHEDA

The newly elected office bearers of the Advocates Association of Sarawak, Kuching branch comprising of the Mr. Khairil Azmi, Mr. Leonard Shim, Mr. Sarbjit Singh, Mr. Bexter Micheal, Mr. Liew Tang Chieh, Mr. Yong Sie Mee and Mr. Desmond Sahathevan paid a courtesy call for the first time ever to the Sarawak Housing and Real Estate Developer's Association (SHEDA) on 18th November, 2008 at their office at Tabuan Stutong Commercial Centre, Jalan Setia Raja, Kuching.

Mr. William Wei together with his Deputy President, Tuan Hj Zaidi Ahmad, the Secretary General, Mr. Iskanda Sharkarwi, the Assistant Treasurer, Dr. Richard Tan, Council Member Mr. Sim Meng Chiok and other SHEDA members were present to receive us for the meeting. Also present at the meeting was our fellow member of the association, Mr. David Toh.

The purpose of the meeting was to introduce our newly elected branch committee to them and more importantly to foster a better understanding between the two associations.

A warm welcome was extended to us by the President and the Deputy President of SHEDA. The President of SHEDA in his speech stressed the importance of their role in the housing industry in Sarawak. It is SHEDA's goal to strive for better and more professional services in the discharge of their role as the developer's association of Sarawak.

Following their welcoming speech, our Chairman introduced the Kuching branch committee members and also identified our Chairman for the sub-committee for the Conveyancing and Corporate Affairs

A few issues were then discussed at the meeting, namely; the developers to ensure the architects' certificates for the release of the loan are reliable as to the exact physical stage of the completion; the purchasers' right to be issued the document of title upon payment of the full purchase price; the chronic squeeze of the legal professional fees by the developers which our members have for so long endured and the call for strict adherence to the Advocates Remuneration Rules.

The views shared and discussed during the meeting is an important first step towards fostering a better understanding of the two associations. Our Chairman indicated and the same sentiments were shared by Mr. William Wei that more meetings should be held in the future.

MEETING WITH INDUSTRIAL COURT CHAIRMAN

The Kuching Branch committee paid a courtesy call on the Chairman of the Industrial Court Cawangan Sarawak, Mr. Gabriel Gumis Humen on 28th October, 2008 at the Industrial Court, Kuching.

The Industrial Court Chairman welcomed members of AAS and thanked them for their presence. The Chairman informed us that currently, the Industrial Court is having 180 cases, of which majority are cases filed in years 2007 and 2008. The Industrial Court has successfully disposed of quite a number of cases by mediation. There are several outstanding awards prior to the transfer of his predecessor and the Chairman is currently working on the said awards.

The Industrial Court Chairman and members of AAS both share the same sentiment that mediation should be started at an early stage of the Industrial Court proceedings.

The Industrial Court Chairman pointed out that the Ministry is currently working on the proposal to have the mediation at IR (Industrial Relation) stage.

The Industrial Court Chairman agreed with our stand that West Malaysian lawyers do need adhoc licence to appear before the Industrial Court in Sarawak. Under the current immigration law and/or practice, West Malaysian lawyers are required to have a Work Permit to appear before the Industrial Court in Sarawak and any application for such Work Permit need to be supported by an adhoc licence granted by the Chief Judge of the High Court of Sabah and Sarawak.

While the Industrial Court Chairman fully appreciates the tight schedule of advocates, His Honour prefer advocates to send to the Industrial Court their written application for an adjournment at least one week before the trial date. This is to facilitate the better management of the hearing list in the Industrial Court.

OPENING OF THE SARAWAK AND SABAH LEGAL YEAR 2009

The Chief Judge of the High Court of Sabah and Sarawak have agreed that the opening of the Sarawak and Sabah Legal Year 2009 will be held in Kota Kinabalu, Sabah on 27th February, 2009.

This is the first time where Sarawak and Sabah have combined to hold the Opening of the legal Year in one of the East Malaysian state. For next year, the event would be held in Sarawak. The Borneo Bar games between Sarawak and Sabah will be held in conjunction with the opening of the Legal Year 2009 in Kota Kinabalu. The sports which our members are invited to participate are golf, bowling, tele-match and soccer.

We warmly welcome all members to attend this event in Kota Kinabalu. Further details, please contact Mr. Khairil Azmi (Tel

No. 082-427071) and Mr. Sarbjit Singh Khaira (Tel No. 082-244866).

LAW SEMINAR

The Advocates Association of Sarawak, Kuching Branch is organizing a seminar as part of the continuing legal education program for members/advocates. This is the Association's first law seminar for 2009 and we warmly welcome all members/advocates to attend. The details of the seminar are as follows:-

Date : 20.02.2009
Time : 9.00 a.m. (Registration)
Venue : Merdeka Palace Hotel & Suites
Topics : **Morning Session** – Speaker : Mr. Lim Chee Wee (Partner of M/s. Skrine & Co.)

1. Schemes of Arrangements : How to prepare and to attack
(9.15 a.m. – 10.30 a.m.)
2. Shareholders Dispute : Latest Development and Do's and Don'ts
(10.45 a.m. – 12.15 p.m.)

Afternoon Session – Speaker : Mr. Vinayak P. Pradhan (Partner of M/s. Skrine & Co.)

1. Construction law – The end of the Affair : Termination and Calls on Bonds.
(2.00 p.m. – 3.00 p.m.)
2. Arbitration – Stitching the hole in the pocket : Controlling time and costs.
(3.00 p.m. – 4.15 p.m.)

Seminar fee : RM120.00 (Members)
: RM150.00 (Non-members)
- Inclusive of coffee/tea break & buffet lunch at Merdeka Palace Hotel & Suites.

Kindly confirm your attendance with Ms. Naomi (Tel : 082-448077) as soon as possible. Thank you.