

PROFILE



Partner
Head, Dispute Resolution
Head, Restructuring & Insolvency
Arbitration & Mediation
Shearn Delamore & Co., Kuala Lumpur, Malaysia

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Qualifications

LL.B (Hons), University of Canterbury, New Zealand (1985)
LL.M (Hons), University of Cambridge (1987-1988)
Barrister & Solicitor, New Zealand (1986)
Advocate & Solicitor, High Court of Malaya (1987)

Languages

English, Malay

RABINDRA S. NATHAN

ABOUT RABINDRA

Rabindra graduated LL.B (Hons) from the University of Canterbury, New Zealand in 1985. At university he was:

- Joint winner, Sir John MacArthur University Prize in Company and Commercial Law.
- Junior and Senior University Moot competitions champion.
- Runner-up, New Zealand Inter-Universities Moot.

Rabindra clerked in Wynn Williams & Co., Christchurch, New Zealand prior to his admission in New Zealand (1986) and chambered in Shearn Delamore prior to his admission in Malaya (1987).

In 1987, he was awarded the Even-Lewis Thomas Law Studentship and the British High Commissioner's Chevening Award to study at Sidney Sussex College, Cambridge University. He won the Cambridge University Law Society Moot Competition for the Stanley de Smith trophy at the final presided by Lord Brightman (1988).

Rabindra resumed practice in Shearn Delamore in September 1988 and became partner in 1997.

He is one of the most experienced insolvency practitioners in Malaysia. He has acted in the three largest insolvencies in Malaysian history. He has also been:

- Consultant to the Companies Commission of Malaysia - Winding up provisions of the Companies Bill 2015.
- Country Consultant for Malaysia to the Asian Development Bank (Insolvency TA) (1999-2000).
- Member for Malaysia, Asian Business Law Institute (ABLI) Working Group (2019-2020).

- A founding member, Insolvency Practitioners' Association of Malaysia (IPAM) in 2010 and Council member.
- The sole Malaysian member of the International Insolvency Institute (III).
- Member, III delegation to the UNCITRAL Working Group VI sessions, UNCITRAL headquarters in Vienna (2013-2017).

Rabindra also has an extensive dispute resolution practice in the West Malaysian courts and ad hoc admissions as counsel in the High Court of Sabah and Sarawak in specialised cases in arbitration and energy and power. He has numerous reported cases to his name. He regularly acts in domestic and international commercial arbitrations under the ICC, AIAC, SIAC and UNITRAL Rules. He has given expert testimony on Malaysian law in the High Court in Singapore and in international arbitrations. He is a member of the ICC Panel of Arbitrators, Malaysia.

EXPERIENCE

Litigation, Insolvency & Restructuring

He has appeared regularly in the Malaysian courts at all levels namely the High Court, Court of Appeal and Federal Court as counsel. These include, on a non-exhaustive basis, the following:

- Celcom Malaysia Berhad v Mohd Shuaib Ishak [2011] 3 MLJ 636 – the first Malaysian case at the Court of Appeal under the new statutory derivative action provision in section 181A of the Companies Act 1965.
- CIMB Investment Bank v Ernst & Young [2014] 6 CLJ 438 which is the first reported statutory audit negligence case in Malaysia involving auditors of a licensed fund management company.
- Sime Darby Berhad & Ors v Dato Seri Zubair [2012] 9 MLJ 464 involving a claim for breaches of director's duties against the CEO of a listed company.

Restructuring and insolvency

- Acted for the syndicate of lenders in an appeal to the Court of Appeal in a scheme of arrangement which was the first case in Malaysia on whether a provision for subordination of debt between unsecured creditors violated the pari passu rule.
- Acted for a bank in pursuing subrogated private banking clients' claims against an insolvent licensed fund manager that collapsed due to pervasive fraud over a number of years.
- Acted as principal legal counsel (2015 to 2020) to the Administrator of Malaysia Airlines in the statutory administration under the Malaysia Airlines System (Administration) Act 2015
- Acted on behalf of the liquidator in an audit negligence claim against the auditors of a Malaysian manufacturing company that collapsed due to fraud that had gone undetected for years

Arbitrations

- ICC arbitrations at the SIAC concerning a joint venture dispute between a Malaysian oil and gas company client and an Italian oil and gas company.

- ICC arbitration at the LCIA in a shareholder and joint venture dispute between a Malaysian telecommunications client and a German telecommunications company.
- HKIAC international arbitration under UNCITRAL Rules over a hotel management agreement of an ultra super luxury resort between the resort owner client and the international resort operator.

ACCOLADES

Asia Business Law Journal

One of Malaysia's Top 100 Lawyers for 4 consecutive years (2019 - 2022)

Asialaw Leading Lawyers

Dispute Resolution 2023 – Elite Practitioner for 4 consecutive years

Dispute Resolution and Litigation 2017- 2019 – Market Leading Lawyer for 3 consecutive years; Leading Lawyer for 4 consecutive years (2013 - 2016)

- *"Rabin is a very experienced and knowledgeable lawyer whom I can safely rely on for advice."* – Asialaw Profiles 2022

Benchmark Litigation Asia-Pacific

Commercial and Transactions 2023 – Litigation Star for 3 consecutive years

Commercial and Transactions, Dispute Resolution and Insolvency 2020 – Litigation Star for 3 consecutive years

Chambers Asia-Pacific

Dispute Resolution 2024 – Band 1 for 3 consecutive years; Band 2 for 11 consecutive years (2011-2021); Band 3 in 2010

- *"Rabindra is our trusted adviser for grey areas in banking law and loan documentation drafting given his vast experience litigating on such issues."* - Chambers Asia-Pacific 2024
- Rabindra Nathan is *"technically superb,"* according to clients, who appreciate that he is *"very upfront with his views."* - Chambers Asia-Pacific 2018
- He has *"excellent technical skills and is very impressive,"* according to sources. - Chambers Asia-Pacific 2017
- Recommended for his *"excellent knowledge of the law"* - Chambers Asia-Pacific 2016
- *"He's very good at what he does and gives us good and sound advice,"* said a client. - Chambers Asia-Pacific 2015

Expert Guides

Restructuring and Insolvency 2021 – Leading Practitioner for 4 consecutive years

International Law Office: Client Choice Awards

Recognised for Litigation for Malaysia jurisdiction in 2018

Individual Winner for Litigation for Malaysia jurisdiction in 2014

The Legal 500 Asia-Pacific

Dispute Resolution 2023 – Other Key Lawyer (2022 and 2023); Recommended Lawyer (2010, 2014, 2015, 2019 and 2020)

TMT 2020 – Recommended Lawyer

Projects and Energy 2019 – Recommended Lawyer

- ... and Rabindra Nathan are noted for their 'legally *sound and strategic advice*'. - The Legal 500 Asia-Pacific 2015

Who's Who Legal

Commercial Litigation 2023 – National Leader (Southeast Asia) for 3 consecutive years

Restructuring and Insolvency 2023 – National Leader (Southeast Asia)

Arbitration 2023 – National Leader (Southeast Asia)

Commercial Litigation 2021 – Global Leader for 3 consecutive years; Expert in 2018

Restructuring and Insolvency 2013, 2017 and 2018 – Expert

APPOINTMENTS/MEMBERSHIPS

- One of the founding members and a Council Member, Insolvency Practitioners' Association of Malaysia
- Member, Malaysian Bar
- Member, International Bar Association (IBA)
- Member, Inter-Pacific Bar Association (IPBA)
- Member, American Society of International Law (ASIL)
- Member, British Institute of International and Comparative Law (BIICL)
- Member, Chartered Institute of Arbitrators
- Member, International Insolvency Institute (III)

PUBLICATIONS

- Co-authored the Malaysian Chapters on Law & Practice and Trends & Developments in Chambers Global Practice Guide: Litigation (2022)
- Co-authored the Chapter on Law & Practice (Malaysia) in Chambers Global Practice Guide on International Arbitration (2019 – 2022)
- The Restructuring Review - Malaysia: Overview - Law Business Research, 7th Edition (2014)
- International Insolvency - Jurisdictional Comparisons - The European Lawyer Reference Series (2015 and 2016)
- Getting the Deal Through: Dispute Resolution - Law Business Research (2015)
- Practical Law's Arbitration Global Guide – Malaysia Chapter, Thomson Reuters, 10th edition (2016)
- The Asia-Pacific Restructuring Review - Malaysia: Overview - Law Business Research (2017 - 2020)
- Corporate Rescue Mechanisms in Malaysia, INSOL World (2017)
- Does Judicial Management in Malaysia Sufficiently Embody a Rescue Culture? (2020) 32 Singapore Academy of Law Journal 518
- Rabindra Nathan (ed.), Law and Practice of Corporate Insolvency Law in Malaysia (Sweet & Maxwell) (2019) (*General Editor, and author specifically of Chapters 1, 10 and 11*)