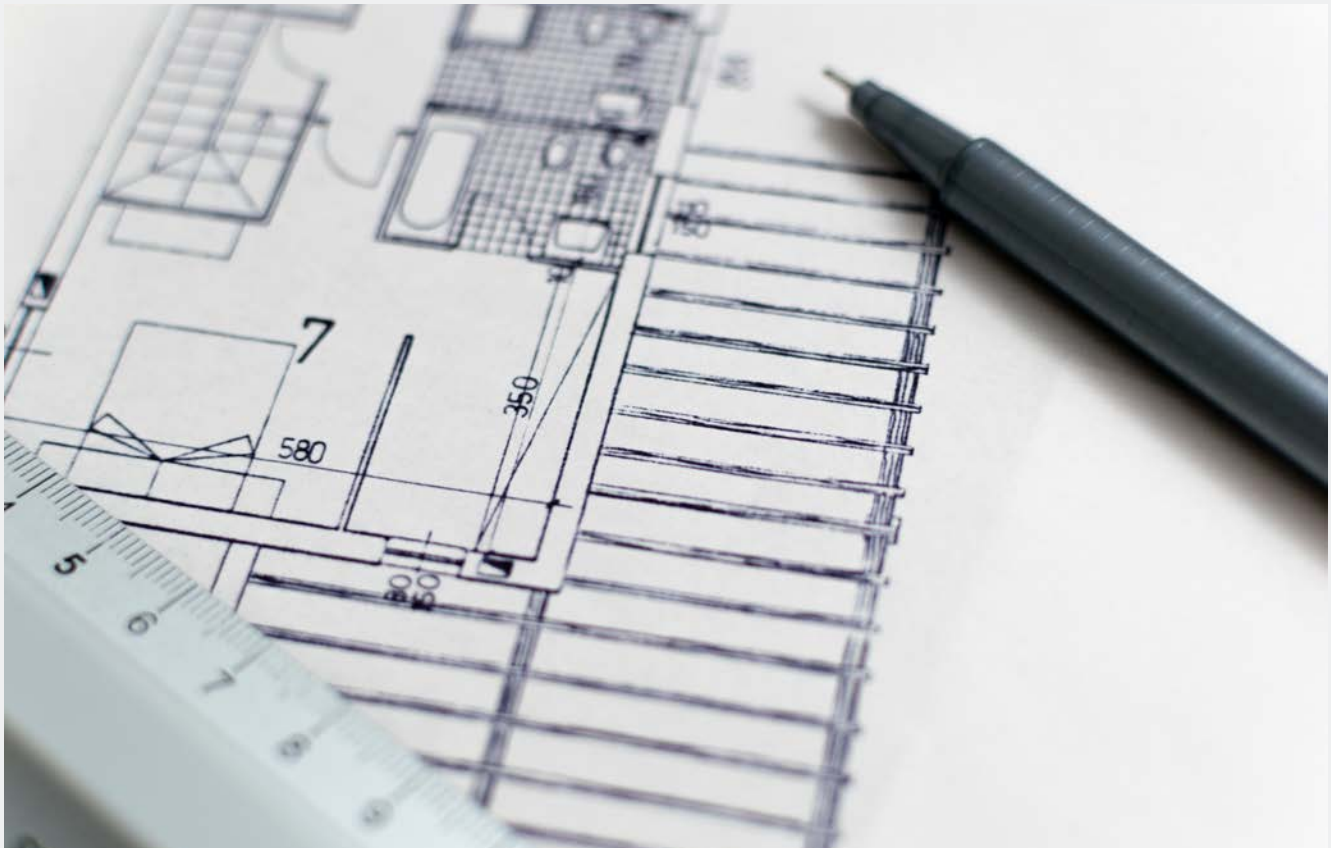


# The Toolbox

A PUBLICATION OF  
THE ENGINEERING, CONSTRUCTION & ENERGY PRACTICE



**COMPETING CLAIMS IN CURIAL AND ARBITRAL PROCEEDINGS: RECENT ANTI-ARBITRATION INJUNCTION DEVELOPMENTS**

**HOUSING DEVELOPERS BEWARE – FEDERAL COURT UPHOLDS FABER UNION**

**A CONTRACTOR'S CLAIMS IN ADJUDICATION AGAINST THE SUB-CONTRACTOR**

**CIPAA: ONLY QUALIFIED ADVOCATES FOR ADJUDICATIONS IN EAST MALAYSIA?**

**SECTION 30 OF CIPAA – A ROAD LESS TRAVELLED, NOW WIDENED**

# ***Competing Claims in Curial and Arbitral Proceedings: Recent Anti-Arbitration Injunction Developments***

By Gan Khong Aik, Kang Mei Yee



## ***Are the Malaysian courts adopting a minimalist judicial intervention approach in considering anti-arbitration injunctions?***

The Federal Court (FC) in ***Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd*** [2019] 5 MLJ 1 had to deal with the issue of competing claims in curial and arbitral proceedings where not all parties were before both forums.

The case concerns a dispute over a shareholders agreement which culminated in a reference to arbitration to settle the dispute.

The appellant, was however not a party to this arbitration. The appellant therefore filed for an injunction to restrain the arbitration proceedings from continuing.

The questions that fell for the FC's determination thus surrounded the ***requirements a party had to satisfy in order to injunct arbitration proceedings to which he was not a party.***

The Federal Court eventually held that the requirements such a party ought to satisfy were not those prescribed under the Arbitration Act 2005, rather those prescribed in the test to grant an

injunction in general.

This article thus examines the FC's findings in this case, and the decisions of the High Court (HC) in ***FELDA Investment Corporation Sdn Bhd v Synergy Promenade Sdn Bhd*** [2020] MLJU 1645 and ***Federal Land Development Authority v Tan Sri Haji Mohd. Isa Bin Dato' Haji Abdul Samad*** [2020] MLJU 1587, which referred to the said findings.

Read the full article by [clicking this link](#).



## ***Housing Developers Beware – Federal Court Upholds Faber Union***

*By Bahari Yeow, Alex Choo Wen Chun, Sonali Nadkarni*

In a series of appeals relating to GJH Avenue Sdn. Bhd, several purchasers of bungalows had brought claims against GJH for liquidated damages for late delivery of the units.

The central issue that the FC had to determine was

***whether the date for the calculation of liquidated damages should be from the date of the booking fee or the date of the sale and purchase agreements***

The FC in upholding ***Faber Union Sdn Bhd v. Chew Nyat Shong & Anor*** [1995] 2 MLJ 597, held that the start date for calculation of liquidated damages would be the date booking fees were collected.

Here, this article examines what this means for purchasers in the future who find themselves in such similar situations.

Read the full article by [clicking this link](#).

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## ***A Contractor's Claims in Adjudication against the Sub-Contractor***

*By Foo Joon Liang, Tasha Lim Yi Chien*

In ***Hiform (M) Sdn Bhd v Pembinaan Bukit Timah Sdn Bhd and another case***, a contractor had taken over a sub-contractor's work as the sub-contractor here had withdrawn itself from the project.

The contractor then sought to commence adjudication proceedings against the sub-contractor.

The main issue before the HC was whether a contractor in such a position was entitled to do so.

The HC answered this question in the negative.

This article examines the HC's decision as well as the correct avenue that such an aggrieved contractor should employ.

Read the full article by [clicking this link](#).

## ***Section 30 of CIPAA – A Road Less Travelled, Now Widened***

*By Foo Joon Liang, Carissa How Chen Huey*

Where a party has obtained an adjudication decision in its favour, the victorious party is entitled to seek direct payment for the said decision from the losing party or its principal, vide S.30 of the Construction Industry Payment and Adjudication Act 2012 ('CIPAA').



The HC decision in ***Chong Lek Engineering Works Sdn Bhd v PFCE Integrated Plant and Project Sdn Bhd and another case*** [2020] MLJU 2389 has fortified this and given further clarity as to the statutory regime as provided under S.30 of CIPAA.

This article examines the principles fortified by the HC and the relevant issues to be considered in making an application under S.30 of CIPAA, including the lifting of the corporate veil and the adjudication sums which can be ordered by the Court.

Read the full article by [clicking this link](#).

## ***CIPAA: Only Qualified Advocates for Adjudications in East Malaysia?***

*By Foo Joon Liang, Tasha Lim Yi Chien*

In ***Tekun Cemerlang Sdn Bhd v Vinci Construction Grands Projets Sdn Bhd*** [2021] MLJU 466 Vinci Construction Grands Projets Sdn Bhd ('Vinci Construction'), a company based in Kuala Lumpur, being represented by a West Malaysian law firm, commenced adjudication proceedings against Tekun Cemerlang Sdn Bhd, a company based in Sabah, concerning a project located in Sabah.

for the HC's determination was whether Vinci Construction could be represented by a West Malaysian law firm. The HC answered this in the negative.

This article examines the rationale behind such a decision as well as looking at what this means for parties and their choice of representation in adjudication proceedings in the future.

The issue that eventually arose

Read the full article by [clicking this link](#).

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# ganpartnership

Gan Partnership is a dispute resolution law firm based in Kuala Lumpur, specialising in dispute resolution and intellectual property.

Since our establishment in 2011, we have grown our practice to cover vast areas of law including corporate and commercial litigation, engineering, construction and energy, intellectual property & privacy and employment & industrial relations.

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### CONSTRUCTION CLAIMS & ADR CONFERENCE 2021

Live | Marathon | Anytime | Anywhere

This first ever 12-hour virtual marathon is set to happen on 23rd July 2021 from 9am to 9pm (KL Time / GMT +8) and will be held via Zoom.

For more information on the conference or to register yourselves, [click this link](#).



The Asian International Arbitration Centre (AIAC) is back with the AIAC ADR Week for 2021. For 3 days between 19th to 21st August 2021, the AIAC will host over 120 distinguished speakers from all over the world including judges, academicians, and ADR practitioners who will share their thoughts and insights on a range of topics. Our Partner, Foo Joon Liang will be part of the panelists for Session 1 of Day 3 - 'Adjudication 2020 Recalibrating Practice and Procedure with Judicial Decisions'.

For more information on the conference or to register yourselves, [click this link](#).