



## Gan Khong Aik FCI Arb

Partner

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Gan Khong Aik is a dispute resolution partner with over 25 years' counsel experience before all levels of Malaysian courts. He is a Fellow of the Chartered Institute of Arbitrators (CI Arb), United Kingdom, who sits on the panel of arbitrators in various Chinese arbitration institutes include international arbitration court. He is also a mediator with the Malaysian Mediation Centre.

Khong Aik's extensive practice experience includes corporate and commercial, insolvency and liquidation, land and property, anti-bribery and corruption, insurance and reinsurance claims, and employment and industrial relations disputes. He often represents directors, shareholders and companies in a wide range of high-value corporate disputes. His commercially practical and legally sound approach coupled with his responsiveness and humble personality made him an all-round counsel.

Khong Aik's notable matters include a landmark apex court decision which led to the significant developments in the arbitration landscape. Building on his wealth of knowledge and experience in corporate disputes, he advises companies on corporate governance and corporate liabilities.

Asia Business Law Journal lists Khong Aik as one of *Malaysia's Top 100 Lawyers* in 2021 and recognizes his practice in arbitration & ADR, Corporate Governance, Insurance & Reinsurance, Labour & Employment and Litigation. He has been recommended for his depth of legal knowledge and troubleshooting skill complemented by a meticulous and solution driven approach in managing the dispute strategy. The Legal 500 Asia Pacific 2021 noted "Mr. Gan Khong Aik is a vastly experienced litigation lawyer who is meticulous, thorough and possesses troubleshooting skills." Khong Aik has been listed as a Litigation Star in Commercial and Transactions, Dispute Resolution, and Labor and Employment by Benchmark Litigation in 2020.

Khong Aik has penned a book chapter on International Arbitration and articles on various emerging areas of law. His recent publications include a book titled "Manoeuvring Corporate Governance in Malaysia: Litigation Perspectives". He is recently appointed to chair the International Conventions and Trade Agreements Subcommittee of International Commerce and Distribution Committee, International Bar Association.

### Practice Areas

- Arbitration
- Anti-Bribery & Corruption
- Boardroom Risk & Reputation
- Corporate Governance & Compliance
- Corporate Litigation & Risk Management
- Employment, Benefits and Incentives & Industrial Relation
- Insurance
- Mediation
- Regulatory & Compliance
- Restructuring & Insolvency

### Admission

Advocate and Solicitor of the High Court of Malaya

### Qualifications

- LL.B (2<sup>nd</sup> Upper Class Honours), University of Malaya.
- Postgraduate Diploma in International Legal Practice, The University of Law.
- Diploma in International Arbitration, Chartered Institute of Arbitrators (CI Arb), UK.

### Languages

English, Malay, Mandarin

## Notable Matters

### Corporate Disputes

- Acted as one of the lead counsels in an appeal where the Court of Appeal decided over the power of liquidator vis-à-vis the power of the minority shareholder for the first time, subsequent leave application to the Federal Court was dismissed.
- Acted as a lead counsel for a leading health food company before the Federal Court in Malaysia in a matter concerning enforcement or exercise the right of option to sell its shares pursuant to an exit clause in the joint venture agreement.
- Acted as a co-counsel before the apex court for the breach of a charter party agreement claiming for the damages in the sum of approximately USD3.1 million.
- Acted for a company in a suit to recover a sum of RM8.61million (approximately USD2.01million) against its director for breach of fiduciary duty and duty of fidelity.
- Represented an elevator provider in a corporate dispute which involved a sum of approximately RM26 million arising from a joint venture arrangement concerning technology transfer.
- Acted in multiple actions arising from complex disputes between directors and shareholders of a company operating in the nature of a quasi-partnership, among others, reported as *Ng Boon Teik v Chang Tong Lee* [2020] 1 LNS 1135.
- Acted for a rising technology company in an action against a former director for breach of fiduciary duties reported as *Superplas Technology Sdn Bhd v See Chou Shon* [2017] MLJU 980.
- Acted as a lead counsel in a highly publicised dispute involving Chinese Educationist in Malaysia over a shareholder oppression claim.
- Acted as a lead counsel in disputes involving renowned properties construction developers in Malaysia where one of the suits was against a state government for damages over RM25 million.
- Acted in a matter concerning re-assessment of damages of a land worth more than RM12 million before the Court of Appeal.
- Acted and advised a multinational company in relation to debt recovery arising from construction dispute.
- Acted for a tertiary educational group of companies and an oil and gas multinational company in disputes over conflict of interest by a member of the senior management.
- Advised a company on the adequate procedures to prevent corruption in the light of Section 17A of the Malaysian Anti-Corruption Commission Act 2009.

## Notable Matters

## Insurance Disputes

- Advising Insurers on coverage and defence in a MYR 12.5 million Directors & Officers liability claim initiated by a Bursa Malaysia Mainboard-listed company against its former directors.
- Advised and acted for Insurers and Reinsurers in a MYR 125 million Machinery Breakdown/Loss of Profit claim arising from a 2013 aluminium smelter incident in.
- Advised and acted for Insurers in a reinsurance claim on a Civil Engineering Completed Risks Insurance Policy claim over a collapse of folded plate retaining wall incident.
- Advised and acted for Insurers in an occupier liability claim in respect of a high-profile escalator incident happened in a renowned shopping mall in Malaysia.
- Acted for Insurers in a reinsurance claim over MYR 22 million involving fraudulent cheque payment by a bank.

## Awards & Accolades

Among others, Khong Aik has been recognised by independent rankers and client testimonials as, *inter alia*:

- *‘experienced litigation lawyer’ who has a ‘depth of knowledge’ and ‘trouble shooting skills’ that are complemented by a ‘meticulous and thorough approach’. This expertise extends to industrial relations.”*
- *“very competent and commercial in his approach”*
- *“Very professional, effective and efficient” and “Extremely knowledgeable, effective and practical”*
- *“Mr Gan Khong Aik – a person who upholds integrity, truth and helps clients to defend their interests in justice. He is a very professional and experienced person with clear direction who enables clients to understand the entire litigation process. Willing to spend a lot of time to understand client needs and give professional advice.”*
- *“The Litigation team has all the criteria we need – dedicated and reliable and assuring.”*
- *“Mr Gan is an exceptional practitioner. He is very well respected by his peers and his clients. He is extremely humble and accessible. I find that he puts the integrity of the profession as a priority. And is a true trusted advisor.”*

## Publications

Khong Aik has authored/ co-authored various publications including:

- Manoeuvring Corporate Governance in Malaysia: Litigation Perspectives (Lexis Nexis Malaysia, 2021)
- “Managing Contracts of Employment in Mergers and Acquisitions in Malaysia” in Inter Pacific Bar Association Journal
- Global Legal Insights, International Arbitration 2019 – Chapter on Malaysia
- Media, Advertising, and Entertainment Law Throughout the World (Multilaw, 2008)
- Selected Articles
  - Apex court rules that foreign employee on successive fixed-term contract is permanent employee
  - Apex court finds controller of housing’s powers to waive or modify provisions of statutory contract invalid
  - Court rules on banks’ rights under absolute assignment after issue of title to land
  - COVID-19 - Legal Mechanisms for Companies and Individuals Facing Financial Distress
  - Competing claims in curial and arbitral proceedings: recent anti-arbitration injunction developments
  - Derivative proceedings: leave of court is substantive legal requirement
  - Dishonesty must be present before debtor in assignment can be made liable
  - Embrace the storms of the Movement Control Order
  - Embassy dismisses employee: exercise of *jure imperii* or act of *jure gestionis*?
  - Federal Court maintains wide scope of Companies Act 1965 in oppression cases
  - Federal Court rules that Arbitration Act provisions do not apply to non-parties to arbitration agreements
  - Federal Court rules that termination clauses should be construed strictly

## Publications

Khong Aik has authored/ co-authored various publications including:

- Selected Articles
  - Movement Control Order & Employment - 4 Key Aspects for Employer
  - Movement Control Order & Employment Workplace Safety and Health
  - Origin of section 17A of MACC Act 2009 - Lessons from UK Experience
  - Section 17A of MACC Act - What are the lessons learnt from foreign case studies
  - Section 17A of MACC Act - Have you adopted Adequate Procedures
  - Section 17A of MACC Act - How to safeguard your company against corporate corruption