MIArb NEWSLETTER

The Newsletter of The Malaysian Institute of Arbitrators

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# Note From President

*Dear Members,*

Wishing all of you a very happy, healthy and successful new year 2021. I hope that you are all keeping safe and coping well in these challenging times.

The year that passed was a most unusual year, to say the least; 2020 will no doubt occupy an important place in the history of the world. The World Bank in its 2020 Year in Review described it *"a truly unprecedented crisis"* and commented that *"COVID-19 has triggered a global crisis like no other – a global health crisis that, in addition to an enormous human toll, is leading to the deepest global recession since the Second World War."*

Despite the bleak year that we had, the Council is extremely grateful for the continued support of our Members. I am pleased to report that in spite of the many challenges faced, the Council has managed to achieve many of its milestones in relation to its main aims and objectives, essentially, to grow and develop the Institute both inwardly and outwardly.

This issue of the Institute's Newsletter covers the events that the Institute hosted from July 2019 to December 2020. In the 2nd half of year 2019, the Institute had maintained our long-term collaboration with PAM, RISM and IEM where we had continued to hold the Joint Courses on Alternative Dispute Resolution for Practitioners. We also collaborated with SCL and the SIAC to organise a half-day event on *"Latest Arbitration Trends & The Role of Women in Arbitration"* which was well received by members and non-members alike. We rounded off 2019 with our 6th Annual Law Review, where we had two dynamic panels discussing current topics in the sessions *"Mediation – Beyond the Horizon, or at our Doorstep?" and "s. 42 Arbitration Act 2005: Back in Black?",* followed by our Year End Party which was graced by members of the Judiciary, friends and partners from the other professional bodies, as well as former Presidents, Office Bearers and Council Members of the Institute. In early 2020, we fortunately managed to host the 4th instalment of *"The Jonathan Yoon MIArb Debate Series"* in person where four brilliant speakers put up an interesting and thought-provoking debate on the motion *"This House Believes that Party Autonomy Must Prevail to Preserve the Sanctity of Arbitration".*

The global movement restrictions imposed for the most part of 2020 did not hamper the Council's enthusiasm in pursuing its plans and programmes. The Institute jumped on the online webinar bandwagon and took our talks and events online. We hosted successful and well-attended webinar sessions, and this has contributed to our outward growth. The Council revamped the Institute's LinkedIn page and created an Instagram account to have more presence on social media (in addition to our Facebook page) to promote and elevate the Institute's presence, objectives and initiatives to a wider audience, both locally and internationally. We conducted virtual webinars (which were hosted on the Institute's Zoom platform and broadcasted on the Institute's Facebook page) with international panels speaking on various ADR trending topics, *"COVID-19 Webinar: The Institutions Strike Back", "Mediation: The New Norm?", "Adjudication Decisions: Weathering the Challenges" and "How to Conduct an Effective Virtual Arbitration Hearing: 10 Tips from the Battlefield",* which received overwhelming response from our members and other ADR enthusiasts.

I hope that you will also find the articles and commentaries in the Newsletter useful in keeping abreast with the latest developments in the evolving ADR landscape in Malaysia.

I am pleased to report that the financial health of the Institute remains robust and sustainable in spite of the pandemic, due in part to the spurt in the Institute's membership growth in the past year and the exceptionally large intake of students who took up the Institute's Diploma in International Arbitration course conducted together with Brickfields Asia College ("BAC") in 2020. For this, I wish to acknowledge and thank my fellow Council Members for their efforts and hard work.

Looking forward to 2021, the Council aims to raise and further enhance the status and value of the Institute's membership. The Council will carry on its ongoing efforts to champion the use of ADR and raise the level and quality of the debate and discussion on ADR in Malaysia. The Council will also focus on the standing and profile of the Institute within Malaysia (through partnerships and regular collaborative efforts with the Malaysian Judiciary, AIAC, CIDB, industry bodies such as MBAM and professional bodies such as IEM, PAM and RISM, as well as institutions of higher learning such as UM and BAC) and internationally (through regional collaborations such as the Regional Arbitral Institutes Forum, in which the Institute plays a key and leading role). The Council welcomes AIAC's new Director and Deputy Director and we look forward to our continuous cooperation in working together to promote arbitration and other modes of ADR in the years to come.

In closing, I would like to especially thank my fellow Council Members and Puan Raja Junaidah from the Secretariat for their dedication and commitment in making 2019/2020 a success for the Institute, and to all our Members for their continued support.

With best wishes,

**Sharon Chong Tze Ying**
President
(2019 – 2021)

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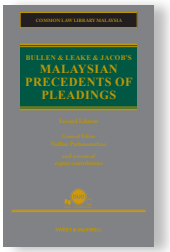


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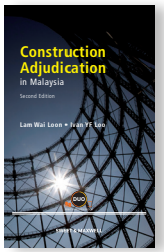


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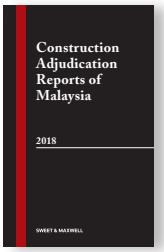


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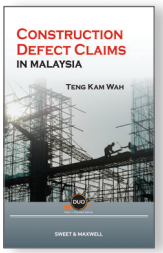


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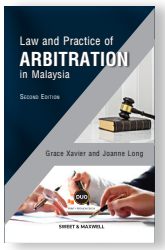


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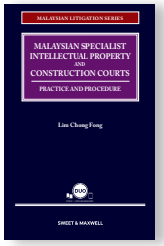


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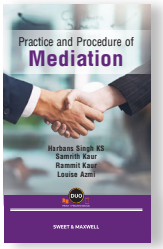


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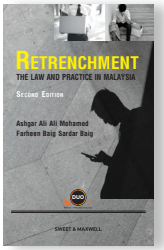


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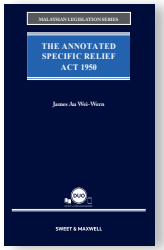


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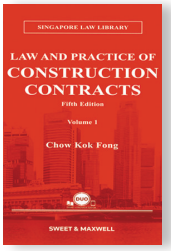


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# Past Events in 2019-2020

**31 July 2019 to 1 August 2019, Wisma IEM**
Alternative Dispute Resolution for Practitioners
Joint Courses with PAM, RISM and IEM

**August 2019 & August 2020, Brickfields Asia College**
Professional Diploma in International Arbitration
Joint Collaboration with Brickfields Asia College

**16 October 2019, The Signature Hotel & Serviced Suites Kuala Lumpur**
Latest Arbitration Trends & The Role of Women in Arbitration
Collaboration with the SCL and the SIAC

**28 November 2019, AIAC**
6th Annual Law Review and Year End Party

**6 December 2019, Rizqun International Hotel, Negara Brunei Darussalam**
Regional Arbitral Institutes Forum (RAIF) Conference

**20 February 2020, AIAC**
The Jonathan Yoon MIArb Debate Series: "This House Believes that Party Autonomy Must Prevail to Preserve the Sanctity of Arbitration"

**12 June 2020**
Webinar Series: "Covid-19 Webinar: The Institutions Strike Back"

**24 June 2020**
Webinar Series: "Mediation: The New Norm?"

**10 July 2020**
Webinar Series: "Adjudication Decisions: Weathering the Challenges"

**21 July 2020**
Webinar Series: "How to Conduct an Effective Virtual Arbitration Hearing: 10 Tips from the Battlefield"

**21 July 2020, AIAC**
The MIArb 28th Annual General Meeting

# 2019-2020 MIArb Council

# Nautical Supreme:
# Non-parties Seeking to Injunct an Arbitration No Longer at Sea

*by* **Jeremy Ooi Jian Rong**
Senior Associate
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## Introduction

1. Though perhaps less common than other forms of injunctive relief, the anti-arbitration injunction is no stranger to Malaysian jurisprudence. This injunction, through which the court's powers are invoked to restrain a party from prosecuting or continuing arbitration proceedings, has long existed in common law[1] and has been recognised as a valid legal remedy in Malaysia[2].

2. Generally, the power of the Malaysian courts to grant an anti-arbitration injunction may be derived from the court's inherent jurisdiction to prevent injustice or, alternatively, from the High Court's powers under Paragraph 11 of the Schedule to the Courts of Judicature Act 1964 to prevent multiplicity of proceedings[3].

3. The repealed Arbitration Act 1952 had also empowered the courts to, inter alia, injunct arbitration proceedings "on the ground that the arbitrator so named or designated is not or may not be impartial"[4]. Whilst no such express power is provided under the current Arbitration Act 2005, the court's power to grant an anti-arbitration injunction nevertheless subsists since the Arbitration Act 2005, as a Model Law-based legislation, does not govern the court's inherent jurisdiction to stay arbitral proceedings[5].

4. The anti-arbitration injunction is a discretionary remedy that is to be exercised with caution[6]. For instance, the court will be mindful of whether or not an arbitral tribunal has already been constituted, such that in case of a jurisdictional challenge, the arbitral tribunal would be in a position to determine its own competence[7] and thus, an anti-arbitration injunction based on such challenge may not be warranted[8].

*1 The North London Railway Co v The Great Northern Railway Co [1883] 11 QBD 30.*

*2 Bina Jati Sdn Bhd v Sum Projects (Brothers) Sdn Bhd [2002] 1 CLJ 433.*

*3 Ibid.*

*4 Section 25(1) of the Arbitration Act 1952.*

*5 Far East Holdings Bhd v Majlis Ugama Islam dan Adat Resam Melayu Pahang [2018] 1 MLJ 1 FC at [114].*

*6 Innotec Asia Pacific Sdn Bhd v Innotec Gmbh [2007] 8 CLJ 304 HC.*

*7 Under Section 18 of the Arbitration Act 2005, the arbitral tribunal may rule on its own jurisdiction.*

*8 See: TNB Fuel Services Sdn Bhd v China National Coal Group Corp [2013] 4 MLJ 857.*

# The anti-arbitration injunction is a discretionary remedy that is to be exercised with caution.

5. However, an anti-arbitration injunction application can be complicated where multifarious transactions and parties are involved. Occasionally, the court is tasked to resolve the inevitable conflict between, on the one hand, parties' agreement to settle their disputes by arbitration and, on the other, the interests of non-parties who may be affected by such arbitration. How does the court untie this Gordian knot? This is explored in *Jaya Sundhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors*[9] *("Nautical Supreme"),* which involves a scenario where a non-party to an arbitration seeks to injunct the arbitration in favour of parallel court proceedings, in which the plaintiff is a non-party.

## Nautical Supreme: Background & High Court Stage

6. *Nautical Supreme* concerns an appeal against an interim injunction obtained by the appellant (in the appeal before the Federal Court) in a civil suit before the High Court **("Suit")** to restrain the 1st respondent from continuing with arbitration proceedings commenced by the 1st respondent against the 2nd and 3rd respondents **("Arbitration").**

7. The subject matter of the underlying dispute between the parties is the shares in the 3rd respondent, a joint venture company incorporated in relation to a project for the provision of harbour tugs services. Initially, the 1st and 2nd respondents respectively owned 20% and 80% of the shares in the 3rd respondent. Pursuant to a shareholders agreement entered between all three respondents, transfer of any part of the shareholding in the 3rd respondent to a third party was prohibited.

8. In December 2015, 10% of the 2nd respondent's shares in the 3rd respondent were transferred to the appellant at his request. The appellant's case is that there was a collateral understanding between himself and the 1st and 2nd respondents for the appellant to participate as an investor in the 3rd respondent. The appellant also asserted that under this collateral understanding, he would become the beneficial owner of part of the 2nd respondent's shares in the 3rd respondent, and the 1st respondent had agreed to the appellant's participation in the 3rd respondent's equity.

9. The 1st respondent denied the existence of any collateral understanding and viewed the transfer of shares as a breach of the shareholders agreement. Thus, in July 2016, the 1st respondent issued a notice of breach against the 2nd and 3rd respondent. This was followed by the 1st respondent commencing the Arbitration against the 2nd and 3rd respondents through the Kuala Lumpur Regional Centre for Arbitration (now the Asian International Arbitration Centre) in October 2016 pursuant to an arbitration agreement in the shareholders agreement in respect of the purported breach.

10. The 1st respondent also commenced three other related civil suits, which were, briefly, two injunction applications and a claim against the appellant for damages for purportedly inducing the 2nd and 3rd respondent to breach the shareholders agreement.

*9 [2019] 5 MLJ 1.*

11. In May 2017, the appellant filed the Suit for, amongst others, a declaration that the appellant is the owner of the transferred shares. In the Suit, the appellant applied for an interim anti-arbitration injunction in respect of the Arbitration pending the disposal of the Suit **("Application").** In the meantime, the 1st respondent applied to stay the Suit in favour of the Arbitration pursuant to section 10 of the Arbitration Act 2005. It is worth noting that by the time the injunction was heard in September 2017, the Arbitration had reached an advanced stage with a hearing scheduled in November 2017.

12. In opposing the Application, the 1st respondent argued, amongst others, that the court has limited powers to intervene under the Arbitration Act 2005, in particular given its mandatory duty pursuant to section 10 thereunder to stay court proceedings where the dispute is the subject of an arbitration agreement. Further, the 1st respondent referred the court to the English case of *J Jarvis & Sons Limited v Blue Circle Dartford Estates Limited*[10] *("J Jarvis"),* wherein the English High Court had set out the test governing anti-arbitration injunction in light of the Arbitration Act 1996. This test was summarised by the Court of Appeal in the ensuing appeal of the Suit[11] in paragraph 47 of its judgment as follows:

    *"Thus, according to the Jarvis test abovementioned, an injunction to restrain arbitration proceedings must be exercised sparingly, and with due regard to the principles of the English Arbitration Act, 1996, (similar to our act of 2005) and if the two conditions are satisfied: where, 'the injunction does not cause injustice to the claimant in the arbitration, and continuance of the arbitration would be oppressive, vexatious, unconscionable or an abuse of process.' In addition, delay in the application for an injunction is a material factor..."*

13. In this regard, the 1st respondent argued, inter alia, that the appellant had, contrary to the principles in *J Jarvis,* delayed in filing the Application.

14. The High Court allowed the Application[12] and dismissed the 1st respondent's application to stay the Suit in favour of the Arbitration. The High Court held that the provisions of the Arbitration Act 2005 had no bearing to the application since the appellant, as the applicant, was not subjected to the arbitration agreement and, thus, could not be made a party to the Arbitration. On this basis, the High Court applied the general test for an interlocutory injunction set out by the Court of Appeal in *Keet Gerald Francis v Mohd Noor @ Harun Abdullah*[13] *("Keet Gerald Francis").* Amongst other things, the High Court held that the balance of convenience lies in favour of allowing the Suit to proceed over the Arbitration as the Suit, unlike the

*10 [2007] EWHC 1262 (TCC).*

*11 [2019] 3 MLJ 166. This appeal is discussed at paragraphs 16 to 23 below.*

*12 [2018] MLJU 364.*

*13 [1995] 1 CLJ 293 CA.*

Arbitration, featured all parties involved in the shareholding dispute (including the appellant himself). In arriving at this conclusion, the High Court had also considered the risk of conflicting decisions from the Suit and the Arbitration since both proceedings involved the same subject matter **("issue of multiplicity of proceedings").** Finally, the High Court accepted the Appellant's explanation for the delay, in that he had "withheld any action to avoid aggravating the situation"[14].

15. Subsequently, the 1st respondent appealed against the injunction.

## The Court of Appeal's Decision

16. At the first appellate stage, the Court of Appeal allowed the appeal against the injunction[15].

17. Firstly, the Court of Appeal held that whilst the Arbitration Act 2005 does not oust the jurisdiction of the court to grant an anti-arbitration injunction, this jurisdiction is to be exercised more sparingly under the 2005 Act than during the regime of the 1952 Act. The Court of Appeal further opined that although section 10 of the Arbitration Act 2005 does not apply to the appellant, a non-party, the court should nevertheless have "due regard to the 2005 Act and take cognizance of pending arbitration proceedings".

18. Secondly, the Court of Appeal held that it is the test in *J Jarvis,* and not *Keet Gerald Francis,* that is applicable to an anti-arbitration injunction application. The Court of Appeal summarised the test in *J Jarvis* in paragraph 47 of its judgment as follows:

    *"Thus, according to the Jarvis test abovementioned, an injunction to restrain arbitration proceedings must be exercised sparingly, and with due regard to the principles of the English Arbitration Act, 1996, (similar to our act of 2005) and if the two conditions are satisfied: where, 'the injunction does not cause injustice to the claimant in the arbitration, and continuance of the arbitration would be oppressive, vexatious, unconscionable or an abuse of process.' In addition, delay in the application for an injunction is a material factor..."*

19. The Court of Appeal reasoned that the test in *Keet Gerald Francis,* being a general test for the grant of interim injunctions, "has no application on the facts and circumstances of this case which is the subject matter of arbitration proceedings". Instead, the Court of Appeal held that the Application was subject to the provisions of the Arbitration Act 2005, in particular sections 10 and 8,

*14 The High Court further noted at [67] that the Appellant "would need some time to arrange and make a reasoned decision on the approach that he would need to take".*

*15 [2019] 3 MLJ 166.*

and accordingly, the correct test was that in *J Jarvis*. Section 8 of the Arbitration Act 2005 provides that: *"No court shall intervene in matters governed by this Act, except where so provided in this Act."*

20. Whilst the Court of Appeal noted that the *J Jarvis* test had a higher threshold to satisfy than the *Keet Gerald Francis* test, the Court of Appeal was nevertheless of the view that the *J Jarvis* test ought to equally apply to an anti-arbitration injunction application where the applicant was a non-party to the arbitration, lest it be easier for a non-party to an arbitration to obtain an anti-arbitration injunction.

21. In applying the *J Jarvis* test, the Court of Appeal held that an anti-arbitration injunction was not merited as on the facts of the case, the Court of Appeal did not find that the Arbitration would cause injustice to the appellant or that the continuance of the Arbitration would be *"oppressive, vexatious, unconscionable or an abuse of process"*. The Court of Appeal also found that the appellant was guilty of inordinate delay, having made the Application 10 months after he was aware of the Arbitration.

22. Thirdly, the Court of Appeal held that under the Arbitration Act 2005, the issue of multiplicity of proceedings or concurrent proceedings was no longer a material ground to restrain arbitration proceedings.

23. Following the Court of Appeal's reversal of the High Court's decision, the appellant appealed to the Federal Court.

## The Federal Court's Decision

24. The Federal Court granted leave to appeal against the Court of Appeal's decision upon the following questions of law:

    *"(a) whether the requirements of s 10 of the Arbitration Act 2005 must be met by a party litigant seeking an injunction to restrain the prosecution of an arbitration to which he is not a party but which would affect his proprietary rights; and*

    *(b) whether s 8 of the Arbitration Act 2005 applies to a party litigant who is not a party to an arbitration agreement and/or arbitration proceedings."*

25. In respect of the first question, the Federal Court held that section 10 of the Arbitration Act 2005 did not apply to the Application. The Federal Court highlighted the fact that the appellant, whose proprietary rights would be affected by the Arbitration, was not a party to the Arbitration. At paragraph 38 of the Federal Court's judgment, Idrus Harun FCJ (now Attorney General of Malaysia) held:

    *"…In our judgment, sub-s 10 (1) of Act 64 is of no application and does not apply to the applicant's claim in the instant suit as it is plain that the matter in respect of which the instant action is brought is not the subject of an arbitration agreement between the parties to this action. That being the case, sub-s 10(3) of Act 646 is also of no application. The conclusion which emerges is that since sub-ss 10 (1) and 10 (3) of Act 646 are of no application to this action, to contend otherwise is an overreach and leans away from the clear legislative intent of the provisions of the law in Act 646." [emphasis added]*

26. It is worth noting that the Federal Court reached this conclusion despite having emphasised in its judgment earlier that the Arbitration Act 2005 "marks the shift to a position of respect for party autonomy and a non-interventionist policy of the court."

27. In respect of the second question, the Federal Court answered the same in the negative, holding that section 8 of the Arbitration Act 2005, and accordingly, the Court's powers under the Act to intervene in the Arbitration, did not apply to the Appellant. At paragraph 42, Idrus Harun FCJ held:

    *"To hold, as did the Court of Appeal, that s 8 of Act 646 applies to the appellant's claim and the injunction application would result in an absurdity. We take that view because it is clear to us that the Court of Appeal did not seem to realise that none of the above prescribed powers under Act 646 are of*

*application or utility to the appellant for the simple reason that there is neither arbitration agreement nor proceedings in relation to the claim in court. What needs to be emphasised for the purpose of this case is that the wide jurisdiction and powers conferred upon court by the above mentioned provisions in court proceedings relating to arbitration would be severely curtailed, constricted or fettered in instances where there is no arbitration agreement and the claim before the court is not before arbitration as is the appellant's case herein. Absurdity will thus inevitably ensue in the event that s 8 of Act 646 is held to be applicable to a non-party to any arbitration proceedings or arbitration agreement such as the applicant. Section 8 therefore does not apply to the appellant's claim in the instant suit and the injunction application."*

28. Further, the Federal Court reversed the Court of Appeal's decision on the applicable test to the Application.

29. The Federal Court held that the Court of Appeal's basis for imposing a higher threshold by the *J Jarvis* test was flawed since the Federal Court held that the Arbitration Act 2005 does not apply to the Application.

30. The Federal Court again placed emphasis on the fact that the appellant was not a party to the arbitration agreement concerned. The Federal Court explained that the rationale for imposing a higher threshold via *J Jarvis* was that parties to an arbitration agreement should be held to their bargain. In this regard, the Federal Court pointed out that the appellant could not *"be held to the so-called bargain since he has no agreement to arbitrate with the first and second respondents in respect of the appellant's claim in the instant suit".*

31. Further, the Federal Court drew an analogy to exclusive jurisdiction clauses, where both parties are subject to an exclusive jurisdiction clause, and found that stronger reasons are required to displace the same. The Federal Court noted that where there is no such jurisdiction clause, parties are at liberty to pursue claims in any convenient forum where jurisdiction can be founded. Applying this analogy to the Application, the Court remarked that it cannot be denied that the appellant has *"found jurisdiction"* in respect of the Suit given that the Suit has reached the trial stage, and this is fortified by the fact that the appellant was neither a party to the shareholders agreement nor the Arbitration.

32. Accordingly, the Federal Court upheld the High Court's findings and the application of the *Keet Gerald Francis* test in finding that there were serious issues to be tried and that the balance of convenience lied in favour of granting the interim anti-arbitration injunction. The High Court's anti-arbitration injunction was accordingly restored.

33. The Federal Court also suggested that even if the *J Jarvis* test were applicable, an anti-arbitration injunction would nevertheless have been granted. The Federal Court stated that *"it would be oppressive, vexatious and unconscionable for the arbitration proceedings to continue because the appellant is not a party thereto while his proprietary rights are sought to be impinged".* On the issue of delay, the Federal Court upheld the High Court's findings that there was no inordinate delay on the appellant's part given the appellant's explanation of not wishing to *"escalate matters as there were without prejudice negotiations to resolve the impasse…".*

34. On the issue of multiplicity of proceedings, the Federal Court held that the courts may decline to give effect to an arbitration agreement where interest of third parties are involved or where there is a risk of parallel proceedings and inconsistent decisions arising out of the conduct of an arbitration. The Federal Court further held that once a duplication between two proceedings is identified, the court has to consider between, firstly the desire of the courts to hold commercial parties to their bargain and secondly, the desire of the court to avoid disruption and multiplicity or duplicity of litigation, in particular to avoid parallel proceedings and the risk of inconsistent findings, as well as to avoid the causing of inconvenience to third parties.

**Nautical Supreme reaffirms the anti-arbitration injunction as an effective remedy for non-parties to an arbitration or arbitration agreement (hereinafter referred to as a "non-party applicant") whose litigation may be affected by such arbitration.**

35. In this regard, the Federal Court held that the primary consideration in the Application was what would be the fairest approach to all parties. Having considered factors such as the similarities between the Suit and the Arbitration, the impact of the Arbitration on the Appellant's claim over the shares, the fact that the Suit would enable all material parties to be included etc., the Federal Court found that there was a *"very strong and significant degree of credence"* to the appellant's argument that the Suit should take precedence over the Arbitration.

36. Finally, the Federal Court found that that the Application was in essence the appellant's bid to preserve his claim over the shares and was thus not a tactical manoeuvre.

## Conclusion

37. *Nautical Supreme* reaffirms the anti-arbitration injunction as an effective remedy for non-parties to an arbitration or arbitration agreement (hereinafter referred to as a **"non-party applicant")** whose litigation may be affected by such arbitration. A "non-party applicant" who seeks to injunct an arbitration pending the conclusion of litigation proceedings would only need to satisfy the lower threshold test under *Keet Gerald Francis* [as opposed to *J Jarvis* (see above)].

38. On a separate but significant note, it is ventured that *Nautical Supreme* leaves the question of the applicable test for an interim anti-arbitration injunction application where the applicant is a party to the arbitration and/or arbitration agreement (hereinafter referred to as a "party applicant") unanswered since it is arguable that the Federal Court stopped short of expressly affirming the J Jarvis test adopted by the Court of Appeal.

39. Post-*Nautical Supreme,* the *J Jarvis* test has been applied by the High Court in the case of *FIC v Synergy Promenade Sdn*

*Bhd*[16] *("Synergy Promenade"),* where a "party applicant" sought a permanent anti-arbitration injunction in favour of parallel court proceedings. In deciding to apply the *J Jarvis* test, the High Court adopted the rationale of the Federal Court that "a higher test or threshold would be a logical and sensible requirement" vis-à-vis the said applicant. Ultimately, the Court refused to grant the anti-arbitration injunction, having found that the continuation of arbitration proceedings "would not be vexatious, oppressive or unconscionable". Interestingly, an interim anti-arbitration injunction against the very same arbitral proceedings referred to in *Synergy Promenade* was subsequent granted in another related case, i.e. *FELDA v Tan Sri Haji Mohd. Isa Bin Dato' Haji Abdul Samad*[17] *("Felda").* In that case, the High Court held that the applicant, this time a non-party, had satisfied the applicable *Keet Gerald Francis* test. It is worth noting that in applying the test, the High Court took into account that the interests of third parties are involved and there is a risk of duplicity and inconsistent decisions if both court and arbitration proceedings were to proceed concurrently. Hence, subject to further judicial clarification by the apex court, it appears that the dichotomy of the J Jarvis test for "party applicants" and the Keet Gerald Francis test for "non-party applicants" represents the current position in relation to interim anti-arbitration injunction applications.

40. Further, it is opined that further judicial clarification by the apex court is required as to the extent to which the provisions of the Arbitration Act 2005, in particular section 10, would affect the court's consideration of an anti-arbitration injunction application by a "party applicant".

41. At the outset, section 10 of the Arbitration Act 2005, being a "clear and unarguable peremptory" statutory provision that requires the Court to grant a mandatory stay of court proceedings in favour of arbitration[18], would appear to curtail the Court's discretionary power to grant an anti-arbitration injunction considerably. Be that as it may, as we have seen in *Nautical Supreme,* the Courts have recently circumscribed the mandatory nature of section 10 of the Arbitration Act 2005, particularly where the interests of non-parties to the arbitration may be affected. In *Protasco v Tey Por Yee*[19] *("Protasco"),* the Court of Appeal held that arbitral proceedings may be temporarily stayed pending the conclusion of parallel court proceedings involving non-parties in the interests of justice. Subsequently, the Federal Court in *Nautical Supreme* referred to *Prostaco* in support of its finding that section 10 of the Arbitration Act 2005 was not applicable to the instant anti-arbitration injunction application since non-parties were involved[20]. To complete this triptych, the High Court in the aforementioned *Felda* case, having granted the interim arbitration injunction sought by a *"non-party applicant",* dismissed a section 10 application by a *"party applicant"* in the same suit[21], echoing the approach in *Nautical Supreme* and Protasco of having due regard to the interests of non-parties. It is, however, reiterated that in both *Nautical Supreme* and *Felda,* the applicant seeking the anti-arbitration injunction was a *"non-party applicant"* and was therefore not bound by section 10 of the Arbitration Act 2005 in any case . Thus, when, if at all, the Court would eschew section 10 of the Arbitration Act 2005 when considering an anti-arbitration injunction application by a *"party-applicant"* remains uncharted waters. ■

*16 [2020] MLJU 1465.*

*17 [2020] MLJU 1587.*

*18 See: Nautical Supreme [2019] 5 MLJ 1 at [28].*

*19 [2018] 5 CLJ 299. In Protasco, the Court of Appeal decided that the arbitration proceedings ought to be temporarily stayed pending the conclusion of parallel court proceedings involving third parties, notwithstanding that a stay under section 10 of the Arbitration Act 2005 had already been ordered. It remains to be seen if the principles and reasoning in this case would be imported into anti-arbitration injunction cases.*

*20 See: Nautical Supreme [2019] 5 MLJ 1 at [72] to [73].*

*21 [2020] MLJU 1586.*

*22 As held by the Federal Court in Nautical Supreme (See: Paragraph 25 of this Article above).*

# Liquidated Damages: Beyond Termination?

*by* **Nanneri Nanggai Vengadasalam**
Associate
Kevin Prakash

A new chapter began in Malaysia on 21st November 2018, when the Federal Court in **Cubic Electronics Sdn Bhd (in liquidation) v Mars Telecommunication Sdn Bhd[1] ("Cubic"),** gave a fresh interpretation of Section 75 of the Contracts Act 1950.

In doing so, the Court broke away from the long-held need to prove actual loss or damage or reasonable compensation by an innocent party seeking to enforce a liquidated damages clause.[2] The Federal Court held that *"legitimate interest"* and *"proportionality"* are notions of reasonableness that fall well within the ambit of Section 75 of the Contracts Act 1950.

The Malaysian Federal Court's decision in this regard brought a harmonised understanding on the operation of liquidated damages clauses with the position adopted in the UK.

## Development in the UK: Triple Point Technology Inc v PTT Public Co Ltd

Meanwhile in the UK, a question on the applicability of a liquidated damages clause when works have yet to be completed, was considered in 2019 by the Court of Appeal, which delivered an eight-part decision on a claim for payment and on the application of a liquidated damages clause in the case of **Triple Point Technology Inc v PTT Public Co Ltd[3] ("Triple Point").**

The decision which was delivered on 5th March 2019 has yet to make its mark in Malaysia. However, this decision is still worth being considered given the commercial environment and the emerging shape of disputes post COVID-19 movement restrictions in Malaysia.

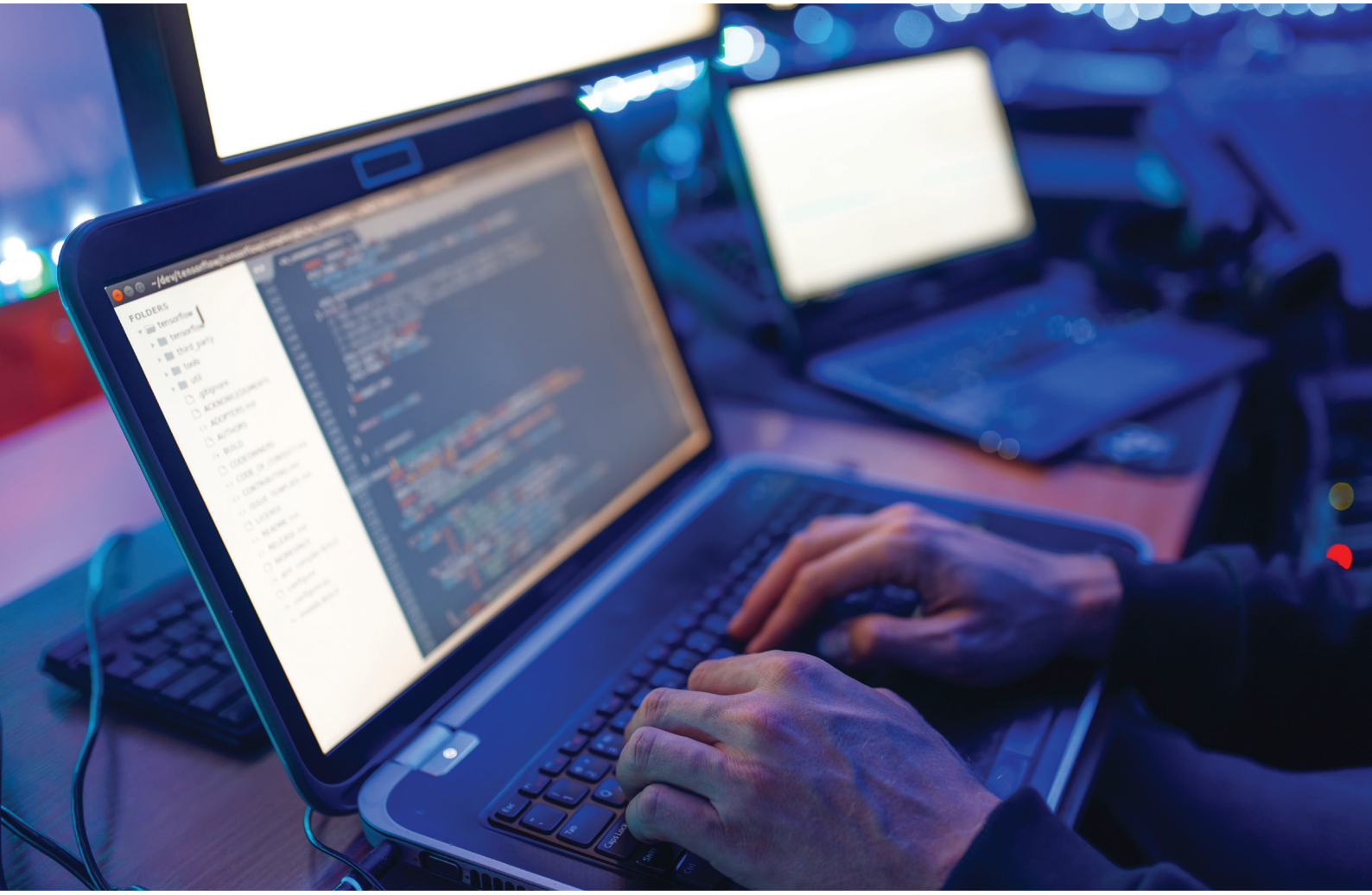
## Brief Facts:

Triple Point Technology Inc **("TPT"),** the contractor, is a developer of software, used in commodities trading. PTT Public Co Ltd **("PTT"),** the employer, is a company that undertakes trading activities in Thailand. A contract signed in February 2013 **("Contract")** was entered into between the parties in respect of the replacement of an existing system (Phase 1) and the development of a new trading risk management and vessel chartering software (Phase 2) (collectively **"the Works").**

TPT delayed in completing stage 1 and 2 of the Works in respect of Phase 1 by a total of 149 days. Nevertheless, upon TPT's completion of the works in respect of stages 1 and 2 of Phase 1, PTT made payment to TPT for the same. TPT submitted further claims based on calendar dates on order forms attached to the Contract for Works in the Contract that have yet to be completed. PTT refused to make payment on the basis that TPT had yet to achieve the milestones for payment stipulated under the Contract.

TPT maintained that payment was due and was unwilling to continue with the works without receiving further payment. PTT in turn maintained

*1 [2019] CLJ 723.*
*2 Para 65.*
*3 [2019] EWCA Civ 230.*



that TPT had wrongfully suspended the Works and terminated the Contract. TPT began an action against PTT for the outstanding payment and PTT counterclaimed for liquidated damages for delay and damages upon termination.

The High Court dismissed the claims by TPT and awarded the damages and liquidated damages sought by PTT. The High Court found, amongst others, that the delay in completion of the Works was due to TPT's breach of its contractual duty to exercise due skill and care and that TPT was not entitled to suspend the Works. The liquidated damages awarded to PTT was in respect of delays to the whole of the Works subject to the cap stipulated in the Contract.

Aggrieved, TPT appealed.

## The Decision of the Court of Appeal

Article 5 of the Contract provided for liquidated damages to be paid by TPT to PTT for *"undelivered work"*. At the outset, the Court of Appeal accepted that the contractual formula at Article 5.3 of the Contract, which specified a rate of 0.1% of undelivered work per day, was a genuine pre-estimate of the losses likely to flow from the delay. Although the term "penalty" was used in Article 5.3, the Court of Appeal held that it was not a penalty clause and that it was a lawful provision for liquidated damages. This too is the current position in Malaysia.

However, the pertinent issue was the applicability of Article 5.3 of the Contract in light of the delays to the Works in respect of stages 1 and 2 of Phase 1 and non-completion of the remaining Works under the Contract as well as the termination of the Contract.

In assessing PTT's entitlement to liquidated damages, the Court of Appeal considered the application of a liquidated damages clause when a contract has been terminated or abandoned. The natural flow of events when a contract is terminated and works are incomplete, is to employ a new contractor to complete the remaining works. The Court of Appeal in this regard identified three possible solutions from various English authorities as follows:

(1) the liquidated damages clause will not apply;

(2) the liquidated damages clause applies only up to the termination of the first contract; and

(3) the liquidated damages clause continues to apply until the second contractor achieves completion.

The Court of Appeal in considering the three possible solutions above, held that much will turn on the precise wording of the liquidated damages clause in question.

In terms of scenario (1), the Court of Appeal referred to the reasoning in **British Glanztoff Manufacturing v General Accident Fire and Life Assurance[4],** where the House of Lords held that liquidated damages will only apply when the contractor has actually completed the works. In respect of scenario (2), the Court of Appeal admitted that there was difficulty in this approach as the liquidated damages clause may have not made provision for instances where the contract is terminated and that it may be artificial to say that an employer's loss stops being the rate specified in the contract upon termination. In respect of scenario (3), the Court of Appeal found that in such cases it creates a situation where the employer could hold the previous contractor at ransom until completion of the works by the new contractor. The uncertainty in scenario (3) is clearly undesirable.

The Court of Appeal in concluding its analysis on PTT's entitlement to liquidated damages held that PTT was only entitled to the delay of up to 149 days in completing stages 1 and 2 of Phase 1. The Court of Appeal further held that PTT was not entitled to recover damages for delays in completing the remaining Works as Triple Point did not complete the same. PTT's remedy for the remaining Works would be to seek damages to be assessed on ordinary principles with reliance on the Contract.

## The Takeaway

The decision in Triple Point provides a welcome clarity as to entitlement to liquidated damages where a contract is terminated. This position is equally applicable to all contracts with scheduled performance such as a construction contract.

This decision emphasises that the construction of a liquidated damages clause remains the chief consideration in the Courts' approach in interpreting the parties' intention. Importantly, this was also propounded in Cubic where the Federal Court held that *"it bears repeating that the court should be slow to refuse to give effect to a damages clause for contracts which are the result of thorough negotiations made at arm's length between parties who have been properly advised[5]."*

As at the time of writing, the Malaysian economic and commercial activities are briskly pacing upwards and is seeing recovery from a complete halt from 18 March 2020 to 9 June 2020.

The almost three-month non-activity will undoubtedly attract issues of delay in performance, employers seeking to recoup losses through means of liquidated damages provided for within the contract and even termination.

While there is no longer a need for the innocent party to prove actual losses to be entitled to liquidated damages, such entitlement is not unfettered. A liquidated damages clause is not carte blanche to a claim for delay related damages. Cubic, will see some of its edges blunt in time. ■

*4 1912 SC 591*

*5 Paragraph 72 at supra (1).*

## PAST EVENTS

# Alternative Dispute Resolution for Practitioners

### Joint Courses with PAM, RISM and IEM

**31 July 2019 to 1 August 2019, Wisma IEM**

An annual event in collaboration with Pertubuhan Akitek Malaysia (PAM), Royal Institute of Surveyors Malaysia (RISM) and the Institute of Engineers Malaysia (IEM), where the speakers and facilitators are themselves construction law and/or alternative dispute resolution practitioners.

The Joint Courses covered "Common Issues on Construction Contract Management: Avoiding Disputes", "Termination and Determination in construction contracts – difference and implications", "Arbitration" and "Adjudication".

The MIArb managed the "Arbitration" session on the second day of the intensive course where Mr. Kevin Prakash (now Messrs. Kevin Prakash) and Ms. Hor Shirley (Deputy President of the MIArb) shared their knowledge and experience.

# Professional Diploma in International Arbitration

### Joint Collaboration with Brickfields Asia College

**August 2019 & August 2020, Brickfields Asia College**

This post graduate professional course in collaboration with Brickfields Asia College (BAC) is a fast-tracked part-time programme for students to develop a comprehensive understanding and appreciation of the role of arbitration.

The course is taught by experienced legal practitioners and industry experts and spans over 5 to 6 weekends.

# Latest Arbitration Trends & The Role of Women in Arbitration

## Collaboration with the SCL and the SIAC

### 16 October 2019, The Signature Hotel & Serviced Suites Kuala Lumpur

In collaboration with the Society of Construction Law (SCL) and the Singapore International Arbitration Centre (SIAC), this half-day event was well received by members and non-members alike.

Distinguished speakers, The Honourable Justice Dato' Mary Lim (now Federal Court Judge), Ms. Delphine Ho (Registrar of the SIAC), Ms. Janice Tay (Past President of the SCL) and Ms. Sharon Chong (President of the MIArb), discussed the latest arbitration trends around the region and shared their experience, observations and statistics on the role of women in arbitration.




# 6th Annual Law Review and Year End Party

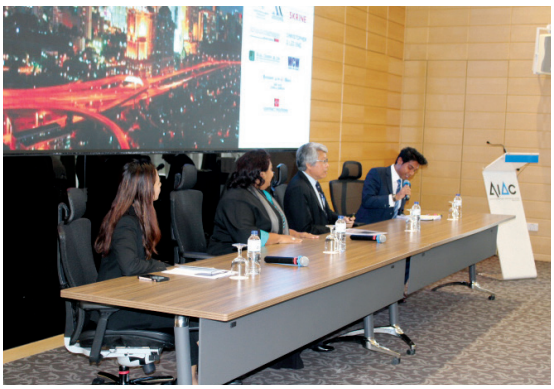
## 28 November 2019, AIAC

The 6th installment of the MIArb's Annual Law Review was a huge success with overwhelming response from participants.

During the *"Mediation – Beyond the Horizon, or at our Doorstep?"* session, distinguished speakers, Mr. Lok Vi Ming, S.C. (representing the Singapore International Mediation Centre (SIMC)), Ms. Shanti Abraham (Messrs. Shanti Abraham & Associates) and Ms. Diana Rahman (Case Counsel at the AIAC) shared detailed insights on the rampant growth of mediation as a highly sought-after option for alternative dispute resolution around the world and how mediation can better achieve dispute resolution objectives effectively.

This session was moderated by Mr. Edward Kuruvilla (now Council Member).



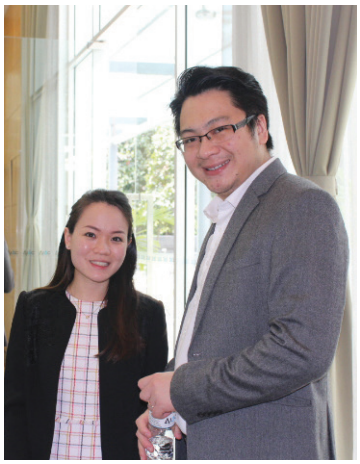



During the *"s. 42 Arbitration Act 2005: Back in Black?"* session, distinguished speakers, The Honourable Justice Dato' Mary Lim (now Federal Court Judge), Mr. Sanjay Mohan (Messrs. Sanjay Mohan) and Ms. Chelsea Pollard (International Case Counsel at the AIAC), had differing views on the practical impact in challenging domestic arbitral awards in light of the abolition of Section 42 of the Arbitration Act 2005 and discussed on what lies ahead for Malaysia in terms of being a *"safe seat of arbitration"*.

This session was moderated by Mr. Kevin Prakash (now Messrs. Kevin Prakash).

Participants were thereafter treated to refreshments at the MIArb's Year-End Party, which has become a joyous tradition over the years.





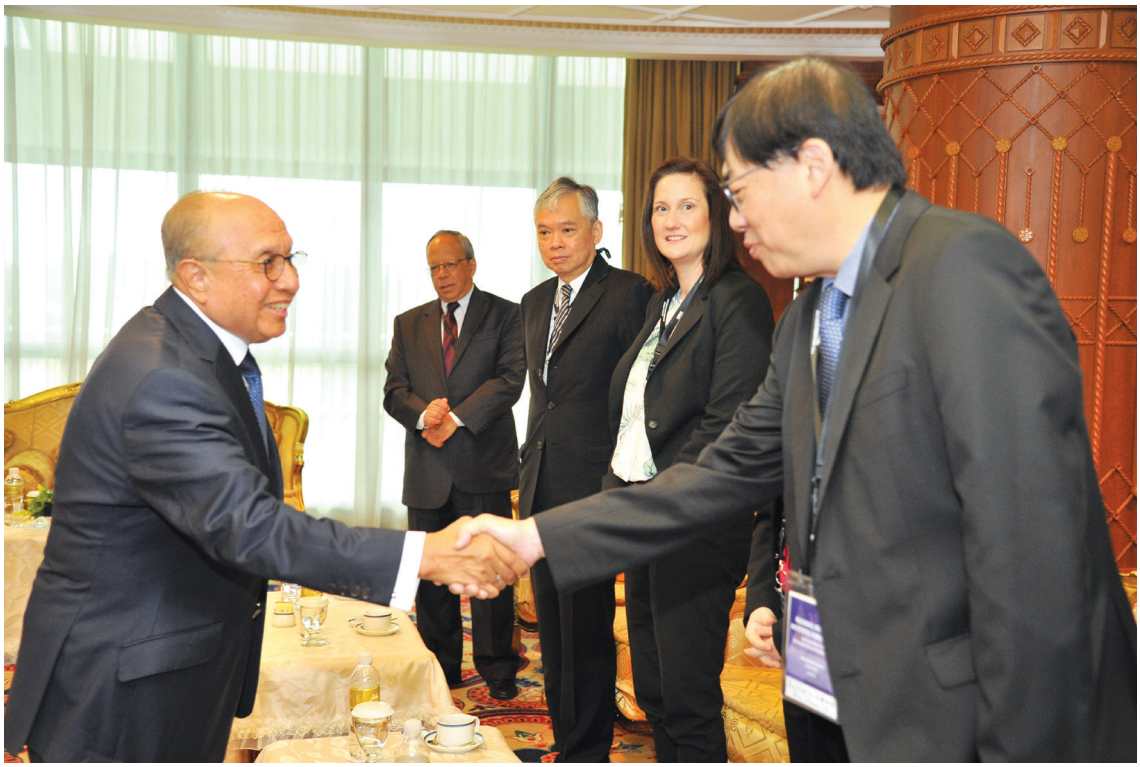
# Regional Arbitral Institutes Forum (RAIF) Conference

## 6 December 2019, Rizqun International Hotel, Negara Brunei Darussalam

The 2019 Regional Arbitral Institutes Forum (RAIF) Conference held in Negara Brunei Darussalam was organised by The Arbitration Association Brunei Darussalam.

The one-day conference was split into 4 sessions covering the following topics: *"How to overcome the problem of Delay in International Arbitration", "The Singapore Convention and Interplay between Arbitration and Mediation with a focus on Financial and Intellectual Property disputes", "Impact of the Belt & Road Initiative on Construction and Commercial Arbitration in the Asia-Pacific" and "New trends of challenges made against arbitrators".*

Ms. Victoria Loi (Vice President of the MIArb) attended the conference on behalf of the MIArb and prepared the Country Report for Malaysia.

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6th DECEMBER 2019
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REGIONAL ARBITRAL INSTITUTES FORUM (RAIF)
6th DECEMBER 2019
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## The Jonathan Yoon MIArb Debate Series

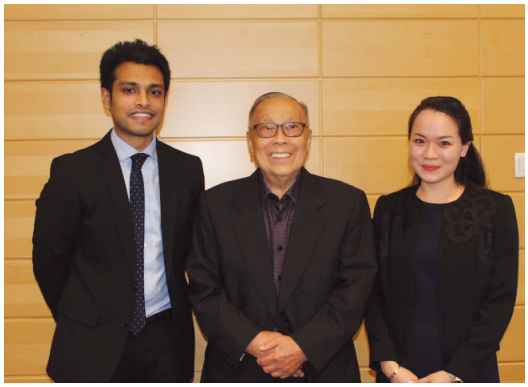
# "This House Believes that Party Autonomy Must Prevail to Preserve the Sanctity of Arbitration"

### 20 February 2020, AIAC

Now in its 4th instalment, last year's debate was very exciting as our esteemed speakers went tooth and nail on the motion that lies at the heart of arbitration stakeholders around the globe: *"This House Believes That Party Autonomy Must Prevail to Preserve the Sanctity of Arbitration".*

Mr. Kamraj Nayagam (Messrs. Mah-Kamariyah & Philip Koh) and Ms. Janice Tay (Messrs. Wong & Partners) were for the Motion while Mr. Ooi Huey Miin (Messrs. Raja, Darryl & Loh) and Mr. Lam Ko Luen (Messrs. Shook Lin & Bok) were against the Motion.

After a hard-fought battle, the Motion was defeated.




THE JONATHAN YOON MIArb DEBATE SERIES
Thursday, 20 February 2020 6.00 PM
DEBATE MOTION:
"This House Believes That Party Autonomy Must Prevail to Preserve the Sanctity of Arbitration."
MR KAMRAJ NAYAGAM
&
MS JANICE TAY HWEE HOON
MR OOI HUEY MIIN
&
MR LAM KO LUEN

## Webinar Series

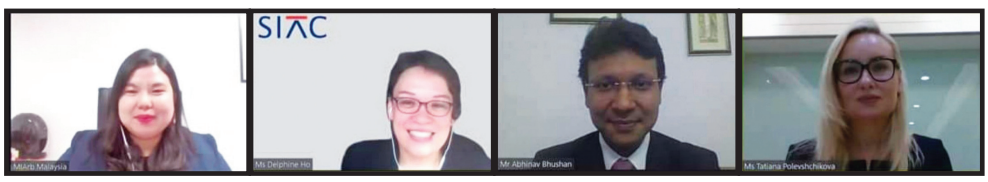
# "Covid-19 Webinar: The Institutions Strike Back"

### 12 June 2020

In keeping up with the times and embracing the *"new normal"*, the MIArb held its first ever Webinar shortly after the commencement of the Recovery Movement Control Order in Malaysia.

The panel of 3 speakers consisting of Ms. Tatiana Polevshchikova (Deputy Head of Legal Services at the AIAC), Ms. Delphine Ho (Registrar of the SIAC) and Mr. Abhinav Bhushan (Regional Director for South Asia of the ICC Arbitration and ADR International Court of Arbitration) discussed on the impact of COVID-19 on institutional arbitrations, how the various arbitral institutions are responding to the global pandemic, and the way forward.

This Webinar was moderated by Ms. Sharon Chong (President of the MIArb) and received overwhelming support from members and non-members alike.

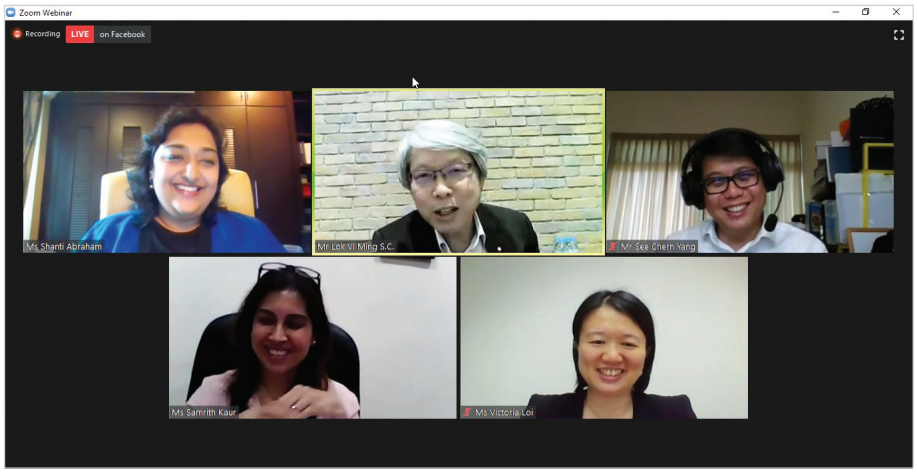
## Webinar Series

# "Mediation: The New Norm?"

### 24 June 2020

For the MIArb's second Webinar, the panel of 4 speakers consisting of Ms. Shanti Abraham (Messrs. Shanti Abraham & Associates), Ms. Samrith Kaur (Messrs. Samrith Sanjiv & Partners), Mr. Lok Vi Ming, S.C. (representing the Singapore International Mediation Centre (SIMC)) and Mr. See Chern Yang (Drew & Napier LLC) gave their perspective on the way forward in the realm of mediation.

This Webinar was moderated by Ms. Victoria Loi (Vice President of the MIArb).

## Webinar Series

# "Adjudication Decisions: Weathering the Challenges"

### 10 July 2020

For the MIArb's third Webinar, the panel of 3 speakers consisting of Tan Swee Im (International Arbitration Member of 39 Essex Chambers), Mr. Christopher Chuah (Messrs. Wong Partnership) and Mr. Sanjay Mohanasundram, (Messrs. Sanjay Mohan) shared their views on whether or not adjudication has been a success in Malaysian and Singapore.

This Webinar was moderated by Ms. Hor Shirley (Deputy President of the MIArb).


## Webinar Series

# "How to Conduct an Effective Virtual Arbitration Hearing: 10 Tips from the Battlefield"

### 21 July 2020

In the face of the COVID-19 pandemic, virtual arbitration hearings have become a part of the *"new normal"*.

For the MIArb's fourth Webinar, we got up close and personal with Jern-Fei Ng, Q.C. (Essex Court Chambers London) who shared his top 10 tips on how to conduct an effective virtual arbitration hearing.

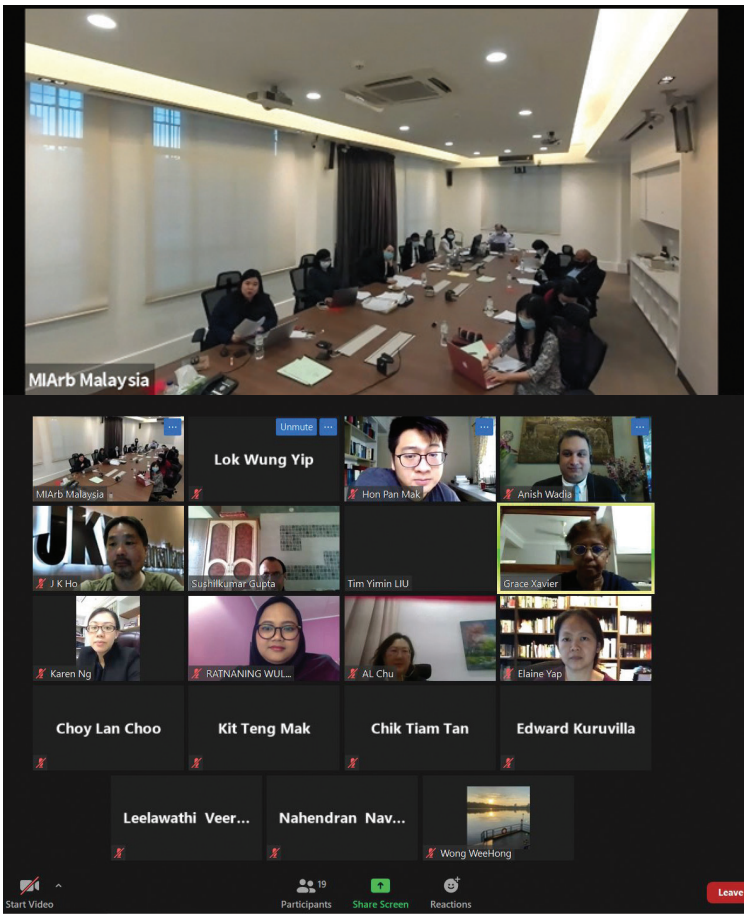
This Webinar was hosted by Ms. Sharon Chong (President of the MIArb).

# The MIArb 28th Annual General Meeting

## 21 July 2020, AIAC

Precipitated by the COVID-19 pandemic, the MIArb 28th Annual General Meeting was held virtually for the first time.

Council sadly bid farewell to Mr. Aaron Mathews and welcomed back Mr. Anish Wadia, Mr. Edward Kuruvilla and Mr. Suhaib Ibrahim who have been elected for the 2020-2022 term.



# New Members/Upgrades for Session January 2019 to January 2021

The Malaysian Institute of Arbitrators extends a warm welcome to our new Fellows, Members, Associates, and Affiliates.

| Affiliate to New | M/No. | Date Joined |
|---|---|---|
| 1. Muhammad Iqmal Harith Bin Ismi Arif | AF196 | 18 July 2019 |
| 2. Agilanda Parameswary Madhavan | AF197 | 18 July 2019 |
| 3. Azhary Bin Awang | AF198 | 07 November 2019 |
| 4. Syuhada Mohd Soberi | AF199 | 12 March 2020 |
| 5. Vishal Tiwari | AF200 | 14 May 2020 |
| 6. Vishnu Rao A/L Damloo | AF201 | 07 October 2020 |
| 7. Lim Jun Xian | AF202 | 19 November 2020 |
| 8. Mohana Ambigai Tr Kanasan | AF203 | 17 December 2020 |
| 9. Aw Pei Ying | AF204 | 17 December 2020 |
| 10. Muhammad Nadzif Ramlan | AF205 | 17 December 2020 |

| Upgraded from Affiliate to Associate | M/No. | Date Joined |
|---|---|---|
| 1. Jasmin Anne Raj | A/299 | 26 February 2020 |

| Associate to New | M/No. | Date Approved |
|---|---|---|
| 1. Parameswary D/O Shanmugam | A/268 | 28 February 2019 |
| 2. Tan Kar Chun | A/269 | 28 February 2019 |
| 3. Kong Jug Soon | A/270 | 02 April 2019 |
| 4. Muhammad Suhaib Mohamed Ibrahim | A/271 | 20 June 2019 |
| 5. Loshini Ramarmuty | A/272 | 20 June 2019 |
| 6. Lavania Kumaraendran | A/273 | 20 June 2019 |
| 7. Janice Ooi | A/274 | 20 June 2019 |
| 8. Jocelyn Lim Yean Tse | A/275 | 20 June 2019 |
| 9. Alyshea Low Khye Lyn | A/276 | 20 June 2019 |
| 10. Serene Hiew Mun Yi | A/277 | 20 June 2019 |
| 11. Sri Richgopinath Salvam | A/278 | 20 June 2019 |
| 12. Yap Yeong Hui | A/279 | 20 June 2019 |
| 13. Ashok Kumar Ranai | A/280 | 20 June 2019 |
| 14. Rachel Chiah | A/281 | 20 June 2019 |
| 15. Richard Khoo Boo Hin | A/282 | 20 June 2019 |
| 16. Lim Hwee Yin | A/283 | 20 June 2019 |
| 17. Amret Preet Kaur Dalbir Singh | A/285 | 07 November 2019 |
| 18. Tnah Seng Keong | A/286 | 05 December 2019 |
| 19. Tan Jian En | A/287 | 05 December 2019 |
| 20. Raymah Selvaraj | A/288 | 05 December 2019 |
| 21. Ahmad Syihan Bin Abdul Rashid | A/289 | 05 December 2019 |
| 22. Goh Li Kian | A/290 | 09 January 2020 |
| 23. Nur Syazwanie Binti Fadeli | A/291 | 09 January 2020 |
| 24. Nicholas Ian Jones | A/292 | 09 January 2020 |
| 25. Ping Zhiow Gin | A/293 | 09 January 2020 |
| 26. Liong Qi Yan | A/294 | 09 January 2020 |
| 27. Mohamad Safwan Bin Rozali | A/295 | 09 January 2020 |
| 28. Munirah Binti Aziz | A/296 | 09 January 2020 |
| 29. Ila Nabila Binti Zaini | A/297 | 09 January 2020 |
| 30. Samumtram A/P Subramaniyan | A/298 | 09 January 2020 |
| 31. Vijayaraja Thirugnanasambandam | A/300 | 19 November 2020 |
| 32. Bernard Chan Kee Siang | A/301 | 17 December 2020 |
| 33. Entoni Zaini | A/302 | 17 December 2020 |

| Upgraded from Associate to Fellow | M/No. | Date Approved |
|---|---|---|
| 1. K Don Sudharma Chandina | F/159 | 09 January 2020 |

| Upgraded from Associate to Member | M/No. | Date Approved |
|---|---|---|
| 1. Lam Chia Yen | M/529 | 08 March 2019 |
| 2. Tie Ling Lin, Avelyn | M/523 | 28 March 2019 |
| 3. Tang Xin Yi | M/538 | 24 April 2019 |
| 4. Mohd Idris Sulaiman | M/556 | 26 September 2019 |
| 5. Muhammad Suhaib Mohamed Ibrahim | M/566 | 14 July 2020 |

| Member to New | M/No. | Date Approved |
|---|---|---|
| 1. Shaun Asok Kumar | M/520 | 28 February 2019 |
| 2. Dr Zulhabri Ismail | M/521 | 28 February 2019 |
| 3. Balbeer Singh A/L Chanan Singh | M/522 | 28 February 2019 |
| 4. Azhani Binti Mohd Najib | M/524 | 08 March 2019 |
| 5. Mohd Amirul Naim Ismail | M/525 | 08 March 2019 |
| 6. Addey Sham Baharin | M/526 | 08 March 2019 |
| 7. Michelle Pauline Lim | M/527 | 08 March 2019 |
| 8. Hal Lai Keong | M/528 | 08 March 2019 |
| 9. Wong Kit Yee | M/530 | 08 March 2019 |
| 10. Nor Hafizatuldiana Binti Ishak | M/531 | 02 April 2019 |
| 11. Lee Jin Yu | M/532 | 02 April 2019 |
| 12. Nishantel Kaur A/P Balvinder Singh | M/533 | 02 April 2019 |
| 13. Khow Weng Liang | M/534 | 02 April 2019 |
| 14. Chong Voon Wee | M/535 | 02 April 2019 |
| 15. David Yek Tak Wai | M/536 | 02 April 2019 |
| 16. Choo Kim Yong | M/537 | 02 April 2019 |
| 17. Liew Kuet Kiong | M/539 | 02 April 2019 |
| 18. Dato Lim Chee Wee | M/540 | 20 June 2019 |
| 19. Lee Shih | M/541 | 20 June 2019 |
| 20. Lai Jian Xian, Nina | M/542 | 20 June 2019 |
| 21. Chong Wai Ken | M/543 | 20 June 2019 |
| 22. Loh Yun Seen | M/544 | 20 June 2019 |
| 23. Ir Lok Wung Yip | M/545 | 20 June 2019 |
| 24. Mak Kit Teng | M/546 | 20 June 2019 |
| 25. Sushilkumar Gupta | M/547 | 20 June 2019 |
| 26. John Mathew Mathai | M/548 | 20 June 2019 |
| 27. Dr V Sreedaran Nair A Veloo Pillay | M/549 | 18 July 2019 |
| 28. Amir Syafiq Venkadesh Narayanan | M/550 | 18 July 2019 |
| 29. Jong Chien Hui | M/551 | 29 August 2019 |
| 30. Praveenna Rajendran | M/552 | 29 August 2019 |
| 31. Shum Suit Lan, Tammy | M/553 | 29 August 2019 |
| 32. Santhy Thangiah | M/554 | 29 August 2019 |
| 33. Leonard Then Eesan | M/555 | 26 September 2019 |
| 34. Rachel Chong Jia Wei | M/557 | 07 November 2019 |
| 35. Selva Raja Lerchumanan | M/558 | 05 December 2019 |
| 36. Ong Cheng Tat, Sr | M/559 | 09 January 2020 |
| 37. Boon Che Wee, Ar | M/560 | 26 February 2020 |
| 38. Ahmad Fikri Ismail | M/561 | 26 February 2020 |
| 39. Wong Lien Lien | M/562 | 26 February 2020 |
| 40. Khoo Ai Theng | M/563 | 26 February 2020 |
| 41. Ng Kee Way | M/564 | 26 February 2020 |
| 42.Jeffrey Low Hoo Guan | M/565 | 14 May 2020 |
| 43. Choy Moon Moon | M/567 | 10 July 2020 |
| 44. Teo Peng Keat | M/568 | 17July 2020 |
| 45. Mikaela Rhema Anthonysamy | M/569 | 14 August 2020 |
| 46. Kamalani Kalaimany | M/570 | 24 September 2020 |
| 47. Mohamad Ridzuan Tan Sri Ir Abdahir | M/571 | 24 September 2020 |
| 48. Wan Mohdzulhafiz Wan Zahari | M/572 | 21 October 2020 |
| 49. Chong Soo Hooi | M/573 | 19 November 2020 |
| 50. Ar Chung Pui Gin | M/574 | 19 November 2020 |
| 51. Syamsul Errwan Mohd Hashim | M/575 | 19 November 2020 |
| 52. Wong Li-Wei | M/576 | 21 January 2021 |
| 53. Calvin Chee Chin Lim | M/577 | 21 January 2021 |
| 54. Ip Kim Man | M/578 | 21 January 2021 |

| Upgraded from Member to Fellow | M/No. | Date Approved |
|---|---|---|
| 1. Wong Hin Loong | F/144 | 28 February 2019 |
| 2. Kevin Prakash A/L Thirunavukarasu | F/146 | 02 April 2019 |
| 3. Wong Chong Wei | F/147 | 02 April 2019 |
| 4. Iain Cameron Potter | F/148 | 24 April 2019 |
| 5. Heng See Imm | F/149 | 24 April 2019 |
| 6. Wong Jian Bei | F/164 | 14 May 2020 |
| 7. Karen Ng Gek Suan | F/200 | 17 July 2020 |
| 8. Wai Chan Ming | F/207 | 24 September 2020 |
| 9. Ng Yen Fah, Rachel | F/210 | 21 January 2021 |

| Fellow to New | M/No. | Date Approved |
|---|---|---|
| 1. Philip Rompotis | F/145 | 28 February 2019 |
| 2. Chan Kheng Hoe | F/150 | 23 May 2019 |
| 3. James Ding Tse Wen | F/151 | 20 June 2019 |
| 4. Donovan Cheah Swee Kin | F/152 | 20 June 2019 |
| 5. Kelvin Ng Chun Yee | F/153 | 20 June 2019 |
| 6. Vatsala Ratnasabapathy | F/156 | 05 December 2019 |
| 7. Anita Natalia | F/157 | 09 January 2020 |
| 8. Ann Ryan Robertson | F/158 | 09 January 2020 |
| 9. Mathew Kidd | F/160 | 26 February 2020 |
| 10. Mr Lui Kan Yi | F/161 | 26 February 2020 |
| 11. Liew Seong Yee, Jimmy | F/162 | 26 February 2020 |
| 12. K Shanti Mogan | F/163 | 26 February 2020 |
| 13. Murat Metin Hakkl | F/165 | 14 May 2020 |
| 14. Qing Ao | F/166 | 14 May 2020 |
| 15. Martin Doe | F/167 | 14 May 2020 |
| 16. Damian James | F/168 | 14 May 2020 |
| 17. Hiran De Alwis | F/169 | 14 May 2020 |
| 18. Syed Mustafa Mahdi | F/170 | 14 May 2020 |
| 19. Leendert Christiaan Can Den Berg | F/171 | 14 May 2020 |
| 20. Kwai Hong Ip | F/172 | 14 May 2020 |
| 21. Samuel Mbiriri Nderitu | F/173 | 14 May 2020 |
| 22. Tim Yimin Liu | F/175 | 14 May 2020 |
| 23. Leticia De Souza Baddauy | F/176 | 14 May 2020 |
| 24. Pijan Wu | F/177 | 14 May 2020 |
| 25. Kabir A N Duggal | F/178 | 14 May 2020 |
| 26. Johan Beyers | F/179 | 14 May 2020 |
| 27. Elizabeth Anna Sloance | F/180 | 14 May 2020 |
| 28. Paul David Sills | F/181 | 14 May 2020 |
| 29. Cheung Ka Wan Karen | F/182 | 14 May 2020 |
| 30. Kamal Dave | F/183 | 10 July 2020 |
| 31. Prof Dr Bagoni Alhaji Bukar | F/184 | 10 July 2020 |
| 32. Dr Rajesh Sharma | F/185 | 10 July 2020 |
| 33. Pelinari Andrei Constantin | F/186 | 10 July 2020 |
| 34. June Yeum | F/187 | 10 July 2020 |
| 35. Stephen Charles Ipp | F/188 | 10 July 2020 |
| 36. Palmiotti Dario Simone | F/189 | 10 July 2020 |
| 37. Girish Kumar Mishra | F/190 | 10 July 2020 |
| 38. Hamish Stuart | F/191 | 10 July 2020 |
| 39. Kieran Humphrey | F/192 | 10 July 2020 |
| 40. Khaled Bedaiwi | F/193 | 10 July 2020 |
| 41. William Cucu Githara | F/194 | 10 July 2020 |
| 42. Jonnathan Bravo Venegas | F/196 | 10 July 2020 |
| 43. Hon Justice Dr Siva Sankara Rao Bulusu | F/198 | 10 July 2020 |
| 44. Hon Consulate Bertha Cooper-Rousseau | F/199 | 10 July 2020 |
| 45. Dr Shahrizal Mohd Zin | F/201 | 17 July 2020 |
| 46. Prof Dr Juan Wang | F/202 | 17 July 2020 |
| 47. Wong Jen Cheng | F/203 | 14 August 2020 |
| 48. Azubike Okoye | F/204 | 14 August 2020 |
| 49. Dr Jamal Chaykhouni | F/205 | 14 August 2020 |
| 50. Dr Tariq Mahmood | F/206 | 14 August 2020 |
| 51. The Hon Tan Sri David Wong Dak Wah | F/208 | 19 November 2020 |
| 52. Ish Jian | F/209 | 17 December 2020 |

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