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Editorial

Much has been said about the problems faced by the banks in Malaysia during this economic situation. The merge between Bank of Commerce and Bank Bumiputera Malaysia Berhad recently has proven how severely affected the banks are. However, has anyone ever wondered on how the economy has affected Islamic banking? Less is known about the status of Islamic banking during this situation, therefore it is appropriate for the Akauntan Nasional to focus on Islamic banking this month.

An article entitled "Islamic Banking in Crisis : The Malaysian Case" by Associate Professor Saiful Azhar Rosly of the International Islamic University is featured and it highlights the problems faced by Islamic banking during the economic downturn. This article covers the problems of Islamic banking operations as pointed out by the Bank Negara Malaysia reports and offers some explanation as to why the Malaysian Islamic banking system is said to be unique.

The world is now more advanced and liberal, and with economic recovery paramount in most minds, the level of competition in the market place for many organisations is more intensified. In response, new organisational structures and management concepts and techniques are continuously being introduced to strengthen the competitiveness of organisations. However, the traditional management accounting practices have changed very little.

Another article entitled "Impact of Global Competition on Management Accounting Practices-Implications on Management Accounting" by Foong Soon Yau and Badriyah Minai of Universiti Putra Malaysia is featured this month to discuss on the empirical evidence of the skills needed by practising management accountants. This paper examines the current development or trends in the management accounting education in Malaysia.

Despite the economic situation, the Institute continues to stand tall as the country's national accountancy body. The month of March has been fruitful for both the Institute and its members, mainly the internal auditors for yet another significant event in the Institute's calendar has taken place. The Internal Audit Conference with the theme "Emerging Roles of the Internal Auditors" was organised by the Institute on 9 and 10 March 1999. The Conference managed to attract over 250 participants from all over Malaysia. All participants agreed that the Conference had reached its target that was to keep the auditors abreast of the new developments in the auditing world.

In this month's issue of the Akauntan Nasional, the Internal Audit Conference receives major coverage. We hope that you will enjoy the pictorial display of the events, which is featured in this issue. In the upcoming issue of the Akauntan Nasional, we will feature the papers that were presented during the Conference for the benefit of all members. The Institute is proud to announce that the Conference was a great success and hopes that the accountants will continue to give their full support for the Institute's conferences and seminars in the future.

Editor

CONTRIBUTION OF ARTICLES

The *Akauntan Nasional* welcomes original and previously unpublished contributions which are of interest to accountants, executives and scholars. The author should ensure that the contribution will be of interest to accountants, executives and scholars.

Manuscripts should cover domestic or international accounting developments. Manuscripts should be submitted in English or Bahasa Malaysia and range from 3,000 to 10,000 words (about 10-24 double-spaced, typed pages). Diskettes (3.5 inch) in Microsoft Word or Lotus Wordpro are encouraged. Manuscripts are subject to a review procedure and the editor reserves the right to make amendments which may be appropriate prior to publication.

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The **Malaysian Institute of Accountants (MIA)**, the country's national accounting body, was established in 1967 under an Act of Parliament, namely, the Accountants Act, 1967.

The functions of the Institute are, inter alia:

(a) To regulate the practice of the accountancy profession in Malaysia;

(b) To promote in any manner it thinks fit, the interests of the accountancy profession in Malaysia;

(c) To provide for the training, education and examination by the Institute or any other body, of persons practising or intending to practise the profession; and

(d) To determine the qualifications of persons for admission as members.

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Printer
Ultimate Print Sdn Bhd (62208-H)
No. 12, Jalan 213
46050 Petaling Jaya
Tel: 03-793 6830/31/29 Fax: 03-793 6816

Published By
Malaysian Institute of Accountants
Registered Office and Address
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Section 169 (16) of the Companies Act 1965 — An Amendment is Paramount!

The board of directors is charged with the function of managing the company's business. They are *the hands that rock the cradle* - thus the Institute is concerned for the welfare of those companies where the directors are irresponsible and negligent in their duty to look after the affairs and well being of the organisations.

Section 169(15) of the Companies Act 1965 clearly states that:

"Every balance sheet and profit and loss account laid before a company in general meeting.....shall be accompanied by a statement signed on behalf of the directors by two directors of the company, stating that in their opinion -

(a) the profit and loss account .....is or are drawn up so as to give a true and fair view the results of the business of the company.....

(b) the balance sheet.....is or are drawn up so as to exhibit a true and fair view of the state of affairs of the company...."

It is lucid from the wordings of the subsection that the directors are required to provide and declare a true and fair view of the company's business transactions.

Directors are required to provide and declare a true and fair view of the company's business transactions

Whereas Section 169(16) requires a statutory declaration to be made by a director or any other person responsible for the financial management of the company, as to the *correctness of the balance sheet and profit and loss account of the company.* Thus one should note the difference between the subsections - where the former exhibits the need for prudence and diligence without any suitable paper qualifications, and on the other hand the latter compels for the need of qualified knowledge, meaning academic qualification and on the job training and experience.

However, under the present provision any director can sign the statutory declaration. A director is defined by the Act as to be human and of full age. This obviously does not require directors to have certain form of qualifications - as in academic qualifications or on the job experience.

Thus the inherent problem vivid from the statutory declaration is that the director who signs the document, does it without having the necessary knowledge and experience to ensure the fairness and correctness of the documents. The person may also not be adequately trained to be in that position and likewise he does not have the necessary knowledge and experience in areas of accounting. Above all, he may not be governed by a professional body such as the Institute.

However, the directors are ultimately responsible for true, fair [as depicted in section 169(15) of the Act] and correct [as required in section 169(16) of the Act] financial statements of the company and to ensure that the documents are prepared in compliance with the Approved Accounting Standards. Any contravention to the

Above all, he may not be governed by a professional body such as the Institute

> The person who signs the statutory declaration under Section 169(16) of the Act should be an "accountant within the definition of the Accountants Act"

requirements of the section by the director or directors will make them guilty of an offence under the Act.

As a result, to carry out the implied intention of the subsection 16 which requires the correctness of the financial statement reported, we strongly propose that there should be special requirements that the person who signs the statutory declaration under Section 169(16) of the Act should be an "accountant within the definition of the Accountants Act".

We also propose that the Institute should be given the role of regulating the law concerning the appointment of foreigners as chief financial officers or directors of companies, where they could easily get away with the need to show credentials as to their qualifications. They may not have the proper qualification, such as being a member of the Malaysian Institute of Accountants or having the requisite qualifications recognised by the Institute to hold the position of chief financial officers of foreign owned public listed companies. The label foreigner then becomes a cliché used to escape any requirements compelled by the law. Thus the Institute could profoundly ensure that the statutory requirements to the fair view and correctness of the balance sheet and profit and loss account should be strictly adhered to.

We cannot emphasise more that the appointment of qualified accountants as directors will ensure better quality of accounting information and its compliance with generally accepted accounting principles. Directors appointed under strict compliance of the proposal tabled by the Institute will be subjected to its rules and regulations. The Institute will make certain that a high professional standard is maintained by holding the directors directly accountable for their professional conduct.

The requirement for qualified directors will inevitably ensure that there will be some basis for calling them as persons responsible for the financial management of the company. Thus we can prevent the likelihood of dishonest individuals from manipulating the accounts of the company. As such the qualified accountant who is a director of a company will serve as a proactive check for any unauthorised transactions. Proactive check means that the director will maintain a progressive and constant monitor of the financial transactions as opposed to an auditor who will conduct a check at the end of a fiscal year. Naturally, a qualified director will also provide for the possible success of a company by making wise business decisions.

Furthermore, the provision whereby the Registrar of Companies is to be envisaged to control and to regulate foreign Chief Financial Officers in the companies will be most favourable as we can than ensure that the local context of financial management is not being overlooked. The proposals by the Institute will enable the authorities to safeguard the country's economy from ultimate foreign influence, hence ultimately preserving national interest.

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Feature

Impact of Global Competition on Management Accounting Practices — Implication on Management Accounting Education

Dr. Foong Soon Yau and Puan Badriyah Minai of Universiti Putra Malaysia examine the empirical evidence of the skills needed by practising management accountants, and the current development and trends in management accounting education in Malaysia and their implications on the future

With the intense competitive pressure brought about by globalisation of the market place and the advancement in IT, significant changes have taken place in an increasing number of organisations

Abstract

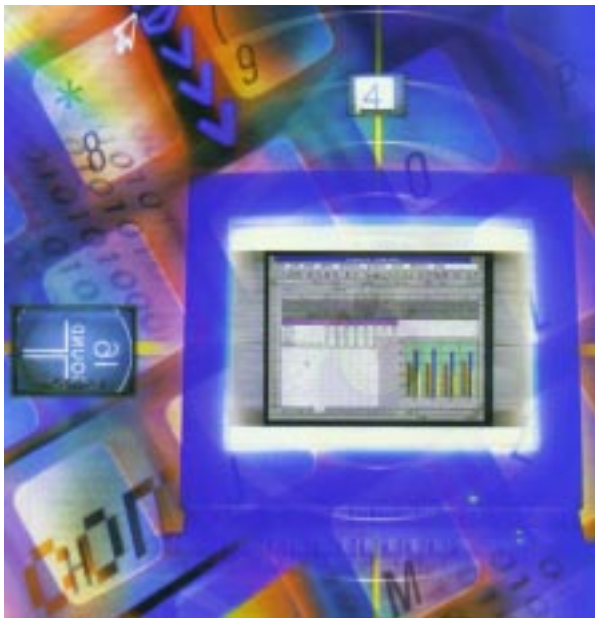
The advancement in information technology (IT) and the liberalisation of world trade have intensified competition in the market place for many organisations. As a response to the rapid changes in the business environment new organisational structures and management concepts and techniques have been and are continuously being introduced to strengthen the competitiveness of organisations. On the other hand, the traditional management accounting practices, which evolved many decades ago, have changed very little. Kaplan and many other writers have questioned the relevance or the value-added aspects of these traditional management accounting practices in the current highly competitive environment. The inadequacies of the traditional management accounting practices to aid the management accountant to perform his/her new role effectively in the new wave organisations, signal the need for significant changes in these practices and thus, imply the need for acquisition of new skills by the management accountant. The empirical evidence of the skills needed by practising management accountants and the current development or trends in the management accounting education in Malaysia are examined. The implications on the future education aid training for management accountants in the new era are discussed.

Introduction

Information technology (IT) has been and still is a dominant driver of change in the 1980s and 1990s. It changes the way that organisations compete and consequently, their organisational structures and management of their workforce. The reduction in barriers to trade through the successive rounds of GATT further intensifies competition in the domestic market with the presence of more and more large multinational companies, most of which are world class manufacturers or service providers. With the intense competitive pressure brought about by globalisation of the market place and the advancement in IT, significant changes have taken place in an increasing number of organisations to ensure their success in the highly competitive trading environment. The new wave organisations adopt a flatter or network organisational structure, 'demassify' their products, empower their workforce, and strive on innovations and continuous improvements (Elliot, 1992). While new management concepts, philosophies and techniques have been and are continuously being introduced to enhance the competitive strengths of organisations, many of the tra-

The relevance of these traditional management accounting practices to aid management decision making in the new competitive environment is often questioned and deemed to be rapidly diminishing

ditional management accounting practices, such as standard costing, variance analysis, C-V-P analysis, and accounting-based evaluation measures, which evolved many decades ago, have changed very little. The relevance of these traditional management accounting practices to aid management decision making in the new competitive environment is often questioned and deemed to be rapidly diminishing. These traditional management accounting practices could even distort the cost information provided to management and result in poor or bad competitive strategy (Kaplan, 1984; Cooper and Kaplan, 1988).



agement reporting. The traditional accounting information is typically backward-looking and inward-focused, whereas decision making in a rapidly changing environment requires a greater awareness of external trends and timely information for rapid decision making. Historical data are seldom a reliable guide to present and future decision making under such an environment.

Secondly, with the shift in competitive strategy from mass production to mass customisation, organisations have invested and still are investing heavily in new process technologies, such as CAD/CAM and CIM, to achieve a flexible manufacturing system which is responsive to changes in customers' needs. The huge investments in IT lead to significant changes in the cost components of organisations. Fixed overhead costs are becoming an increasingly significant cost component. In certain organisations, overhead cost can constitute as high as 40% to 50% of the total production costs. Traditionally, such overhead costs are allocated based on certain volume-related bases, such as direct-labour hours and units of production. When the overhead cost component is relatively low and organisations are producing a very small range of products, such a simplistic overhead cost allocation approach is not likely to distort product costs seriously.

However, when organisations have huge investments in IT and are embarking on a diverse product strategy, volume-based cost allocation can seriously distort product costs and cause harmful or bad pricing and product mix strategies to be made (see Kaplan, 1984; Cooper and Kaplan, 1988).

Thirdly, standard costing practice reflects an engineering-mindset and Frederick Taylor's scientific management approach. In the current highly turbulent and competitive environment, companies are producing a very diversified range of products with shorter and shorter product life cycles. Under such a situation, the cost standards are generally difficult to be revised quickly to

The huge investments in IT lead to significant changes in the cost components of organisations

Criticisms of Traditional Management Accounting Practices

There are several criticisms on the traditional management accounting practices. Some of these criticisms are summarised below;

Firstly, the accounting information systems in many organisations are designed almost solely for financial reporting purpose. External reporting rules, such as those for product costing and capitalisation of expenditure, are followed in the preparation of management accounting reports. While the main objective of these financial reporting rules, which are based on generally accepted accounting principles, is to facilitate inter-firm comparison, management accounting information should aim at aiding internal management decision making and organisational learning. The application of financial reporting rule for product costing purpose does not reveal the actual costs incurred for a particular product. The cost accumulation procedure for product costing "starts too late and ends too early"[1] and thus, managers are often misled on the actual profitability of individual products. The prudence concept on capitalisation of expenditure discourages investments in strategic assets, such as R & D, human resource development, knowledge-based resource and promotional activities. There are other inherent weaknesses in the traditional accounting practices that are inconsistent with the decision-usefulness goal of man-

[1] All the pre-production and post-production costs are excluded from the calculation of individual product costs. Instead these costs are treated as period costs which are written off as incurred.

The conventional budgetary control system, however, is often seen as a costly, burdensome routine that is reinforcing and constraining response to the rapidly changing environment

reflect the very rapid technological and market changes. As a consequence, the relevance of standard costing and variance reports are increasingly open to question. In this competitive environment, it becomes more important to deliver products according to the specifications of customers than merely to produce a product, which is manufactured according to the best engineering practice. Standard cost variances, which are traditionally reported on a routine basis, are not measures directly linked to the tasks of operational personnel. For example, what do spending and efficiency variances mean in terms of reduction of set-up and cycle times, and quality improvement? The use of standard costs also appears inconsistent with the continuous improvement efforts.

Fourthly, the budgetary control system is traditionally used for planning and control. The conventional budgetary control system, however, is often seen as a costly, burdensome routine that is reinforcing and constraining response to the rapidly changing environment. Budgetary control system often becomes a constraint, which is suffocating managerial initiative and contradicting the workforce empowerment philosophy to encourage innovation and continuous improvement. Traditionally, budget is prepared by referring to last year's budget and performance, rather than by judging what should be right or seek ways to improve effectiveness. The stovepiped or hierarchical structure that links the various budgets has impeded participants to view business processes across functional boundaries. Such a conventional departmental budgetary process thwarts inter-functional co-operation and creates difficulties in dealing effectively with shared costs and benefits. The linking of the budget performance to the employee reward system often leads to costs being cut indiscriminately by managers to protect their individual interests without understanding the strategic impact of their actions on the organisational performance. The inherent weaknesses of financial performance measures are frequently discussed in the literature (for example, see Eccles, 1991). The over-emphasis on financial indicators encourages 'short-termism' in outlook by managers and impedes innovative thinking and experimentation culture among managers.

Fifthly, the traditional capital budgeting techniques used in investment appraisals are inappropriate for evaluation of IT investments (Drury (a), 1990; Finnie, 1988). The indiscriminate use of these traditional techniques by accountants, who are usually given the responsibility to evaluate investments in 1T, often lead to under-investment in IT due to their inability to quantify financial benefits and the inherent risks associated with such investments. The under-investment in IT undermines the long-term competitive strengths of these organisations.

With the intensification of global competition, cost management rather than cost control becomes critical to the success of the organisation

New Role for Management Accountants

The organisational changes in response to the increasing global competition and the new focus on product quality, innovation and customer service in the new competitive strategy inevitably necessitate new developments in the management accounting systems and practices. Kaplan (1995, p 13) argues that management accountants in the modern organisations should:

- Become a part of their organisation's value added team;
- Participate in the formulation and implementation of strategy;
- Translate strategic intent and capabilities into operational and managerial measures; and
- Move away from being score keepers of the past and to become the designers of the organisation's critical management information systems.

With the intensification of global competition, cost management rather than cost control becomes critical to the success of the organisation. The survival of an organisation now depends upon its abilities to develop the appropriate management accounting systems and cost management systems to enhance cost efficiency throughout its entire value chain. Accountants in organisations are expected to work together with other functional specialists to

Management accounting practices must be aligned to support and reinforce corporate strategies for attainment of corporate goals and should not be subservient to external reporting standards

create an effective cost management programme. Functional specialists from other disciplines, such as product design, production and marketing, often lack knowledge and skills to develop their cost management systems and accountants can play a vital role in the cost restructuring process by providing cost analysis data and evaluate the cost impact of various strategy changes. Teamwork and mutual consultation are the common phenomena in the new wave organisations. Evidence from practices in the Western countries and Japan have already indicated an emerging trend of decentralisation of the management accounting process and the empowerment of workforce in cost management (Cooper, 1996). Cooper (1996) reported that the decentralisation of the management accounting function to support the cost management programme has already begun in many American companies, such as AT & T, GM, HP and Motorola. Where decentralisation occurred, the management accounting functions have been decreased by more than 50% in certain cases and the downsizing of management accounting functions could go even further in some Japanese companies. According to Cooper, if such a trend proceeds, only the highly trained management accountants with a broad general business background and excellent systems design skills will be needed by these world-class organisations. As Kaplan (1995, p13) predicts that for the new management accountants to be "effective members of the management team, they have to spend less time dealing with financial accounting, auditing and tax issues. More of their time must be spent learning about product and process technology, operations, systems, marketing, strategy, and behavioural and organisational issues relating to the immediate implementation of new systems and processes."

Management accounting practices must be aligned to support and reinforce corporate strategies for attainment of corporate goals and should not be subservient to external reporting standards. Even though it is necessary for the accounting system to provide the necessary data for external reporting, the accounting function in an organisation should play more of the "influencing" role than the "informing" role, when it comes to measuring and controlling an organisation's activities (Hiromoto, 1988). In other words, management accounting systems should be designed more for the purpose of encouraging the behaviour that is consistent with the organisation's long-term goals rather than for the sole purpose of providing the precise data on costs, variances and profits measured according to certain externally determined rules. This requires proper linking of the reward system to the appropriate performance indicators. The design of the performance measurement system should incorporate both the financial and non-financial performance indicators to monitor the progress of the organisation's critical success factors, such as quality, innovation, on-time delivery, product customisation and cost efficiency.

Where the survival and growth of an organisation depend on its agility or adaptability to the rapidly changing environment, the organisation has to embark on a continuous learning process. Even though the operating personnel may be the best persons to collect the relevant operating data for continuous improvements, the management accountant should be skilled in providing timely and relevant financial information feedback to the users. The financial information feedback that will promote organisational learning is unlikely to be those on standard costs and variances provided by the organisation's traditional accounting system, but on those cost information and non-financial indicators derived from an intimate knowledge of the underlying technologies, capabilities, market and strategy of the organisation.

The major challenge faced by the management accountants in this new era is to retool themselves with the required competencies to undertake the new role more effectively. They are expected to be effective business partners in the multi-disciplinary teams to deal with the growing range of management and business-related issues. The continual use of the set of traditional management accounting practices will not raise the profile and role of management accountants because these practices fail to meet the results-focus requirements of modern organisations (Fox, 1995). The new generation of management accountants must be seen as good value-adding, business advisors and partners by their colleagues and employers and not as mere "number-crunchers".

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Management Accounting Skills Gap Analysis

Awareness of the new skills needed for the new environment is crucial in the development of appropriate syllabuses or contents for management accounting education and training in academic and professional institutions. The continual teaching of traditional management accounting topics will lead to many of the management accounting students being ill-prepared to meet the challenging needs of the modern organisations.

It is interesting to note from the empirical evidence that generic skills, such as communication and 1T skills, are perceived by practising management accountants to be of higher educational priorities than those specialist management accounting skills

A review of the literature indicates a gap between the skills desired and the skills taught. Joe (1986) quoted a survey conducted in New Zealand, which found that very few accountants were seen as good managers, assertive, progressive and versatile[2]. Accountants tend to confine themselves too narrowly to their technical role and seem to lack awareness of changes in the global environment. Traditionally, the teaching of the basic techniques of developing budgets and monitoring the actual progress against the budget is a compulsory area of study in management accounting. However, Bellis-Jones (1992) reported that only 10% of the finance managers surveyed believed the conventional budgets, cost centre and variance reporting to be a "very effective" control mechanism, while more than 30% believed it to be "poor". Lowry and Yap (1997) analysed responses from 659 management accountants in Australia on what should be the educational priorities for topics traditionally taught in management accounting courses. The top three topics, which were ranked according to the frequency of being rated as of high educational priority, were: communication (80.8%); spreadsheet modelling (70.5%) and staff management (69.3%). The traditional specialist topics such as flexible budgeting variance (33.6%), transfer pricing (16.6%), C-V-P analysis (13.1%) and EOQ model (6.6%) were perceived as less of a priority to the practising management accountants. In another survey of 153 certified management accountants in USA, Novin (1997) reported the top three academic subjects/topics, which were perceived as essential for practising management accountants, were (in the order of importance) communication, electronic spreadsheet knowledge and accounting information system. There was a feeling for fairly high additional educational requirements for these three subjects/topics

It is interesting to note from the empirical evidence that generic skills, such as communication and 1T skills, are perceived by practising management accountants to be of higher educational priorities than those specialist management accounting skills. These empirical findings might be interpreted in two ways. Firstly, the respondents might perceive the traditional specialist topics to be less relevant to their work now and therefore, have lower educational priorities. Alternatively, they might have expected these traditional specialist topics to be continuously emphasised in the management accounting syllabuses and therefore, did not reinforce such a need in these areas.

Educators and trainers have to consider the longer-term perspective in curriculum design. Syllabuses should combine both the current view of professional accountants based on their practical experiences and knowledge, and the longer-term perspective of educators based on their anticipated changes in the types of skills required in the future. Earlier analysis reveals that the new environment shows a decline in demand for the traditional management accounting skills, but a higher need for value-adding skills in strategic and business (competition) analysis, decision support and information resource management. Management accountants are required now to play a more significant role in the change process as they are often given the tasks of designing and implementing new cost management systems. Unfortunately, most management accountants have inadequate exposure to change management expertise and that increases the risk of systems failure.

Management accountants are required now to play a more significant role in the change process as they are often given the tasks of designing and implementing new cost management systems

Academic contents should be expanded to include more extensive coverage on systems development and implementation, change management and strategic role of cost management. Professional bodies should develop appropriate qualifying examinations for new members and design continuing professional education (CPE) courses that enable existing members to retool. The importance of IT knowledge to management accountants needs no further elaboration.

[2] The finding is consistent with the result of Banker's (1998) survey on the perception of chief financial officers by other business managers in some USA companies.

The role of the management accountant is that of a key specialist who can provide the strategically critical information to the team to manage costs

The network organisational structure, which emphasises on teamwork with multi-disciplinary members, implies the need for good inter-personal skills for successful performance of the team. The role of the management accountant is that of a key specialist who can provide the strategically critical information to the team to manage costs (Cooper, 1996).

The traditional specialist topics in management accounting may have to be modified or supplemented with more pertinent topics or concepts, such as:

a New costing approaches, like Activity-Based Costing (ABC), target costing, kaizen costing and life-long costing.

b Design of appropriate performance-linked reward systems to promote goal congruence.

c Cost analysis of competitive forces, including analysis of entry barrier cost, product attribute costing and competitors' intelligence system.

d Benchmarking and continuous improvement.

e Value-chain cost analysis.

From a preliminary study of the syllabuses of management accounting courses taught in our local universities, there is an apparent trend of incorporating more and more of the new strategic management accounting concepts into the teaching of management accounting at the tertiary level. The actual management accounting course contents are very much influenced by the main text adopted. Generally, those who have adopted the US-based textbook tend to include more of the new management accounting concepts and techniques in their teaching than those who have used the UK-based textbook. Activity-based costing concept is already a topic commonly discussed under product costing in our local management accounting syllabuses. The teaching of the more advanced topics in management accounting, such as value-chain analysis, cost analysis of competitive forces and benchmarking, is yet to be properly developed and incorporated into the local management accounting syllabuses.

The syllabuses of the Stage 4 of the management accounting papers of the Chartered Institute of Management Accountants (CIMA), which has recently revised its examination syllabuses, have reflected the Institute's goal to prepare their members to play a more strategic role in organisations. The syllabuses of the management accounting papers in the qualifying examinations of the other professional accountancy bodies, whose members tend to work in the public accounting practice or other finance-related fields, tend to be still very traditional in content.

With respect to the other generic skills for management accountants, cooperative- or team-learning approach together with traditional classroom lecture methods are adopted by a few academicians in the teaching of management accounting courses. Cooperative learning is based upon the concept of learning groups of 3 to 5 students working together on case study projects or problems-solving assignments. According to an earlier research study, this learning approach can help students retain more information for a longer period of time, as well as to provide them the opportunity to acquire the skills in leadership, inter-personal and communication, which are the types of "soft skills" often cited to be lacking among accounting students (Nikolai, 1996). Case-study method of teaching can also promote more critical thinking and integration of the related management and accounting issues. The use of spreadsheet packages is commonly found in the teaching of traditional management accounting topics, such as budgeting, C-V-P analysis and product costing (Arfah and Williams, 1997). The traditional approach that is textbook-based, rule-intensive, structured problem-solving type tends to encourage rote-learning and is not consistent with the life-long learning objective to equip accounting graduates to adapt to challenges posed by the rapidly changing world.

Summary and Implications

This paper hopes to contribute to an understanding on the need to change the traditional academic contents of management accounting courses and identify the relevant course contents to effectively prepare students for today's ever-changing, complex and competitive business environment. A new syllabus incorporating the reality of the workplace should be designed to increase the relevance of management accounting education to meet the needs of the employers in this information era. The tertiary education should provide the future accountants the platform for life-long learning, so that their skills are upgraded in response to the chang-

The tertiary education should provide the future accountants the platform for life-long learning, so that their skills are upgraded in response to the changing needs of their workplace

The diversity of skills required by the new generation of management accountants implies a curriculum with proper integration of interdisciplinary topics on business strategy, marketing, production, and product design technology and issues related to change management and systems implementation

ing needs of their workplace. The professional management accountants must be alerted to the inadequacies of the traditional management accounting practices to provide valid cost and other information for managerial decision making. They would have to decide on their future role. Evidence indicates that the management accounting functions will likely be decentralised and the demand for the traditional management accounting skills will drop. Therefore, unless management accountants choose to adopt a more active role in the management process, they will find themselves at risk of being at the career dead end (Cooper, 1996).

Both the academic and professional curricula have to be continuously updated to reflect the increasing importance of the decision support role of management accountants in the strategic decision making processes in organisations. The diversity of skills required by the new generation of management accountants implies a curriculum with proper integration of interdisciplinary topics on business strategy, marketing, production, and product design technology and issues related to change management and systems implementation. The design of the new teaching materials will require a greater knowledge of the real world and assessment of the trend of future requirements of businesses. Eventually, textbooks have to be rewritten to reflect the new curricula. Professional accountancy bodies can act as the catalyst for change. These professional institutions, through their accreditation processes, can define the new skills required for their new members. They certainly need to develop the appropriate continuing professional education programmes to retool their existing members. Such changes in the professional curricula can potentially influence the course contents of subjects taught in universities.

With the changes in the business environment, the demand for the traditional accounting skills will be minimal. In view of that, the focus of the present and future accountancy education and training programmes should be directed to satisfying the needs of the market place. Any failure to meet the market needs would likely be exploited by other professionals and the role and influence of accountants in organisations will diminish.

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Feature

Islamic Banking in Crisis: The Malaysian Case

Saiful Azhar Rosly of the Department of Economics, International Islamic University Malaysia, analyses the status of Islamic Banking in Malaysia during this current economic crisis

Attempts to evaluate the performance of Islamic banking in Malaysia have not been attempted with rigor as data is scarce while Islamic banking operations have been dominated by only one bank, namely BIMB

Introduction

The current economic crisis in Malaysia has seriously affected banking operations to a point where two special purpose vehicles, namely Danaharta and Danamodal were set up to buy bad loans and inject fresh capital so that banks can continue its lending activities. A number of big banks have been severely affected, which could further seriously affect the production sector if the supply of loans fall indefinitely. However efforts are being carried out now to put the banking system back on track, which will in turn be dependant on how successful Danaharta and Danamodal have been in raising capital to finance their activities.

But less is known about the status of Islamic banking during the crisis. Since its inception in 1983, Islamic banking has not been able to exert a commanding role in banking performance since the license to run Islamic banking operations was only awarded to one bank, namely Bank Islam Malaysia Berhad (BIMB). So, to further incorporate the operation into mainstream banking, the interest-free banking system (SPTF) was set up in 1992, which saw the opening of special counters or windows offering Islamic banking products[1].

Attempts to evaluate the performance of Islamic banking in Malaysia have not been attempted with rigor as data is scarce while Islamic banking operations have been dominated by only one bank, namely BIMB. As such assessing economic efficiency using economies of scale and scope methodology is ridden with problems. To some extent, financial ratio analysis has been attempted but requires a comparative outlook with traditional banks of similar sizes, may it be assets or capital.

As more evaluation of Islamic banking performances is made in future articles, the one good source of information about banking performance is the annual Bank Negara report. This paper highlights the problems of Islamic banking operations as pointed out by the latest BNM reports and offers some explanation as to why it is unique in Malaysian Islamic banking systems. In its report, Bank Negara states that,

> "The tight liquidity situation has put pressure on the operations of Islamic banking. The current turmoil revealed a structural weakness in Islamic banking operations particularly under a volatile economic environment. In Malaysia, 90% of Islamic financing is negotiated on fixed-rate terms such as *al-murabahah*, *al-bai-bithaman-ajil* and *al-ijarah thumma al-bai'*. Traditional banking has the flexibility to adjust upwards the interest rates on borrowing accordingly to reflect higher cost of funds. Comparatively, the return from financing under Islamic banking would decline under this environment and contribute to lower deposit rates to depositors. In essence, Islamic banking could not react swiftly under the current interest rates environment due to the absence of a floating-rate option. Thus the lagging factor resulted in a mismatch whereby the financing-deposit ratio registered an increase from 84.6% as at end-1966 to 108.6% as at end-1977. To accommodate the shortfall, Islamic banking institutions had to resort to Mudharabah placements which amounted to RM2.6 billion as at end-1997" [2]

It was also reported in parliament recently, that Islamic banking performance was affected by the economic slowdown. In the first eight months of this year, total deposits recorded a mere 6.2% growth against 36.2% last year. Financing fell by 1.7% this year compared with a 75% growth recorded last year. As of August 31st

[1] Beginning December 1998, operations of Bank Islam Malaysia Bhd and the SPTF will be called Islamic Banking.
[2] Bank Negara Report 1977, pp.

This over-dependence on BBA financing has somewhat made Islamic banking fall into employing a Negative-Fund Gap (NFG) strategy during both periods of economic boom and slowdown

this year, total deposits mobilised by banks listed under interest-free banking and Bank Islam Malaysia Berhad came to RM10.51 billion while financing was RM10.57 billion.[3]

These statements, to some extent indicate harder times to come for Islamic banking. High-intensity application *of al-bai-bithman ajil* (BBA) financing has been identified as the main factor leading to the decline in performance. This over-dependence on BBA financing has somewhat made Islamic banking fall into employing a Negative-Fund Gap (NFG) strategy during both periods of economic boom and slowdown.

Al-Bai-Bithaman Ajil Financing

As an alternative to debt finance, Islamic banking has introduced a new instrument in the market in which the salient features of *al-bay'* or trade are manifested. The Quran says, *" God has allowed trade but prohibits riba".* This product known as *Al-bay' bithaman ajil* (BBA) in essence is a contract of sale by deferred payments. As its name implies BBA is not a loan. Therefore, the prospective home buyers, for example will not ask an Islamic bank to give him a loan but rather asks the bank to buy the house for them. To do so, the bank will purchase the house from the developer, which it will later sell to the buyer at a mark-up price. Since payments will be made by instalment, the mark-up price is put higher than the market price. The difference between the mark-up price and the prevailing market price represents the bank's profit. This "buy and sell" method is unique in a sense that an Islamic bank now acts as trader or merchant as opposed to a money-lender. However, there are many similarities. For example all payments are made by equal instalments. The BBA amortisation adopts traditional procedures where the selling price is amortised on the basis of the number of years of repayment and an annual profit rate that the bank desires to make from the sale. The annuity factor is also used to find the monthly instalment payments.

Some observers may wonder why the profits created from the BBA sale are permissible in Islam while profits from loans are not. The answer is as follows. In spot sale, the offer price must reflect current market determined price while in BBA, the offer price will include some time element since payment will be made at some future time. In other words, it is argued that Islamic jurists have no objection to set credit price higher than cash or spot price. This also implies that the profit generated from a BBA sale is legitimate in Syariah Law since it is created from trade rather than a loan. Profit fixation in trading is allowed because profits generated from trade and commerce are not free from risks, losses and uncertainties. Even profit fixation is a common practice in trading. The actual sale remains random and uncertain. For example, a trader may lose his inventories as a result of market risks. He may not be able to sell his goods due to factors beyond his control, such as earthquakes, floods or political instability. To sell his goods, some added value is also required to make it more attractive to customers so that it creates some sense of utility to buyers. These risk-taking as well as value-added elements in trading (*al-bay*), therefore deserve some rewards, namely profit.

On the contrary, risks and value-added features are relatively

Profit fixation in trading is allowed because profits generated from trade and commerce are not free from risks, losses and uncertainties

[3] See Business Times, 26/10/98. However published data given in Bank Negara Monthly Bulletin, September 1998 gave a different figure.

absent in loans. For instance, in eliminating default and market risks, bank loans are collateralized and further supported by credit checks and guarantees. In some cases restrictive covenants are imposed on the loan agreement so that it can be restructured to speed up repayments. The remaining risks such as interest-rate and foreign exchange risks can be avoided by hedging in the financial futures market. Profits from loans are therefore certain with relatively zero variance, which Islam sees as unfair and thus contradicts the essence of justice that the Quran desires to exemplify in trade and commerce.

Al-Bai bithaman Ajil as a mode of financing

When BBA is used as a mode of financing, the Islamic bank now must assume two roles, namely that of a financier and a trader. As a bank, an Islamic bank may find it too difficult to involve itself directly in trading or real production such as the wholesale and manufacturing business. But to apply the *al-bai-bithaman ajil* contract in the banking business, Islamic banks must fulfil the first principle of *al-bay'*, that is to act as a buyer as well as a seller, which by nature is significantly different from the role played by a lender or financier. As stated earlier, an *al-bay'-bithaman ajil* transaction takes place in two main stages. The first stage involves asset purchase by the bank from the supplier and the second stage, the purchase of property and its resale involving the repayment of the resale price upon deferred payment terms. In such a purchase and resale exchange process the Islamic bank then becomes a trader, which is evident in the property-sale agreement between the bank and the customer. In this agreement, the property is sold to the customer at a price that is higher than the cash sale. Prior to the property-sale agreement, a notation agreement between the bank, vendor and customer is undertaken to secure the purchase of the property by the customer[4].

In other words, in the BBA sale, no loan is made to the customer. Instead, the Islamic bank will purchase the property direct from the developer or vendor at current market price and sell it back to the customer at a mark-up price. In the BBA sale, the determination of the mark-up or selling price will depend on the stipulated annual rate of profit the bank desires from the transaction. Once the rate of profit is determined and financing period specified, the selling price can be computed using the annuity factor table[5]. The difference between the market price (cost price) and the mark-up price (selling price) is the profit created over the instalment periods, which is permissible or *halal* since the transaction is based on a deferred sale contract rather loan a loan. See Table 1 below:

> In the BBA sale, the determination of the mark-up or selling price will depend on the stipulated annual rate of profit the bank desires from the transaction

TABLE I

Al-Bai-bithaman-ajil
Home Financing: An Illustration

Market price	= RM150,000
Down payment	= RM120,000 or 20%
Cost of Financing	= RM130,000
Annual profit rate	= 10% (CRR)
Period of financing	= 15 years
Annuity factor	=
Monthly payments	=
Selling price	=
Profit	=

Determination of selling price: BBA as a fixed rate asset

The impact of BBA financing on the bank's performance will be analysed on the basis of some restricted assumptions. First, there exists a parallel or dual banking system each governed by different banking laws. These laws will put restrictions on the respective banks in product development and marketing. For example, traditional banks are allowed to make loans and attract deposits on the basis of interest receipts and payments while Islamic banks can do the same but only through the application of trade and commercial contracts. Secondly, customers irrespective of faith are free to pursue financing or deposit in banks of their choice as banking laws only apply to the banking business alone. For example, Muslims customers who seek interest-based financing or deposits in traditional banks will not be penalised by either the Syariah or civil law. On the other hand, non-Muslims customers are free to use both banking systems as no discriminatory policies are applied to favour Muslim customers.

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[4] The role of the bank as a trader, namely buyer of property from the vendor and seller of the same property to the customer are somewhat clouded and misconstrued. This is because, a sale and purchase agreement between the bank and the vendor or developer is relatively absent. Instead, the same agreement is evident between the customer and developer, as commonly practiced in traditional sale documentation. Under this state of affairs, the role of the Islamic bank as a financier is most revealing. If the bank desires to embrace the spirit of *al-bay'* as the Quran has rightfully intended, it must hold risks of possession of the property before resale. Doing so, will make the profit generated from the BBA sale legitimate as it involves the element of risk-taking, namely risks of holding possession of property.

[5] If the cost of financing is $100,000 with desired annual profit rate of 10% and 60 months period of financing, an annuity factor of 0.0098345 is used to obtain the monthly installment payments which equals to $875 per month. Multiplying $875 by 60 will give the selling price, which equals to $210,000.

Al-Bai' bithaman ajil as a fixed rate asset (FRA)

Based on the contract of sale, the BBA facility requires the selling price to remain fixed since a single selling price is allowed. This would imply that the rate of profit in each contract must remain unchanged. It cannot be adjusted to a new level, as doing so will lead to the creation of many selling prices in a single contract, thus making it null and void[6]. To avoid potential contract violation, the selling price cannot undergo any changes even if Islamic banks are widely exposed to economic volatility. For example, a bank's earning in the traditional system will vary in accordance to movement in market interest-rates. Because BBA is a fixed rate asset, there is relatively nothing the Islamic bankers can do to react swiftly to such macroeconomic shocks. In a case of rising interest rates, traditional bankers normally revise interest-rates on loans upwards, so that earnings can be maintained since they too have to raise interest-rates on deposits.

Al-Bai' bithaman ajil financing and interest-rates volatility.

As any contract of sale requires the agents (*tharafayil 'aqdi*) to sell or buy goods and services on the basis of a single price, price fixation has made BBA facility a better alternative to loans among non-Muslim customers (NMC), especially when interest-rates are rising[7]. With rising interest rates, the non-Muslim customers are expected to use more BBA financing instead of loans which are now more costly. Thus, the Syariah constraints imposed on the BBA pricing make it a popular alternative to loans in an event of rising interest rates. As a fixed rate asset, *al-bai-bithaman ajil* contractual prices cannot change to reflect a tight credit market, thus making it relatively cheaper than loans[8].

Declining earnings on existing *Al-bai' bithaman ajil* sale

As interest rates rise, the demand for BBA is expected to increase since existing BBA profit rates will not change. As the volume of BBA financing increases, Islamic banks are expected to make more profits as now higher profit rates can be imposed on the new BBAs. However, the margin on existing BBAs will be severely affected if the bank decides to increase the *hibah* and dividend on *Al-Wadiah* and *Al-Mudarabah* Investment deposits in order to attract more deposits. This is highlighted in the illustration in Table 2 below.

TABLE 2

Case I: Stable interest rate regime
Bank's profit = Total Revenue – Total Costs

Traditional bank *Bank's profit = (contractual interest rate on loans x size of loans) x (interest rates on deposits x size of deposits)*	
Given:	
Contractual loan rate	=12%
Interest rate on deposits	=8%
Size of loan and deposits	=RM200 million each
RM8 million	= (0.12 x 200) – (0.08 x 200)
Islamic bank *Bank's profit = (contractual BBA profit rate x size of BBA) – (costs of deposits x size of deposits)*	
Given:	
BBA profit rate	= 12% per annum
Cost of deposits *(hibah and dividends)*	= 8% per annum
Size of BBA and deposits	= RM200 million each
Bank's profit	= (0.12 x 200) – (0.08 x200) = RM8 million

In the Malaysian dual-banking system in which size of assets and deposits of traditional banks are normally larger than Islamic banks, changes in market interest-rates are expected to shift the supply of deposits towards alternative facilities that provide higher returns. For example, when the interest-rate is rising, more customers will opt for BBA financing since it is not a floating rate asset. However in the existing BBA sale, the profit rates cannot be adjusted upwards if Islamic banks desire to compete with traditional banks, in which interest-rates on loans are not fixed. To maintain a profit margin, traditional banks will increase interest-rates on deposits. Similarly to regain competitiveness, Islamic banks may also choose to increase the *hibah* and dividends but this strategy will only see their profit margin falling. See example on next page.

[6] For example, 10% profit rate per annum on a BBA facility is partly influenced by market interest rates, as Islamic banks would use the interbank rates as a benchmark in their respective pricing policy. If the cost of financing is $50,000 with a 5-year installment period, the profit generated is equal to $25,000, thus setting the selling price at $75,000. The contract of sale is therefore concluded based on a selling price of $75,000. Now if market rates go up, to say 13%, it would now be a disadvantage to Islamic banks as they now cannot adjust the 10% profit rate upwards to remain competitive since they too have to pay higher on deposits. Doing so would cause profit to increase to a new level at $32,500, thus changing the selling price to change from $75,000 to $82,500.

[7] The benchmark market interest rates is the KLIBOR (Kuala Lumpur Interbank Offer Rate). It is the price of funds in the interbank money market usually used as the basis of the base-lending rate (BLR) for the banking system.

[8] In Gap Analysis, over dependence on deferred sale financing would mean that most assets will not be sensitive to changes in market interest-rates. Since all Islamic liabilities are interest sensitive (i.e. hibah and dividend rates can be altered according to prevailing competitive market deposit rates), funds gap will always be negative. For more discussion on Gap analysis, see Sinkey Jr., Joseph F, *Commercial Bank Financial Management*, pp.372-881 and Williams, Bill, *Asset-Liability Management Techniques*, pp.7-25.

TABLE 3

Case II: Rising interest rates

Traditional bank	
New interest rates	= 14%
New deposit rates	= 10%
Profits on existing loans	= (0.14 x 200) – (0.10 x 200)
	= RM8 million
Islamic bank	
Contractual profit rate	= 12% (unchanged)
Islamic deposit rates	= 10%
Profit on existing BBAs	= (0.12 x 200) – (0.1 x 200)
	= RM4 million.
Profit on existing loans	**> Profit on existing BBA**

Since every dollar of BBA financing must be supported by deposits, deposit mobilisation is therefore crucial to sustain financing activities. When market interest rate rise, so would interest rates on deposits. However, Islamic banks are not able to offer higher returns on their deposit products because the return on existing BBA assets is always fixed as required by the Syariah. Doing otherwise would mean declining the bank's earnings as illustrated in the above example.

Firstly, if Islamic banks failed to increase the deposit rates, non-Muslim customers will shift their savings to interest-based deposits because they can gain more from the rising deposit rates offered there. This may cause the supply of deposits in traditional banks to increase relative to the supply of deposits in Islamic banking. In the event of greater demand for BBA financing, Islamic banks have two options, either to increase deposit rates or to acquire funds from the Islamic inter-bank money market.

If the bank chooses to increase returns on deposits so that the supply of Islamic deposits increase, the banks earnings may fall. Similarly, if they prefer to seek new funds in the inter-bank money market, earnings may also fall since cost of funds in the money market is higher than deposits. What is seen here is a mismatch between deposits and financing. It is bound to happen when Islamic banking activities are pursued along a dual system.

In the event of greater demand for BBA financing, Islamic banks have two options, either to increase deposit rates or to acquire funds from the Islamic inter-bank money market

With regards to product choice, the Muslim customers however may have fewer options than the non-Muslim customers. Irrespective of changes in interest-rates, they have to be content with the existing financing or the new BBA financing. In the event of rising interest rates, there is no tendency to shift deposits from Islamic to traditional facilities in view of the Islamic prohibition of riba. Non-Muslim customers who are exposed to greater options in banking tend to benefit most from the dual-banking system. When interest-rates are rising, they are expected to use BBA financing, as this option will protect them from interest-rate risks. If Islamic banks choose not to increase rates on deposits for fear of falling earnings, non-Muslim customers may place their savings in traditional banks where interest rates on deposits are always adjusted to account for rising market interest rates.

Although banks may refuse to offer loans, successful applicants will have access to cheaper loans as interest rates further decline

Declining interest rates

The same argument holds during an economic slowdown. The currency crisis has seen many companies unable to their settle loans with banks. The drop in share prices further depleted the value of collateral pledged as security causing banks to stop credit lines. Without credit, investment will fall and further cause a decline in spending. Due to fear of default, many banks have refused to give loans. Declining business activities will see falls in market interest-rates.

Although banks may refuse to offer loans, successful applicants will have access to cheaper loans as interest rates further decline. To compete with the much cheaper loans, Islamic banks are again trapped into holding assets that cannot react in tune with market volatility. To provide lower rates on existing BBAs, Islamic banks simply cannot adjust the contractual selling price downwards as this will violate the sale agreement, in which the bank is required to quote only one selling price. As such, customers, especially the non-Muslims will find BBA as an inferior option to loans as the former is now relatively more expensive. As a result, the demand for BBA by the non-Muslim customers is expected to fall while the demand for loans will increase.

The impact of declining interest rates will not alter the demand for BBA by the Muslim customers, if there is any. However, on an average BBA financing is expected to fall but this event may not jeopardise bank earnings in the short-run as existing BBAs can still generate higher margins for the bank. As mentioned earlier, this is due to the fact that the selling price of existing BBA's cannot be reduced to account for falling interest rates, which Islamic

banks may want to undertake to remain competitive. What is observed here is a case that disfavours Muslim customers who cannot enjoy lower rates on their existing BBAs [9]. In the final analysis, the Islamic bank will stand to gain more during falling interest rates since they are able to increase profit margins. The higher margin is evident because Islamic deposits are in essence variable rate liabilities (VRL) i.e. the *hibah* on Wadiah deposits and dividends from AMIA are allowed to fall to remain competitive following a declining trend in deposits rates of traditional deposits[10]. See illustration below.

TABLE 4

Case III: Falling interest rates
Traditional bank

Contractual loan rate	= 10%
Deposit rate	= 6%
Profit	= (0.1 x 200) – (0.06 x 200)
	= RM8 million
BBA rate	= 12%
Deposit rate	= 6%
Profit	= (0.12 x 200) – (0.06 x 200)
	= RM12 million
Profit on loans < profits on BBA	

However, Islamic banks can choose to increase the deposit rates when annual profit rates on existing BBAs stay at the old level, as doing so will not reduce their margins. Raising the interest rate of deposits will therefore attract new deposits. But the problem of increasing excess reserves may occur since the demand for new BBAs is now weaker given the preference for traditional loans by non-Muslim customers as loans are now available at relatively lower rates. Since assets in Islamic banks are BBA-intensive, less demand for BBAs is expected to increase excess reserves, therefore lowering earnings. Inability to offer new variable rate products will further aggravate the problem. For example, some non-Muslim customers may choose to make early settlements to avoid using the more expensive BBAs financing.

Conclusion

Based on the above arguments, the future of Islamic banking in Malaysia will depend much on its structure of financing. The economic crisis will not promise an environment of stable interest rates. As such banks are expected to seek protection from interest-rate risks through the application of selected asset-liability management strategy, which unfortunately BBA intensive Islamic banks have not been able to undertake. The paper has shown that Islamic banks have suffered more when interest rates are rising as evident in early 1997. To what extent they will fare better under falling interest rates will only be known at some future date when the economy begins to recover.

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[9] For example, when BBA price is set at a 10% profit rate per annum with a contractual price of say, $100,000, interest-free banks cannot reduce this rate comparable to the new but lower interest rates on loans. If a new and lower profit rate of 7% is quoted, the selling price of existing BBAs will fall to say $80,000 making the contract void.

[10] In the *Al-Wadiah* contract, depositors have no contractual claim on any returns but they do have legal claim on the principle deposits. Return on deposits is given out at the bank's discretion, which among others depends on its performance. However in the *al-Mudarabah* deposits, contractual claim is non-existent on both principle deposits and returns, as these deposits are equity in nature. By virtue of the variability of returns on the *Wadiah* and *Mudarabah* deposits, they are in essence variable rate liabilities (VRL). For example, when profit rate of BBA assets remains at 10% and the rates of Islamic deposits are allowed to fall to say, 4%, the profit margin will increase.

MIA's Technical and Practice News

FINANCIAL REPORTING BOARD

The Institute's ASC and FSRC have merged to form FRB, which will efficiently take over the functions of the two committees. The Council approved the formation of the Board which will regulate members, on compliance with approved accounting standards, deal with issues relating to financial reports, address any divergence in views on financial reporting issues, and encourage and educate members towards good financial reporting.

FINANCIAL AND MANAGEMENT ACCOUNTING COMMITTEE

FMAC of IFAC Research Grant (1998)

The Committee discussed the research grant award worth $4,500, which is offered by FMAC of IFAC for research to be done on 'The State of Management Accounting in the Developing Economies'. The Committee agreed to extend the invitation to members of the Confederation of Asia Pacific Accountants (CAPA) that are also developing countries.

Presentation of Certificates for the FMAC/IFAC Article Award Competition

The FMAC of IFAC has forwarded certificates to be awarded to three co-authors of an article, which was submitted to the FMAC/IFAC Article Award Competition, which aims to encourage research and practice of management accounting.

Terms of Reference

The Committee proposed that its terms of reference be broadened in view of the fact… that its existing one is both restrictive and narrow.

COMPANY LAW PRACTICE BOARD

Section 166A, 169 and 174, Companies Act 1965 - Approved Accounting Standards

The above sections which were amended now require the accounts of a company and the consolidated accounts of a holding company to be made out in accordance with applicable approved accounting standards.

As the Companies Act has been amended to take cognisance of MASB's accounting standards, it was questioned whether the standards have force of law, in view of the fact that it has not been gazetted.

INTERNAL AUDIT COMMITTEE

Malaysian Institute of Certified Internal Auditors (MICIA)

The M&A of MICIA has been amended to include the power of MICIA to conduct examinations. It was also proposed that the power be further extended to include 'education and training'.

Internal Audit Conference, 9-10 March 1999

The administrative details of the Conference have been finalised and KLSE has agreed to support the conference.

IASC BOARD MEETING IN FRANKFURT (14-16 December 1998)

The IASC Board met in Frankfurt, Germany from 14-16 December 1998, when it approved:

- International Accounting Standards IAS 39, Financial Instruments: Recognition and Measurement
- SIC Interpretation SIC-16, Share Capital - Reacquired Own Equity Instruments (Treasury Shares)

MIA was represented by Board Member, Mr Tony Seah and Josephine Edward, from the Technical Department.

Under IAS 39, all financial assets and financial liabilities are recognised on the balance sheet, including all derivatives, and will apply to all enterprises and not just public enterprises as proposed in E62. Hedge accounting is permitted under IAS 39 under certain circumstances, provided that the hedging relationship is clearly defined, measurable, and actually effective.

COMPANY LAW FORUM

Section 176, Companies Act 1965

On the role of an independent director as expressed in the recent amendment to Section 176, the members were of the view that the role of the independent directors has not been properly defined. MIA will prepare a study paper together with the necessary recommendation on the recent amendment to Section 176, Companies Act 1965.

Limitation of Directorship

Members were informed that the amendment to limit the number of directorships to 15 will not be covered under the Companies Act. An amendment to incorporate the above requirement will be under the KLSE Listing Requirements, which is still in the drafting stage.

MAREF BOARD OF TRUSTEES

Tax Exempt Status

The tax agents had submitted an application to IRB on behalf of MAREF to request for tax exempt status pursuant to Para 13, Schedule 6 of the Income Tax Act 1967.

DUE DILIGENCE GUIDELINES

The Working Group completed the Due Diligence Guidelines, which has been reviewed and accepted by the Securities Commission (SC). SC plans to launch it sometime in mid-March 1999 and will organise a seminar on the topic.

Emerging Roles for Internal Auditors

The Institute organised a two-day internal auditor's conference to keep participants abreast of the latest developments in the auditing field. The two-day conference was held at Hotel Nikko, Kuala Lumpur from 9 to 10 March 1999.

The Institute was deeply honoured to have the presence of Minister in the Prime Minister's Department, YB Datuk Tajol Rosli at the conference's opening ceremony. Datuk Tajol delivered the keynote address as well as officiated the opening.

In his keynote address, Datuk Tajol said that a strong corporate governance mechanism and high level of transparency in the financial system was needed to restore investor confidence in the country. Datuk Tajol added that restoration of investor confidence is an important element in bringing swift and sustained economic recovery for Malaysia.

The two-day conference focused on how to reinvent the organisation's internal auditing processes and practices for achieving a high level of excellence given the current economic conditions. The conference also looked into ways to gear up the internal auditing process to meet the new challenges as we move into the next millennium. Among the issues addressed at the conference were corporate governance, transparency in the financial system and the impact of information technology (IT) on auditing.

To coincide with its main focus, "Emerging Roles for Internal Auditors" was chosen as the theme of the conference. The conference was designed to address the concerns of external and internal auditors, financial controllers, corporate treasurers, company directors and operations managers.

Experts in their fields were invited to present relevant discussion papers at this conference. The speakers include highly experienced practitioners and academicians, from renowned organisations such as the Federation of Public-Listed Companies Bhd, Malaysian Institute of Corporate Governance, Arthur Andersen & Co, Universiti Utara Malaysia, Ernst & Young, MARA Institute of Technology, KPMG Peat Marwick, Lotus Sales & Services and PricewaterhouseCoopers.

Among the discussion papers presented were *Corporate Governance — Emerging Roles for Internal Auditors, Auditing Financial Instruments, Risk Management and Internal Controls, Implementing Internal Control Framework, Knowledge Management in Internal Auditing, Enhancing Internal Auditing through Innovative Practices, Audit Committee — A Survey of its Effectiveness, IT in Auditing* as well as *Forum on Y2K Compliance.*

The closing address was delivered by Deputy Secretary General in the Ministry of Energy, Communications and Multimedia, Yang Berbahagia Dr. Abdul Halim Shafie. He delivered the speech on behalf of Minister of Energy, Communications and Multimedia, YB Datuk Leo Moggie, who could not make his scheduled appearance at the closing ceremony due to unforeseen circumstances.

In his closing address, Dr. Abdul Halim called upon the accountancy fraternity to accelerate efforts in mitigating any Y2K Bug-related business risks. He said that corporations do not have much time left in making their computer systems Y2K-compliant. Dr. Abdul Halim also urged accountants to keep abreast of the latest developments in information technology such as electronic commerce.

Conference on Emerging

Yang Berhormat Datuk Tajol Rosli Ghazali hitting the gong — to mark the opening of the conference

YB Datuk Tajol Rosli delivering his keynote address at the opening ceremony

Professor Dr Juhari Samidi welcoming delegates in his speech at the opening ceremony

Dignitaries at the opening ceremony. From L to R: Mr Yue Sau Him, YBhg Datuk Hj Mohd Khalil Da Noordin, YB Datuk Tajol Rosli, Professor Dr Juhari Samidi, Mr Soon Kwai Choy and Mr Daniel Chi

Roles for Internal Auditors

YB Datuk Tajol Rosli, YBhg Dato' Hanifah Noordin and Mr Daniel Chian at the MOU signing ceremony

Yang Bahagia Dr Abdul Halim Shafie reading out Yang Berhormat Datuk Leo Moggie's closing address

to' Hj Mohd Noor, YBhg Dato' Hanifah an.

YBhg Dato' Hanifah Noordin, YB Datuk Tajol Rosli, Dr Juhari Samidi and Mr Yue Sau Him fielding questions from the press

Strengthening the Audit Mechanism

According to the latest macroeconomic indicators, the Malaysian economy is poised for a slow but steady recovery. In order to pave the way for a strong and sustainable economic recovery, we have to win back the confidence of both local and foreign investors.

Malaysian Institute of Accountants (MIA) President, Yang Berbahagia Dato' Hanifah Noordin believes that we can restore the full confidence of the investing public by enhancing corporate governance standards and transparency levels of our financial system. He said this in his welcome address at the opening ceremony of the Internal Audit Conference.

"After going through the worst in 1998, we are glad that the Malaysian economy is currently on a strong path to recovery. We are glad that the Government has come up with staunch and innovative measures to put Malaysia on the track to recovery. In the past few months, we have seen some improvements in the country's macro-economic indicators," said Hanifah.

"However, the Institute believes that our economic recovery could be further enhanced if we are able to fully restore the confidence of local and foreign investors. The erosion of investor confidence was identified as one of the major factors that exacerbated the financial turmoil in Malaysia and a number of Asian countries."

YBhg Dato' Hanifah Noordin delivering his welcome address at the Internal Audit Conference

"According to various experts, the erosion of investor confidence in Malaysia was brought about by the country's poor corporate governance standards and lack of transparency in the financial system. To ensure that the economic recovery is in full force, we have to win back the confidence of investors by enhancing our corporate governance standards and our financial system's transparency level," added Hanifah.

"Enhancing the internal auditing mechanism of local organisations can be an effective method of elevating our corporate governance standards. Internal auditors play a crucial role in making sure that an organisation is efficiently run and is not exposed to unnecessary risks."

"Since the onset of the financial crisis, local companies were said to have embarked on business ventures haphazardly. They do so without carrying out comprehensive risk-return analyses and proper planning. Most of them were accused of using short-term funds to finance long-term projects," he said.

"We need to have a strong corporate governance mechanism to make sure that such blunders and oversights do not happen again. To bring about a strong corporate governance mechanism, local companies have to establish a strong and effective internal audit system."

"To achieve high corporate governance standards, internal auditors must be permitted to play their roles effectively. When times were good, most corporations put internal auditor's reports as the last and least important item in board meetings."

"With the onset of the financial crisis, organisations can no longer afford to do this. In today's trying economic conditions, it is crucial for any organisation to carry out detailed risk-return assessments before committing itself to capital-intensive projects and business ventures," said Hanifah.

"To prevail in today's economic environment, organisations have to turn to internal auditors for accurate analyses and frank recommendations. Hence, it is wise for organisations to give higher recognition to the work of internal auditors. The work of internal auditors should get the priority it deserves."

"On top of enhancing the local corporate governance standards, we must also increase the transparency levels of our financial system to fully restore investor confidence. The level of transparency in our local financial system can be uplifted if companies especially public listed ones, are more obliged to provide investors with reliable, detailed as well as timely financial statements," said Hanifah

Hanifah said that accurate disclosures to investors on a more frequent basis will enable them to make better investment decisions. He said that audit committees were established to ensure that the financial records and statements of public listed companies present a true and fair view. However, he feels that the audit committees of most public listed companies have not been really effective in dispensing their duties.

"A recent survey by MIA discovered that only 37 of the 345 audit committee members of the 100 KLSE Composite Index companies are accountants. This means that less than 11 percent of audit committee members for these companies are professional accountants. The same survey showed that 66 percent of these 100 companies have no MIA members or professional accountants on their audit committees."

"An audit committee can only be effective if it operates on audit-based methodologies. There can be no substitute for the skills, experience and knowledge of professional accountants in carrying out auditing tasks," said Hanifah

"To protect the interests of the investing public against any risks or irregularities in the management of a company, there should be at least one MIA member in every audit committee. MIA hopes that the Government will consider making the appointment of MIA members in the establishment of audit committees a mandatory requirement," he added.

Disciplinary Cases

he Institute has taken the following disciplinary action against members for *"unprofessional conduct"* and breaching the Institute's By-laws *(On Professional Conduct and Ethics)*.

Case 1

A member was disciplined for violating item (iv) of the audit licence conditions with regard to the location of the audit firm and the registered office of its client, thereby committing an act amounting to *"unprofessional conduct"* as defined under Rule 43 of the Accountants Rules, 1972.

The Disciplinary Committee ordered that a penalty of Ringgit Malaysia Two Hundred and Fifty (RM250.00) be imposed against the said member; and that he also pays to the Institute a sum of Ringgit Malaysia One Thousand (RM1,000.00) in respect of costs and expenses of and incidental to the inquiry held by the Disciplinary Committee and the investigation held by the Investigation Committee.

Case 2

Two members practising as a firm were disciplined for violating item (iv) of the audit licence conditions with regard to the location of the audit firm and the registered office of their clients, thereby committing an act amounting to *"unprofessional conduct"* as defined under Rule 43 of the Accountants Rules, 1972.

The Disciplinary Committee ordered that a penalty of Ringgit Malaysia Two Hundred and Fifty (RM250.00) be imposed against each member; and that each member also pay to the Institute the sum of Ringgit Malaysia Five Hundred (RM500.00) in respect of costs and expenses of and incidental to the inquiry held by the Disciplinary Committee and the investigation held by the Investigation Committee.

Case 3

Members who are partners of a member firm were disciplined for breaching By-law 7-2(2)(b) of the Institute's By-laws *(On Professional Conduct and Ethics)* pertaining to *"Advertising, Publicity and Solicitation in Respect of Professional Services of Public Practices"*. The members had caused their firm to place an advertisement in one of the newspapers which contravened By-law 7-2(2)(b).

The Disciplinary Committee ordered that the members be reprimanded by writing under the hand of the Chairman of the Disciplinary Committee.

Case 4

Members who are partners of a member firm were disciplined for breaching By-law 6-4 of the Institute's By-laws *(On Professional Conduct and Ethics)* pertaining to *"Descriptions and Designatory Letters"*. The members had caused their firm to fail to describe itself as a firm of *"Public Accountants"* in its correspondence addressed to the Institute.

The Disciplinary Committee ordered that the members be reprimanded by writing under the hand of the Chairman of the Disciplinary Committee.

Case 5

A member was disciplined for breaching By-law 6-4 of the Institute's By-laws *(On Professional Conduct and Ethics)* pertaining to *"Descriptions and Designatory Letters"*. He had caused his firm to describe itself as a firm of *"Chartered Accountant"* and *"Certified Public Accountant"* in its correspondence addressed to the Institute.

The Disciplinary Committee ordered that the member be reprimanded by writing under the hand of the Chairman of the Disciplinary Committee.

Case 6

A member was disciplined for breaching By-law 6-4 of the Institute's By-laws *(On Professional Conduct and Ethics)* pertaining to *"Descriptions and Designatory Letters"*. He had caused his firm to describe itself as a firm of *"Certified Public Accountants"* in its correspondence addressed to the Institute.

The Disciplinary Committee ordered that the member be reprimanded by writing under the hand of the Chairman of the Disciplinary Committee.

Debt Restructuring

When the regional economic turmoil hit Malaysia close to two years ago, many small and large local corporations found themselves strapped for cash. The turmoil caused consumer and investor confidence to take a nosedive almost overnight. No thanks to this general erosion of confidence, sales plummeted, bad debts skyrocketed while banks pulled back their lines of credit. All these factors caused a lot of companies to end up technically insolvent.

To prevent insolvency from crippling organisations, it is imperative for them to come up with debt restructuring schemes. Some cash-strapped or insolvent organisations can still be viable in the long-term if effort and time are invested to nurse them back to good health. When the economy recovers, these organisations will be able to generate profits and cash to pay up all their debts.

In view of the importance of debt restructuring in today's tough economic climate, the Institute conducted a full day seminar to shed some light on how to carry out debt restructuring exercises successfully. A panel of speakers was invited to present numerous discussion papers that covered many crucial aspects of debt restructuring.

One of the speakers at the seminar

Mr. Kelvin Flynn was given the honour to kick off the seminar by providing an introduction and overview of what debt restructuring is all about. At the onset of his presentation, Flynn disclosed methods we could utilise to evaluate whether an organisation is facing liquidity problems or not.

Participants paying undivided attention

"We should be able to predict whether an organisation will be facing financial problems in the near future by taking heed of various warning signals. These signals include the organisation's inability to generate profits for a period of time. A sustained period of losses or very large losses over a very short period can indicate fundamental weaknesses of the company's operations," said Flynn.

"If the organisation fails to provide regular financial information, it is likely to be headed for trouble. A prolonged delay in providing financial information is either an indication of the absence of proper accounting controls or a sign that information is being withheld," added Flynn.

"Other warning signals that one should pay attention to are worsening cash flow position, failure to rectify financing breaches, falling debt/security cover, overvaluation of assets, requests for further funding, deteriorating financial ratios, fall in share price and unfavourable industry trends."

According to Flynn, once an organisation discovers that it might face financial problems in the near future by examining these warning signals, it should take proactive measures to cope with the situation. "The organisation should carry out a critical assessment of its operations or financial position. The test of solvency must be satisfied on both a balance sheet and a liquidity basis. Firstly, a company must have sufficient assets to meet its liabilities and secondly, these liabilities must be capable of being satisfied as and when they fall due."

"The organisation should also seek professional advice on how to improve its financial position to avert any disasters in the near future. Many accounting firms have divisions specialising in corporate recovery and are qualified in identifying weaknesses as well as advising on corporate reconstruction," added Flynn.

Flynn also advised companies to examine whether they have suitable management expertise to carry out corporate reconstruction. "If weaknesses in management are the root of the problem, then the organisation should consider changing the current management set-up. To improve its financial position, the company should also look into obtaining further funding,

rescheduling its debts and implementing debt/equity swaps."

"After exhausting all avenues in improving its financial standing, the organisation should then initiate a formal debt restructuring programme as a last resort. A debt-restructuring scheme ensures that a business survives if there is a reasonable prospect that it is viable. There are various benefits associated with the retention of viable businesses, as opposed to closure and liquidation," said Flynn.

"First of all, stakeholders like lenders, creditors and shareholders of companies in financial distress can benefit mutually from a debt restructuring programme. Debt restructuring programmes can also help save jobs and avert any possible contagion effects in the corporate sector. A contagion effect takes place if company A fails and can't pay company B, B then can't pay C and so on."

According to Flynn, there are six basic steps in debt restructuring. "A debt restructuring programme can consist of these six steps — assess process management, financial stock take, assess future cash flows, identify options, negotiate and implement. The first three steps require the company to do a critical assessment of its operations and financial position. After that, the organisation should identify the various alternatives that are available to improve its financial situation."

"After examining the various alternatives, the organisation should carry out negotiations with shareholders, creditors, employees, customers and suppliers. The organisation must reconcile the various stakeholders' perspectives before any debt restructuring exercise can be implemented. The last step is to put the debt-restructuring plan into action. Ultimately, debt restructuring exercises should lead to a win-win outcome for both creditors and debtors," said Flynn.

Flynn mentioned that Malaysian legislation and debt restructuring practices and guidelines have undergone rapid change. "The Malaysian Government has established a host of vehicles that can assist organisations in restructuring their debts. These include the Corporate Debt Restructuring Committee, Pengurusan Danaharta Nasional Berhad and Schemes of Arrangements under Section 176 Companies Act."

After Flynn's brilliant introduction, the other speakers touched on the more specific aspects of debt restructuring. Mr. Khoo Chuan Keat presented a paper entitled *Taxation Aspects of Company Reorganisation*, which examined the tax implications of debt restructuring exercises. Other discussion papers that were presented at the seminar included *Accounting for Group Reorganisation*, *Workings of the Corporate Debt Restructuring*, *Legal Considerations for Debt Restructuring* and *Insolvent Organisations — Audit Considerations.*

E-Commerce Essentials

Malaysian Institute of Accountants (MIA), in collaboration with Infoscience Technology Group, recently organised a one-day seminar entitled *Electronic Commerce — The Essentials*. This seminar was designed to keep professional accountants abreast of the latest developments in the realm of information technology (IT).

Electronic-commerce or e-commerce is a hot IT phenomenon that is taking the world by storm. E-commerce is expected to revolutionise or change the way business is done for small and large organisations.

E-commerce enables businesses to execute transactions namely ordering, invoicing and paying using electronic media such as the Internet. With the global reach of the Internet, local organisations can expect to market and sell their products or services to customers around the world using e-commerce solutions.

According to the speaker of the seminar Mr. Tommy Tan Teh, e-commerce is currently in the infancy stage in Malaysia but its growth is expected to be phenomenal in the next few years. "Recent surveys have shown that the total value of transactions done via e-commerce is still quite insignificant in Malaysia at the moment. However, the same surveys have indicated that the value of e-commerce transactions is expected to go beyond the RM500 million mark by the year 2002," said Tan.

"There are multiple factors contributing to the rapid growth of e-commerce around the world. One of them is the growing popularity of the Internet as an electronic medium. People around the world have been mesmerised by the Internet's enormous capabilities in the field of global communications. With the Internet evolving in a constant and rapid manner, it also has the potential to accommodate a wide range of innovative applications," added Tan.

"There are numerous benefits associated with using e-commerce solutions to market products and services. By using e-commerce, organisations will be able to deliver new products to their customers in shorter time frames. The e-commerce framework is also capable of assisting corporations in improving the delivery of after-sales services to their customers," said Tan.

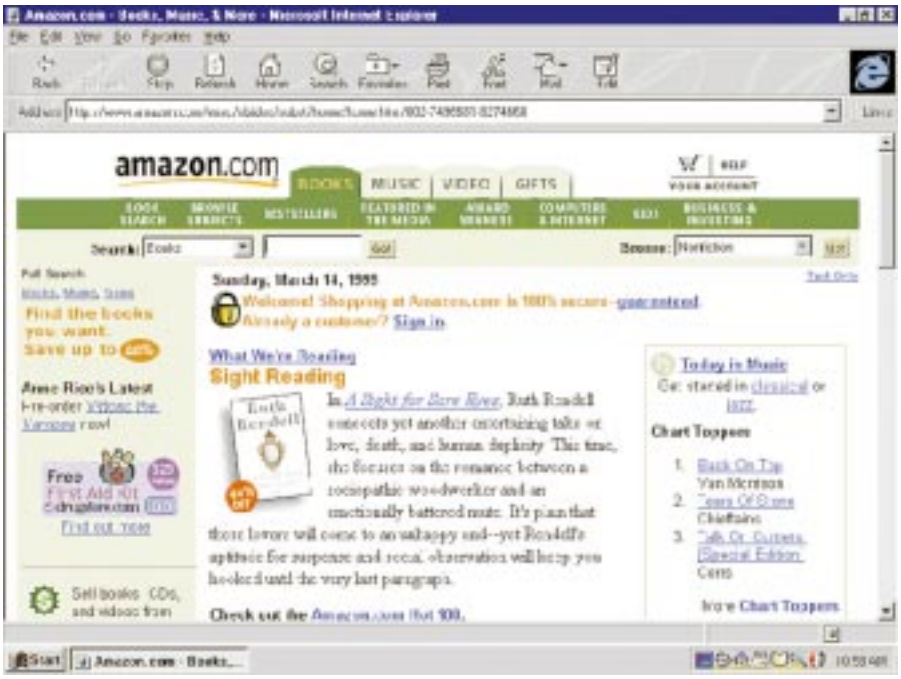
"E-commerce helps create a more personal one-to-one marketing channel where the vendor will be able to know exactly what each customer wants. With this information, vendors can achieve a higher level of product customisation to better satisfy the needs of their customers," added Tan.

According to Tan, there are several e-commerce models. The first model of e-commerce is known as electronic retailing, which involves the selling of products and services by businesses to consumers. The second model allows businesses to sell to each other in an electronic manner. Other models include business to administration, consumer to administration and consumer to consumer (where second hand goods are involved).

To illustrate these various different models, Tan gave a guided tour around several e-commerce Web sites on the Internet such as Amazon.com, one of the world's most popular online bookstore. After the guided tour, he highlighted and explained the factors that can determine the success or failure of an e-commerce Web site.

"First of all, an e-commerce Web site has to offer the right types of goods. Past studies have shown that the top selling products are toys, clothing, books, flowers, cards, electronics and video products. In other words, an e-commerce Web site needs to have a unique selling proposal," explained Tan.

"The site also needs to be secure so that customers have peace of mind when buying goods/services online. Customers will not be willing to provide credit card numbers to e-commerce sites that are not secure. E-commerce should also be well designed and organised so that it is convenient and easy to use," elaborated Tan.



Amazon.com…One of the most popular e-commerce web sites in the world

A Seminar on Winding Up

It was a beautiful Tuesday morning at the Melia Hotel. Mr Alex Chang, the speaker of the seminar entitled *Companies Winding Up Petitions and Amendment to s.176 of the Companies Act*, was hovering around the corridor impatiently. It was already past nine in the morning, and obviously Alex was keen to start his talk.

As soon as all participants were present, Alex got down to business. He started the seminar by giving a speech – saying he was flattered and embarrassed that there were fellow lawyers present in the seminar. All the participants were then asked to introduce themselves and state their objectives for participating.

Alex began by mentioning that the winding-up process was seasonal. Companies incorporated under the Companies Act may be wound up on the basis of arrears of debts. He emphasised that the interesting point to note about this type of petition was that it may be based on a debt with or without judgement being obtained first.

An application of winding up a company can be done by the company itself (this is known as voluntary winding up), any creditor, including a contingent or prospective creditor of the company, the liquidator, a contributory or any person who is the personal representative of a deceased contributory or the trustee in bankruptcy or the Official Assignee of the estate of a bankrupt contributory. A liquidator can also apply to wind up a company.

Under section 218, the Court may order a winding up on a number of circumstances. Amongst these are when the company by special resolution resolves that it should be wound up by the Court, when the company does not commence business within a year from its incorporation or suspends its business a whole year, and when the company is unable to pay debts.

Alex explained that a company is defined as unable to pay its debts if a creditor to whom the company is indebted in a sum exceeding five hundred ringgit then due has served in the company by leaving at the registered office a demand under his hand or under the hand of his agent requiring the company to the sum, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor. This must be followed by execution or other processes issued on a judgement, decree or order of any court in favour of a creditor of the company which is returned unsatisfied in whole or in part. Alternatively the Court shall take into account the contingent and prospective liabilities of the company to satisfy the inability to pay the debts due.

Of course, as Alex stressed there are relieves for the debtor company to apply for stay or restrain of proceedings against it. This is provided in section 222 of the Act. However, if the debtor wants to evade the consequences of the proceedings by disposing of the company's property before the commencement of the winding up by the Court, such a disposition will be void. Furthermore, if there is an abuse of process, the court has an inherent jurisdiction to restrain a petitioner from presenting a petition. This injunction process also operates if there is a claim to set-off or counterclaim which exceeds the debt as in the case of *Compana Distributor Sdn Bhd*, where the Petitioner claimed for unpaid tiles and the Respondents filed a counter claim in the form of a civil suit for 20 times the amount of the sum claimed by the Petitioners for Liquidated and Ascertained Damages and delay of supplies. The Respondents were eventually wound up.

Alex also touched upon the liquidators' functions and powers, proof of debt, priority of payment of debts. He then went on to elaborate on the powers of section 176 - namely the power to compromise with creditors and members, where under certain circumstances the Court may grant its approval to such an arrangement. A Company usually needs section 176 protection if for example:

- the company's core operations are still viable
- where there are many outstanding creditors
- there are high accumulated losses that may have exceeded its issued and paid up share capital.

Nevertheless, this provision may be amended if the proposed amendment bill is passed. This step is taken to rectify a few loopholes of the section.

The seminar obviously gave some valuable insight to the winding up process and the application of section 176. Alex presented his talk pretty well, intermittently adding anecdotes to liven up the atmosphere of the seminar. He is a lawyer who has practised for many years and is the advisory editor for the Malayan Law Journal titled *Companies Winding-Up Handbook*. This book can be purchased from the Continuing Professional Department at the Institute.

Year 2000 Risk — Directors' Responsibilities and Auditors' Considerations

The Y2K issue is the talk of the town. It worries everyone in the business world as well as the accounting world as it has the potential to affect large and small businesses, public and non-public companies, government and non-profit organisations such as the Institute itself. Although the Y2K issue arises because of the computer systems, the non-IT people, such as directors and auditors, should also concern themselves in facing the Y2K problem.

A seminar was organised by the Institute recently to alert directors and auditors on the Y2K issue. The seminar entitled "Year 2000 Risk - Directors' Responsibilities and Auditors' Considerations" was conducted by Mr Alex Lian who is the Managing Director of Sprout Sdn Bhd.

"Each part of a company has its own responsibility in dealing with the Y2K issue. A multi-disciplinary team of people from both the technical and business areas are needed to reduce the impact of the Y2K issue," started Lian.

The management of a company, Lian continued, is responsible for assessing the impact of the Y2K issue, and remediating its effects whereas the auditors, who are the technical people, are responsible to plan and perform audit to obtain reasonable assurance about the correctness of the financial statement. The auditors are responsible to detect any material misstatements in the financial statements due to the Y2K issue or any other reasons.

When dealing with the Y2K issue, many companies will modify their systems by installing new systems. This will increase the risk of material misstatement in the financial statements. One of the reasons, according to Lian, is the new system may not function as intended.

"Although the auditors are open to all the risks but due to the Y2K issue where the auditors will have to resolve the problems by a specific date, there will be a higher risk of material misstatement in the financial statements," explained Lian.

Lian pointed out that the auditors may need to consider the effect of the system modifications and new systems in the auditors' current audit plans. Also, the auditors are advised to raise their clients' awareness of the Y2K issue so that the management of the companies will have in depth understanding of the problem.

The directors, on the other hand, are responsible to ensure that the company is prepared for the Y2K date change and the business will not be materially affected. The directors as the people who run the business, should be alert to the auditors' needs when they audit the companies.

"The directors or the management of a company should start off by establishing an overall steering committee in charge to look into the Y2K issue. They will have to delegate the projects to individuals and alert the individuals on their responsibilities. A monitoring program should be established and in case of a failure, the directors will have to establish a contingency plan as back up," said Lian.

Both the auditors and directors will have to work together in order to lighten the impact of the problem caused by the arrival of the new millennium. Both parties must be aware of their responsibilities and dependencies. Mr Alex Lian during this seminar, conducted a few discussion sessions for the participants to get a better understanding of the situation.

"This seminar was informative and interesting as it had a number of workshops which gave me the chance to interact with other participants. Through these workshops I could listen to views and ideas of others on this matter," elaborated one participant when Akauntan Nasional asked on his view regarding the seminar.

It is the Institute's obligation to inform and alert the auditors and it is the Institute's hope to provide seminars such as this to assist the various people involved. This seminar ended with a question-and-answer session with active participation from the crowd.

Participants engrossed in discussion

The Legal Procedures of Debt Recovery

This was yet another seminar conducted by Mr Alex Chang Huey Wah, which was interesting and informative. As usual, Alex started the seminar by asking the participants to introduce themselves. Besides self-introduction, Alex sought the participants' opinion on whether one could recover debts within a period of six months. Most participants agreed that it was quite impossible to recover debts within six months. Two participants thought it was possible to do so. Alex concurred that it was possible and that there are ways to recover debts within six months.

Alex started out by laying out the structure of courts. For claims under RM5000, the court to be reckoned with is the Small Claims Courts where parties need not be represented by lawyers unless the parties are companies or such other authorised persons. Then there are the Magistrates Courts and the Sessions Courts. The jurisdiction of the magistrate's court is to try all actions "where the amount in dispute or value of the subject matter does not exceed RM25,000". Whereas the Sessions court deals with cases "where the amount or value of the subject matter does not exceed two hundred and fifty thousand ringgit.

There are two situations where the Sessions Court or the Magistrate's Court has the jurisdiction to try all actions and suits which exceeds the limit. First is by relinquishment - where a plaintiff can bring an action or suit in the Sessions or Magistrates' Court by relinquishing a portion of a Plaintiff's claim to below the limit. The other situation is where the claims cannot be split so as to enable one to bring more than one action or suit of a civil nature in respect of the same cause of action against the same party.

There are so many technicalities and loopholes a legal officer has to look out for in order to give the best service to his client. For instance Section 28 of Courts of Judicature Act 1964 provides that where the value of the subject matter is less than RM10,000, a party has no right of appeal from the Subordinate Court to High Court unless on question of law. So it is really up to the diligence and wisdom of a lawyer to circumvent around the law.

Alex gave a wide selection of cases and details for the participants to digest for their own benefit and information. Throughout the session, he made sure there was feedback from participants on the subject matter — this kept participants on their toes. In short, the seminar was quite informative and Alex tried his best to highlight the difficulties that lawyers face when it comes to litigation and the process involved in it. The law in theory is usually comprehensible to be a short process but in practice, the legal procedure takes time as it involves human factors and civil service red tape.

The seminar was an eye opener. Participants were introduced to legal jargon and legal procedures they were previously unfamiliar with.

Alex Chang speaks to an audience of attentive participants

Participants having a break ... enjoying the sumptuous spread

Audit Pengurusan Dalam Sektor Awam

Pada Persidangan Audit Dalaman yang bertemakan "Tugas-tugas Baru Untuk Juruaudit Dalaman" yang telah dianjurkan oleh Institut baru-baru ini, YBhg Datuk Haji Mohd Khalil Haji Mohd Nor, Ketua Audit Negara, telah memberi ceramah berdasarkan kertas kerja beliau yang bertajuk "Audit Pengurusan Dalam Sektor Awam". Beliau telah memulakan ceramah beliau dengan menyampaikan objektif-objektif audit pengurusan. Menurut beliau, objektif utama adalah untuk menaksir dan menilai fungsi-fungsi organisasi dan pengurusan operasi agensi untuk memastikan agar fungsi-fungsi tersebut dapat dijalankan dengan baik.

"Pengurusan audit akan memastikan tatacara pentadbiran mematuhi kesemua prinsip, polisi dan praktik pengurusan," terang Khalil. Audit pengurusan menekankan kepentingan sumber-sumber kewangan dan buruh, tatacara pengurusan, sistem maklumat, penilaian prestasi dan pengawasan mekanisme untuk mencapai objektif dan sasaran organisasi.

Ketua Audit Negara kemudiannya menerangkan mengapa audit pengurusan itu penting di dalam sesuatu sektor. Menurut beliau, audit kewangan adalah berdasarkan penyata kewangan yang disiapkan pada akhir tahun dan ia hanya merangkumi bahagian kewangan sesuatu organisasi. Segala kelemahan dan kegagalan di dalam hal ehwal pengurusan tidak dapat dikesan melalui audit kewangan. Justeru pengauditan kini tidak hanya bergantung pada audit kewangan malah harus ditambah dengan audit pengurusan bagi membolehkan segala permintaan atau pertanyaan daripada orang ramai dapat dijelaskan.

Menurut Khalil, audit pengurusan mula diperkenalkan di Malaysia pada tahun 1981 dengan pemindaan pada Akta Audit 1957 dan dalam menjalankan mandat baru audit pengurusan tersebut, Jabatan Audit Negara telah menghadapi pelbagai cabaran. Di antara cabaran-cabaran yang telah disebut oleh Khalil ialah ketiadaan objektif, kriteria dan penunjuk prestasi yang jelas, maklumat prestasi yang didokumenkan tidak mencukupi dan kekurangan pengetahuan serta kemahiran.

"Keberkesanan audit pengurusan di sektor awam tidak boleh diukur melalui jumlah laporan audit pengurusan yang dihantar ke pihak yang berkuasa, sebaliknya ia diukur dengan jumlah perakuan audit yang telah dipersetujui oleh eksekutif untuk dilaksanakan," tegas Khalil.

Setelah hampir dua dekad audit pengurusan diperkenalkan, ia nyata membawa kesan kepada pihak pentadbiran sektor awam. Pihak kerajaan telah menjalankan pelbagai reformasi terhadap program-program yang sedia ada untuk memperketatkan kawalan dan prosedur. Pihak kerajaan juga telah menyemak semula sistem pengawalan dan undang-undang untuk memperbaiki mekanisme pentadbiran. Menurut Khalil lagi, di antara kesan-kesan yang dapat dilihat adalah seperti berikut:

- Prosedur kerja dan sistem adalah lebih baik
- Sistem peraturan, pengawalan dan undang-undang telah diperketatkan
- Lebih perkhidmatan awam disediakan dengan kos yang lebih rendah

Sebagai kesimpulan, Khalil menegaskan bahawa kejayaan audit pengurusan tidak tertakluk kepada keupayaan juruaudit untuk mengesan kelemahan atau menyumbang cadangan sebaliknya bergantung kepada kesanggupan pihak kerajaan untuk bertindak secara positif dengan kadar segera di atas laporan audit pengurusan.

IASC Update

International Accounting Standards Committee

The Standing Interpretations Committee (SIC) held its eighth meeting on 11 February 1999 in London. At this meeting, the Committee:

- held a technical discussion on one agenda item;
- added three new agenda items;
- agreed to perform additional steps to evaluate a potential agenda item;
- decided not to proceed with a draft Interpretation; and discussed several other technical topics.

AGENDA ITEMS

The SIC discussed the following item which had been accepted to its Agenda at the October 1998 meeting:

Share Capital – Transaction Costs

The issues were how to account for costs incurred in connection with the issuance of share capital classified as equity as well as costs incurred in connection with the acquisition of treasury shares. The SIC explored an approach which required costs be linked to an issuance of share capital or the acquisition of treasury shares to be recorded together with the underlying share capital transaction as a change in equity. Under the approach, the costs of a transaction no longer considered probable, would be expensed.

The Committee favoured a definition of transaction costs eligible for such treatment as being incremental external costs directly related to the transaction. Transaction costs may at times be related to two or more simultaneous transactions, for example a debt and equity issuance. In simultaneous transactions, the SIC favoured an allocation of qualifying transaction costs to each of the component transactions based on their relative fair values.

The SIC will discuss this topic further at its next meeting in May.

NEW AGENDA ITEMS

The SIC agreed to add the following topics to its agenda:

Consistency – Alternative Methods

Following the initial discussion in October, the issue explored further at this meeting is whether choices of alternative measurement and presentation practices allowed under IASs represent one-time policy decisions made for a category of transactions or events or a different policy may be selected for each new transaction and event.

Equity Method and Accounting for Losses

The issue is the definition of the investment in an associate for the purpose of determining whether an enterprise should continue to recognise losses under the equity method. The question arises in enterprises which hold more than one type of instrument, for example, and enterprise which holds both an investment in ordinary shares and a long-term loan to an associate.

Major Inspection or Overhaul Costs

The topic considers whether the cost of a major inspection or overhaul can be linked to the sub-components of an asset, and evaluates related implications of the distinction between repair and maintenance costs, which are expensed, and an increase to the originally assessed standard of performance of an asset, which under some circumstances would be capitalised.

NEW TOPIC UNDER CONSIDERATION

The Committee discussed the following topic which was not yet added to the agenda, pending further evaluation of whether the Committee's criteria for acceptance are met:

IAS 12 – Revaluations of Non-Depreciating Assets

The Committee discussed the application of IAS 12 to revaluations of non-depreciating assets. The Committee viewed IAS 12 as being clear on the point of requiring the recognition of deferred taxes on the revaluation of both depreciating and non-depreciating assets. Under IAS 12, the measurement of deferred tax liabilities related to revaluations must reflect the tax consequences that follow from the manner in which the enterprise expects to recover the amount of the asset.

The issue is the meaning of recovering the value of assets in the context of revaluations of non-depreciating assets. In some jurisdictions, the means of recovery could imply the use of a different tax rate.

DRAFT INTERPRETATION WITHDRAWN

SIC-D4, Classification of Financial Instruments

The SIC discussed the status of SIC-D4, "Clarification of Financial Instruments – Issuer's Settlement Option". Work on SIC-D4 had been suspended by the Committee in June 1998 as a result of the Board's progress on its Financial Instruments project which incorporated components of SIC-D4. As IASC intends to issue IAS 39, "Financial Instruments: Recognition and Measurement", in March 1999, SIC-D4 will not be finalised.

OTHER TECHNICAL TOPICS

IAS 19, Scope of Plan Assets

The Committee was asked to look at an issue related to the definition of plan assets under IAS 19 (revised 1996). The situation described failed to meet the definition of plan assets under

IAS 19.7, as the obligation for plan benefits remained with the sponsoring enterprise. The Committee plans no further discussion on this topic.

SIC-8, First Time Adoption of IAS

The SIC discussed topics related to the application of SIC-8 and recent Standards. SIC-8 requires that the financial statements of an enterprise applying IAS, including those applying IAS for the first time, should be prepared and presented as if the financial statements has always been prepared in accordance with IAS. As a result, the effective date and transitional treatment of a new Standard or Interpretation apply to a first-time adoption just as they apply to an enterprise which has previously prepared financial statements in compliance with IAS.

It follows that transitional treatments specified by new Standards and Interpretations apply only to the transition from an accounting policy which was acceptable under IAS prior to the new Standard or Interpretation. Transitional treatments specified by a new Standard or Interpretation do not apply to the transition from a national GAAP policy which deferred from the IAS requirements in existence prior to the new Standard or Interpretation. SIC-8 requires that any adjustment from a national GAAP accounting policy to an acceptable under IAS for that period should be treated as an adjustment to the opening balance of retained earnings of the earliest period presented in accordance with IAS. Where the amount of an adjustment to the opening balance of retained earnings cannot be reasonably determined, disclosure of that fact should be provided.

The Committee concluded that SIC-8 provides sufficient guidance and no further discussion is currently planned.

DISCLOSURE

When an enterprise has not yet adopted a new Standard which has been published, IAS 8.48 encourages disclosure of the nature of the future change in accounting policy and an estimate of the effect of the change on the enterprise's net profit or loss and financial position. The Committee agreed to add to the Preface of the SIC loose-leaf binder a reminder that such disclosure should also be considered in relation to Interpretation issued but not yet adopted.

SUGGESTIONS FOR NEW TOPICS

The SIC welcomes the submission of interpretative topics to be considered for the agenda. Suggestions for new topics may be put forward by any individual or organisation. The SIC considers the following criteria in evaluating a topic for the agenda:

- the issue should involve an interpretation of an existing Standard within the context of the IASC Framework;
- the issue should have practical and widespread relevance;
- the issue should relate to a specific fact pattern; and
- significantly divergent interpretations must either be emerging or already exist in practice.

An illustrative format "Suggestion to the SIC" can be found in the SIC's loose-leaf binder.

IFAC Update

New IFAC Guidance Helps Executives Manage Information Technology Risks

Managing Information Technology Planning for Business Impact is the title of a new guideline released by the International Federation of Accountants (IFAC). Developed by IFAC's Information Technology Committee (ITC), the guideline is the second in a series focused on increasing management's awareness of the key issues affecting the management of information and communications.

"The potential of technologies to dramatically change organisations and business practices, create new opportunities and reduce costs is virtually limitless. Unfortunately, management often may not realise nor manage the risks associated with implementing new technologies," points out Graeme McGregor, Chairman of the ITC. "The new guideline emphasises the importance of IT planning as a means to manage risk."

The document highlights how technology planning supports the business direction of an organisation, outlines ten core principles of an information technology program, and describes the steps needed to execute the process. Such information can help executives improve the direction and control of IT initiatives and maximise their IT investments.

The new guideline, *Managing Information Technology Planning for Business Impact* as well as the first in the series, *Managing Security of Information*, can be downloaded from IFAC's web site at www.ifac.org or obtained from the IFAC Secretariat.

The ITC works to increase accountants' information technology competency and their awareness of technological developments and applications by facilitating relevant research, enhancing global communications and providing guidance on technology-related issues impacting accountants, their employers and clients.

Student's Column

The National Accounting Convention Jointly Organised by MIA and UUM Accounting Club (NOVAC) from 11 to 13 February 1999

The National Accounting Convention and Exhibition, jointly organised by Malaysian Institute of Accountants (MIA) and UUM Accounting Club (NOVAC) was held in conjunction with NOVAC's Accounting Week, one of the Club's annual activities. The purpose of this project was to expose accounting students to the global aspects of accounting and to provide the latest information in order to identify opportunities and prospects in the field of accounting.

The project was divided into two segments, Exhibition and Convention. For the Exhibition, a booth was set up to promote the MIA/ACCA Examinations, MIT Examination and MIA Membership. The Convention involved activities such as paperwork presentations, dialogues and career workshops.

The National Accounting Convention was launched by Encik Sofian Kochik, representative of the Accountant-General's Office. This was followed by a slide presentation of the Convention. Encik Sofian then spoke on career opportunities in the public sector and the development of public sector accounting. Ms Josephine Edwards gave the students some insight on the latest developments in the accounting and auditing standards setting in Malaysia. Ms Tam Kam Peng then followed with an explanation on MIA membership requirements. This was followed by a Question and Answer session.

About 150 accounting students, from First Year to Final Year, attended the day's programme. With the information they had on MIA membership and career opportunities as accountants, the accounting students discussed among themselves which career path they wished to pursue upon graduation.

UUM Students enquiring details about MIA from Sharon Koh, staff of the Institute at its booth at the exhibition

Seated from left to right are Ms Tam Kam Peng, Education Manager of MIA; Encik Sofian Kochik from the A-G's office; Professor Madya Dr Noorhayati Mansor, Dean of UUM School of Accounting; and Encik Bakhtiar Abdullah, the Project Director of the National Accounting Convention and Exhibition

ITM Kelantan Visits the Institute

Where else can students seek guidance on the profession of accountancy if not from the Institute which regulates the accountants themselves? The Institute always welcome students who are interested in the accountancy profession. The Institute is proud to announce that it provides services, for example a library and career talks, to help accountancy students achieve their ambitions of becoming an accountant. Recently, the Institute had again played its role in promoting the profession when it received 50 guests from the MARA Institute of Technology in Kelantan.

Boys like to have fun … the male students and their lecturer seem to be enjoying a light moment

The ladies contigent from Kelantan

Coming all the way from Kelantan, the students accompanied by their lecturer were on a study tour in Kuala Lumpur for two days and the Institute was their first stop. The students and their lecturer were given a career talk by Ms Norzainah from the Membership Department of the Institute. Ms Norzainah informed the students all about the Institute's roles. Later, she explained the path the students should take to practise accountancy.

Ms Norzainah informed the students that the number of accountants, compared to other professional careers in Malaysia, is very low. Only 25 percent of accountancy graduates chose to become accountants. Currently there are approximately 12,500 accountants in Malaysia whereas the country is in need of 50,000. When asked why, she explained that this is because of the three-year on-the-job training graduates have to undergo before they are recognised as accountants. The graduates do not realise that the training is for their benefit — to prepare them in facing the real accounting world.

"To get the title 'accountant' is not easy but the benefits supersede the hardship. Since accountants are in demand, they command higher salaries, and during the current economic turmoil, job security is a guarantee," said Ms Norzainah to the students.

It was pointed out that it is critical to ensure that accountancy graduates enter the accountancy profession after they graduate because of the favourable prospects for accountants with experience, especially in public accounting firms. This is also in line with the government's target to produce 70,000 accountants by the year 2020.

The Institute hopes that the students will choose to become the Institute's members in years to come. The Institute will strive to bring the profession to greater heights and it hopes that the students will be a part of it.

The career talk went on for an hour and the students were taken on a tour to the Institute's library and departments for a better understanding of the Institute.

Columns

MIT News

The Stamp Law on Asssessments, Objections, Appeals and Claims

The application of the stamp law in Malaysia has had a history of more than 100 years, originally having been in force by way of State Enactments. But as has been previously observed of the English law, it "has not become simple by the lapse of time...". The sustained strength of the economy, apart from causing rapid changes in equity control has also given rise to increasing complexity in legal documentation. Interpretation and comprehension of the application of the law therefore continues to be challenged. It may therefore be appropriate to consider and/or invite comment upon some of these recent challenges.

On Assessments

The term 'assessment' is not defined by the Act[1]. It is no more than a term of art, descriptive, in the instance of the management of the stamp law, of an act undertaken and performed by the Collector of Stamp Duties. Nevertheless it received judicial consideration consequent to a preliminary objection raised on behalf of the **Collector in Shell Malaysia Trading Sdn. Bhd. v. Pemungut Duti Setem, Johor Bahru (1990) 1 MLJ 48**. Abdul Malik J., in considering submission with respect to the Collector's formal statement or notification of liability, adopted an observation by Issacs J. in **The King v. The Deputy Federal Commissioner of Taxation for South Australia ex parte Hooper (1926) 37 CLR 368**:

> "*An 'assessment' is not a piece of paper: it is an official act or operation; it is the Commissioner's ascertainment, on consideration of all relevant circumstances, including sometimes his own opinion, of the amount of tax chargeable to a given taxpayer. When he has completed his ascertainment of the amount he sends ... 'a notice of assessment'... But neither the paper sent nor the notification it gives is the 'assessment'. That is and remains the act or operation of the Commissioner.*"

The Collector's act of ascertaining liability normally requires completion of two processes:

1. the ascertainment of the form and substance, i.e. the legal effects, of the instrument for the purpose of determining its classification under the charge provisions of the Act described as the First Schedule.
2. if that instrument be found liable to ad valorem duty the ascertainment of the value base upon which the rate as specified by the First Schedule shall be applied to calculate the amount payable.

A matter of some apprehension to the tax practitioner apparently was brought about by the current practice at some stamp centres with regard to completion of the second process in ascertaining the duty payable upon share transfer instruments of private and unlisted public companies. It would appear that where the transfer on sale is in respect of 50,000 or more share units, the duty assessed will not be calculated in terms of the pecuniary consideration expressed by the instrument or, in the case of non-arms-length transactions, on the net tangible asset value or an alternative objective measure of value but upon "*a price earning ratio of 18, that figure being based on the average price earning ratio of all listed counters on the KLSE discounted for 30 percent.*[2] " That practice bears a measure of scrutiny.

It would be pertinent to note that the charge to duty as respects a share transfer instrument "*On sale ... (is) to be computed on the price or value thereof on the date of transfer ...*[3] ". That expression is in conformity with the wording of the substantive provision stated by Section 13(1):

[1] Act 378/Stamp Act, 194

[2] Tax Nasional Dec 1994 at pg. 1

[3] Item 32(b) First Schedule of the Act

"Where an instrument is chargeable with ad valorem duty in respect of: -

(a) ...

(b) any stock or marketable or other security

the duty shall be calculated on the value, on the day of the date of the instrument ... of the stock or security according to the average price thereof or, if there be no price, according to the value thereof."

In the case of transfers of stock and marketable securities therefore the amount of duty payable must be calculated upon 'value' in the absence of information on the 'average price' of such stock or security. The Act does not include an interpretation for the term 'average price' and it follows that this term need not necessarily be construed as being limited to that produced by the KLSE with respect to listed stocks. Then again the 'value' of stock may be measured by means of more than one indicator and it is not open to the stamp centres to specify the employment only of an unreliable indicator.

The price of unlisted stock may not be subject to the elements of a true market. But in an arms-length transaction, as between a willing buyer and willing seller, the pecuniary consideration, in the absence of objective evidence to the contrary, must be assumed to have been agreed in terms of an average price of that block of negotiated stock after consideration of the Balance Sheet and all factors influencing previous progress intended development of the Company's business enterprise and projected future earnings.

It may be in point to observe that: -

i in appeals against value ascertained for purposes of calculating stamp duty or compensatory payments, the Courts have consistently required presentation of an objective evidence of value

ii the Collector's capacity to disregard the value of the pecuniary consideration expressed by the instrument may only be undertaken in exercise of a power conferred by Section 16(3):

"*Any ... transfer, not being a disposition made in favour of a purchaser ... in good faith and for valuable consideration, shall, for the purposes of this section, be deemed to be ... a transfer operating as a voluntary disposition inter vivos, and ... the consideration for any ... transfer shall not for this purpose be deemed to be valuable consideration where by reason of the inadequacy of the sum paid as consideration ... the transfer confers a substantial benefit on the person to whom the property is ... transfered.*"

iii as the Adjudicator of liability or non-liability[4] to stamp duties, the Collector is obliged to arrive at conclusions only following a judicious consideration of all facts, circumstances and legal precedents.

The provisions under Section 16(3) correspond with those under Section 27 of the Hong Kong Stamp Ordinance. The Privy Council in considering an appeal arising from the application of the Hong Kong provisions in **Lap Shun Textiles Industrial Company Ltd. v. Collector of Stamp Revenue [1976] 1** ALL **ER 833 PC** observed

"... the plain wording of the subsection ... indicates that the tests by which the collector is to be guided are objective. When the section refers to inadequacy of consideration, and when it refers to the conveyances conferring, in the opinion of the collector, a benefit, it is clearly stating factual elements whose existence, or non-existence, appears on the face of the transaction.": per Lord Wilberforce at pg. 837.

It must appear therefore that before the Collector may exercise power conferred by Section 16(3) he must first ascertain by objective tests that the pecuniary consideration expressed by the instrument represents an inadequate sum. The Act does not contain provisions corresponding to Sections 90(1), 90(2) or paragraph 13 of Schedule 5 of the Income Tax Act 1967.

It had been a previous practice with respect to transfers of unlisted shares upon a sale or gift to require the transferee of a substantial block to submit a statement from the Company Secretary with respect to a past record of transactions in the Company's stock (Form PDS 6) and where the transaction involved a transfer of a controlling interest to require submission of the Auditor's statement on the value of stock. It may, in the light of the foregoing, therefore seem appropriate to seek further discussion with the Lembaga Hasil Dalam Negeri with a view to obtain reinstitution of the previous practice at those centres that have adopted an arbitrary practice. It may not now be appreciated that the singular feature of the law on stamp duties is its almost wholly self operating-collecting mechanism and whilst it is acknowledged to effect a tax on change its application was never intended to impede the speed of change. Except where other information is pending, completion of the assessment process therefore should not be delayed unnecessarily. As was further observed by Lord Wilberforce "(The section) cannot require the collector to investigate whether an evident inadequacy, or an evident benefit, is deliberate or intended; such a requirement, if it were to be imposed, would have to be stated in clear words."

On Objections

The statutory position is expressed by Section 39(1):

"Any person who is dissatisfied with the assessment of the Collector may, within twenty-one days after the date of the assessment and upon payment of duty in conformity therewith, appeal against the assessment to the High Court..."

The Act does not include a provision similar to that stated by Section 101 of the Income Tax Act, 1967. It may therefore seem

[4] Provided by Section 36(1). The Collector's adjudication is ordinarily conclusive that an instrument is duly stamped

that the person aggrieved by the Collector's assessment is capable only of seeking judicial review of that assessment. In practice however the stamp centres do not refuse consideration of a reasoned objection: the initial notification of liability e.g. as stated in Form PDS 14 normally states that any dissatisfaction with the assessment should be addressed to the Collector within the period specified by the notification of liability. Malik J. in the appeal from Shell observed that this practice appeared to have been adapted after that followed in the UK in the application of the corresponding provision under Section 39 of the UK Stamp Act 1891, as recorded in Atkins Encyclopaedia of Court Forms in Civil Proceedings 2nd Ed., Vol. 34 at pg. 112:

> "*The practice of the Inland Revenue is to give the applicant a notice of provisional assessment; if the applicant agrees the instrument is stamped with the duty assessed and an adjudication stamp and is then returned to him. If the applicant dissents he should submit a statement of reasons for dissenting and his view of the basis upon which the instrument should be stamped. He may have an interview with the adjudicating officer by appointment if he wishes. Thereupon the final assessment from which the statutory appeal lies, is made.*"

He accordingly rejected a contention submitted on behalf of the Collector that a person aggrieved by the Collector's assessment was obliged to file both objection and the appeal within twenty-one days after the date of the assessment.

On Appeals

Strictly an appeal lies from the Collector's adjudication of liability, that is, the assessment made upon a formal request under Section 36 of the Act. An appeal may nevertheless be lodged against an informal assessment as stated under the 'over-the-counter' stamping procedure. The statutory provision under Section 39 confines a right to judicial review with respect to the Collector's decisions on liability only. The Collector's rejection of a claim against duty paid, for example, therefore must stand as final unless the Minister consents to direct revision under powers conferred by Section 78.

A cursory reading of Section 39(1) which further provides that the person dissatisfied " *... may for that purpose require the Collector to state and sign a case, setting forth the question upon which his opinion was required and the assessment made by him*", may mislead the tax practitioner into assuming that the procedural requirements would be similar to that prescribed by Section 99 of the Income Tax Act 1967. However it is to be noted that appeal lies from the Collector's adjudication of liability and accordingly hearing is by the High Court in the first instance. The procedural requirements therefore must conform with those set by the Rules of the High Court. The process accordingly commences with the filing registration and service of a Notice of Motion under Rule 13 Order 55 to require the Collector to state a case for consideration and decision of the High Court in terms of the specific orders prayed including over costs. The Notice must include the Affidavit of the Appellant and, as stated by Section 39(1) be filed within 21 days after the date of the assessment and upon payment of duty assessed. The Solicitors for the Appellant will also be expected to submit an initial draft of the case stated for consideration by the Collector.

Some confusion over the procedural requirements for an appeal from a decision of the Collector was created when the matter was raised before Harun J. (as he was then) in the initial appeal by **Cold Storage (Malaysia) Bhd. [1987] 1 CLJ 261**. He considered that *"... the procedure ... was relevant to practice prevailing in 1950 and should not now be followed*" and went on to state "*The correct procedure for appeals from the Collector to the High Court is as follows:-*

(a) Within 21 days of the date of the assessment and on payment of duty, file Notice of Appeal with the Collector.

(b) Appellant requires Collector to state and sign a case.

(c) Collector states and signs case and delivers it to Appellant.

(d) Within 7 days of receipt of the Case Stated, the Appellant files Originating Motion in the High Court under RHC o.55.r 13 ..."

The matter therefore was taken before the Supreme Court in the course of the further appeal by **Cold Storage [1988] 2 MLJ 93** which observed (pg. 99) that *"... the Collector of Stamp Duties is merely a civil servant and not legally qualified like an officer of the Judicial and Legal Service. He may have difficulty in drafting a case stated without legal assistance.*" It considered "*... as valid today as it was 37 years ago*" the statement by Taylor J. in the **Cheong Yok Choy case [1950] MLJ 276**:

> "*The general practice is for the appellant's legal advisers to make the first draft of the case and send it to the respondent's advisers for their consideration, after which it is submitted to the presiding officer who alone can settle accurately that part of the document which expresses his findings of fact and his opinion on the points requiring decision. ..... The essence of a case stated is a joint statement by all three of the facts and of the outstanding issues, so that the appellate court has the whole matter before it in the most concise form ...*"

Surprisingly that endorsement of practice did not mark the final closure in the matter of arguments over procedural requirements. In the Shell case a further preliminary objection raised on behalf of the Collector was "... that the appeal was incorrectly worded as it did not reflect the question of law that was desired to be adjudicated upon by the High Court. That objection was rightly dismissed: Malik J noting that "*the applicant may have obtained the co-operation of the Collector of Stamp Duty ... to state and sign a case for the opinion of the High Court, setting forth the question upon which the Collector's opinion was required and the assessment made by him.*" He accordingly held that "*... this preliminary objection is nothing but a storm in the teacup ...*" Hopefully the matter now stands finally resolved.

On Claims

A limited right to recover stamp duty paid is permitted under Sections 21, 57 and 58 of the Act. This limitation reinforces the necessity to be exacting and certain as to one's intention and capacity in proceeding with the execution, acceptance of delivery and due stamping of a chargeable instrument. The instance of a 'change-of-mind' case, as when a legal charge is stamped but the mortgagor unilaterally withdraws from completion of the loan transaction or as when a transfer instrument is stamped but the transferee seeks re-negotiation of the terms of transfer, by virtue of that limitation therefore stands automatically struck out.

The admissible circumstances are as:

a per Section 57 (f), when the instrument is found to be:

(i) void from the beginning; or

(ii) unfit for the purpose originally intended by reason of an error or mistake therein; or

(iii) by reason of the inability or refusal of a necessary party to sign the same, incomplete and insufficient for the intended purpose; or

(iv) by reason of inability or refusal of a person to act under the same or to register it within the time prescribed by law, void or incapable of effecting the intended purpose; or

(v) either replaced by a similar duly stamped instrument made by the same parties for the same purpose, the original having been inadvertently spoiled; or rendered ineffective by virtue that the original purpose was effected by some other duly stamped instrument.

b per Section 58, as when duty in excess of the amount due was paid or when inadvertently duty was paid upon an exempt instrument.

c per Section 21, where a contract or agreement was stamped as if it was a transfer on sale but subsequently rescinded or annulled or not carried into effect or substantially performed so as to operate as or be followed by a transfer.

It will have been noted that both Sections 57 and 58 of the Act specify a time threshold of 12 months, being that the claim must be filed within that time after

(i) the stamp had been spoiled or become useless; or

(ii) the date of the instrument, in the case of an executed instrument; or

(iii) the day on which it was 'first or alone executed' in the case of an undated instrument.

Rightly a similar time threshold has not been set for an application under Section 21(7) but, as with a claim consequent upon revision of liability ordered either by the Minister in exercise of his powers under Section 80 or upon judicial review of an appeal from the Collector, it is expected that such a claim will be presented within a reasonable measure of time.

The Collector's discretionary capacity to prescribe a further measure of time within which a claim may be filed is limited to the case of an instrument sent abroad for execution or when from unavoidable circumstances the instrument, which had since been substituted, cannot be produced within time. The time threshold on claims in today's context may seem unnecessarily stringent, more so as certain transfers of land that require the approval of more than one authority may not obtain completion within a period of less than 12 months after execution of the instrument of transfer. On occasion the delay in filing of a claim may have been due to time lost in completion of the transfer by an unexpected withdrawal of approval of a State authority or failure to obtain financing facilities or to a referal to the Courts. As to whether in the circumstance of a rejection of a claim by the Collector, the Courts have an inherent power to review on the grounds of justice and equity, it is a matter for advice from a Solicitor.

There is requirement upon the claimant by provison (b) to Section 57 to confirm that "no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence" and also to surrender the instrument into the custody of the Collector. Dispensation of this latter requirement may be sought where the original stamped instrument has already been lodged or must be lodged with a lawful registry (as in the case of instruments under the National Land Code and share transfer instruments). The claimant must also provide full particulars with respect to his name, address, NRIC No., the bank name and account number into which the payment cheque is to be made. In the case of a claim rendered through a firm of Solicitors, the firm should state their Clients' Account Number and name of the Bank. If the claim is made under Section 57(f)(v), a copy of the replacement instrument should be attached.

A matter of some uncertainty concerns the position of the replica instrument made in substitution of the original that was lost subsequent to due stamping. Generally if the Collector is satisfied with the evidence presented including a copy of the office invoice, copy of the bank draft or particulars of the cheque by which the original payment of duty was tendered and it is again supported by a statutory declaration of the circumstances of the loss of the original instrument and an undertaking to surrender the original instrument if subsequently found, he may consent to endorse the replica to the effect that the proper duty due had been paid on a previous date. The adjudication fee of RM10 prescribed by Section 36 may be payable.

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