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Global Financial Tsunami and Beyond:

Loo Choon Chiaw

ALB: Are the capital markets in Asia dead?
Loo Choon Chiaw: My answer is an emphatic 'NO'. The genesis of the present global financial meltdown can be traced back to August 2007, when the US subprime mortgage market collapsed. Even the current capital markets in the US, which are badly hit by one crisis after another, the latest relates to the uncertainty of the proposed bailout of the auto industry, and the possible collapse of General Motors, Ford and Chrysler should the bailout plan fail to be approved by the US Congress, are by no means dead. Figuratively, they are seriously wounded. The injury, though serious has not been fatal. While the general economy of Asia has been adversely affected by the global downturn, in a relative sense, the wound inflicted on Asia has not been as severe as that inflicted on the US. There is certainly no sign of any burial-service concerning the Asia financial markets as of now, or in my opinion, within the foreseeable future.

ALB: As you have personally experienced and witnessed the last Asian financial crisis, can you share your thoughts on that crisis?
LCC: As many of us will recall, the Asian financial crisis which started in mid-1997 was initially triggered off by a drastic fall in the value of Thai baht, soon thereafter, the problems spreaded like wild fire to Indonesia, Malaysia, the Philippines, South Korea and the rest of Asia, and even beyond Asia to Russia and Brazil! After the Asian financial crisis, the Asian countries in general took serious steps to improve their financial systems. With the recovery of the general economy, the Asian countries also managed to gradually build up stronger foreign exchange reserves.

ALB: As you have said, one of the legacies of the Asian financial crisis last decade was that many countries in the region had built up strong foreign exchange reserves. In your opinion, what actions will the Asian countries take, in reliance of their strong reserves, to prop up their economies in the next few months?
LCC: The action which each country within Asia may take, or more accurately, has taken, to address the present global downturn varied from country to country in the light of its unique domestic situation. There can be no generalisation. The measures adopted have been as alike as chalk and cheese. For instance, the PRC, a relatively closed economy with a population of approximately 1.3 billion, has announced that it will loosen its credit conditions, reduce its taxes and embark on a massive RMB4 trillion stimulus infrastructure building package, which will be spent over the next two years, to boost domestic demand in key areas, such as low-income housing, rural infrastructure, water, electricity, transportation, technological innovation etc. In contrast, a package to stimulate domestic consumption would not work in Singapore, a tiny city-state with a population of approximately 4 million, and an open economy with an estimated 60 cents of every dollar spent domestically leaking out of the domestic economy. Instead, Singapore has announced that it

Q&A with Loo Choon Chiaw; Loo & Partners LLP

will utilise its S$2.9 billion package to help its workers to keep their jobs, to upgrade their skill sets, to reduce business costs in general, and to assume part of the credit risks of the banks when they lend money to businesses.

ALB: Are Shariah-compliant financial instruments the key to weathering the credit crisis?
LCC: Islamic banking activities are banking activities which are carried out in accordance with Shariah principles. Basically, such activities must avoid *riba*, i.e. must not involve the payment or receipt of interest, must prohibit *gharar*, i.e. must not be uncertain, but must posses an element of risk-sharing and profit-sharing, and ought to focus on *halal* activities, i.e. be confined to Islamic permissible activities.

Advocates for Shariah-compliant financial activities have emphasized the unique characteristics inherent in such activities. For instance, every Islamic finance transaction must be supported by an underlying and genuine trade and business-related activity, which has the effect of rendering the gearing of such a transaction lower than that applicable to a conventional finance transaction. Further, the requirements of the sharing of risk and profit between the funder and the entrepreneur have the effect of ensuring that the funder is just as careful and vigilant as the entrepreneur in carrying out the requisite due diligence investigations before funding the transaction. Thus, those advocates argue that Islamic financial activities, as compared to conventional financing activities, are likely to be less speculative, more prudent and transacted with less leverage. Accordingly, those financing activities would be in a better position to weather a credit crisis.

I am not in possession of any statistics on the comparison of the default rates of Islamic financing transactions versus conventional financing transactions under the prevailing global downturn. It will be insightful to review and analyse the relevant statistics, when available.

ALB: What is the potential of the Shariah-compliant banking business?
LCC: The total value of Islamic invested assets today is estimated to be in excess of USD800 billion, compared to only USD150 million in 2000. Before the current global financial turmoil, some analysts have forecasted the value of the Islamic invested assets to overshoot USD1 trillion by the end of 2008, with an annual growth rate of 10% to 15%. The phenomenal growth in the value of Islamic invested assets was predominantly fueled by the investments from the wealthy Gulf States. In Asia, Islamic nations such as Malaysia, Indonesia, Brunei, and non-Islamic nations or regions, for instance, Singapore and Hong Kong SAC have all been acutely aware of the lucrative opportunities presented by the Shariah-compliant banking activities and have, without exception, allocated much resources to review, revise or change their legal, regulatory and fiscal framework to ensure that Islamic banking activities are not disadvantaged vis-à-vis the conventional banking activities, with a view to promoting Islamic banking activities.

ALB: Would the growth in the volume of Islamic financing transactions benefit lawyers?
LCC: Absolutely. Competent legal advice and services are essential in structuring financing transactions, whether they are conventional finance transactions or Islamic finance transactions. Indeed, as Islamic finance is still in its early development, it presents opportunities to lawyers who are familiar with such transactions. At a micro level, legal skill shall be needed to ensure that the legal documents are consistent with the applicable Islamic principles. There will be great challenges and opportunities for lawyers with expertise in conventional finance to use their cumulative experience in developing innovative Islamic financial products by borrowing concepts used in existing conventional finance which are not inconsistent with applicable Islamic principles. On a macro perspective, in view of the relatively short history of Islamic finance, a uniform regulatory and legal infrastructure for Islamic finance is yet to be in place. This also means that it is not too late for lawyers who aspire to develop expertise in Islamic banking to get into the act.

ALB: How will the current global downturn affect legal practice?
LCC: As the current financial crisis worsens, less legal work shall be available because businesses will enter into fewer deals. Competition for a smaller pie will be more intense. There will be a drastic drop in the volume of certain types of legal work, including, real estate work (as fewer purchases are made), IPOs (as IPO aspirants are holding back their listing plans), general banking work (as banks are cutting down on new loans). In contrast, there will be an increase in the volume of other types of work, for instance, (1) Acquisition and RTOs (as controlling shareholders of listed companies which do not perform well are now more willing to dispose of their equity stakes in those listed vehicles), (2) Delisting or Privatisation (when controlling shareholders are more ready to take their listed vehicles private when their share prices are traded at historically lows), (3) Restructuring and Insolvency works (as we witness more corporate collapses) and (4) Corporate Governance and compliance work (when the regulatory authorities introduce more regulations, directives and guidance notes in response to the financial crisis).

ALB: How should lawyers view the current global financial crisis?
LCC: What goes down must come up. Law firms who could weather through the current financial storm shall emerge stronger and be ready to capitalize on the next upturn!