

The Toolbox

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Winding up petition based on adjudication decision under CIPAA – Court of Appeal reaffirms Likas Bay

By Foo Joon Liang, Carissa How Chen Huey

After a party successfully obtains an adjudication decision in its favour, that party may seek to bring a winding up petition premised on that adjudication decision.

Bhd (Civil Appeal No: B-02(NCC) (A)-695-06/2020) has affirmed its position in **Likas Bay Precinct Sdn Bhd v Bina Puri Sdn Bhd [2019] 3 MLJ 244**, that this is possible.

This article discusses this issue in light of the COA's decision, which ultimately found against the grant of such an injunction sought by RZH Setia Jaya Sdn Bhd.



The Court of Appeal (COA) in its recent decision of **Sime Darby Energy Solutions Sdn Bhd v RZH Setia Jaya Sdn**

However, what about the losing party then seeking to obtain a Fortuna Injunction to stop the presentation of such a petition?

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

CIPAA: Adjudicators' Powers to Order Remedies and Interest when Payment Clause is Unenforceable

By Tan Min Lee, Foo Yuen Wah

In **First Commerce Sdn Bhd v Titan Vista Sdn Bhd and another case [2021] MLJU 376**,



the High Court (HC) examined the extent of an adjudicator's powers to determine remedies and interest in unique circumstances where a payment clause was void and the default statutory implied payment provision in the CIPAA was pleaded.

This article looks at the relevant factors taken into consideration by the HC leading to its decision, among others, that adjudicators are not bound by the disputes referred to them in the exact way as pleaded by the parties.

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

CIPAA: Clash of Stay Applications and Enforcement Orders

By Foo Joon Liang, Tasha Lim Yi Chien

Adjudication decisions once awarded, are usually enforced under S.28 of the Construction Industry Payment and Adjudication Act 2012 (CIPAA) by the winning party, while the losing party often attempts to set aside or stay the adjudication decision under ss. 15 or 16 of the CIPAA.



However, what if an application to stay is made after an enforcement order is granted and the application to set aside the adjudication decision is dismissed?

This was the scenario faced by the High Court (HC) in **MKP Builders Sdn Bhd v PC Geotechnic Sdn Bhd [2021] MLJU 1061**. This article looks at the HC's decision here where the HC ultimately held that a stay cannot subsequently be granted after an enforcement order has been granted.

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

Housing Developers Breathe a Sigh of Relief – The Alvin Leong Saga

By Bahari Yeow, Alex Choo Wen Chun

All hope is not lost for housing developers, even in this tumultuous season of the pandemic.

In an appeal brought by a Developer of several service apartments against its purchasers, the Court of Appeal held that the Controller of Housing is not empowered to grant an extension of time to deliver vacant possession, this does not oust said power from being exercised by the Minister of Urban Wellbeing, Housing and Local Government. This article discusses the said Court of Appeal's decision.



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Challenging Compensation for Acquired Land: High Court is the Final Avenue

By Foo Joon Liang, Eri Fu Swee Theeng

Article 13 of the Federal Constitution allows for lawful acquisition of private land by the government, provided it is in accordance with the Land Acquisition Act 1960 where landowners are duly compensated.

Landowners, are nevertheless often dissatisfied with said compensation given. While there is an opportunity for landowners to object to the compensation, the question remains as to what extent the compensation awarded by the land administrator can be challenged.

The Federal Court (FC) in ***Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd [2021] 4 MLJ 570*** held that the HC is the highest court that parties can go to when challenging the quantum of the awarded compensation.

A limitation of landowners' rights to challenge such compensation perhaps? This article looks at the FC's decision and highlights matters that all landowners should be wary of.

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

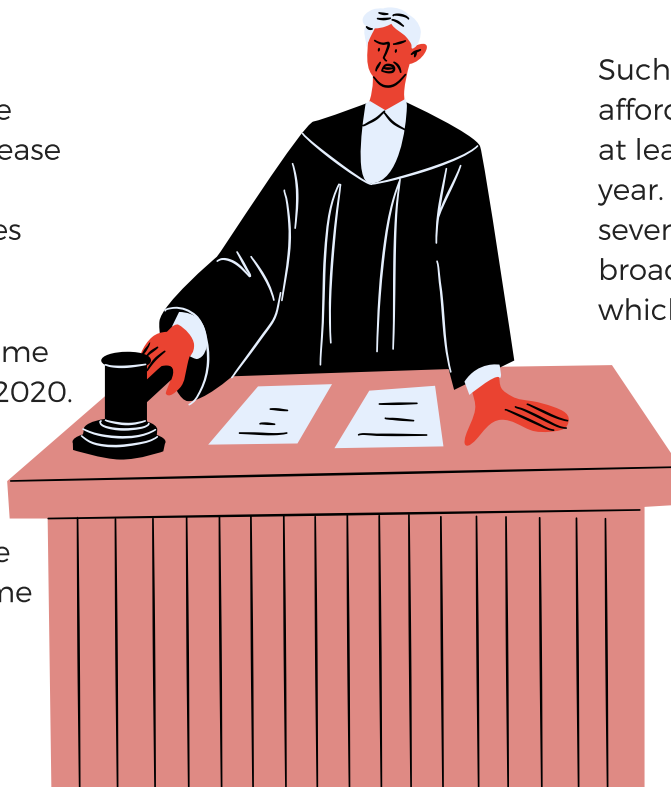


Covid Act: “Inability to Perform Contractual Obligation” tested in Courts

By Lee Xin Div

Part II of the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) Act 2020 (“**Covid Act**”) which relieves contracting parties with inability to perform contractual obligations came into effect on 23 October 2020.

Its operation has been extended until 31st December 2021 by the former Minister in the Prime Minister’s Department (Parliament and Law) – Datuk Seri Takiyuddin Bin Hassan, in June 2021.



Such protection is hence still afforded to eligible businesses at least until the end of this year. This article discusses several reported cases across a broad spectrum of areas of law, which have considered the extent to which business may be afforded such protection under Part II of the Covid Act.

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

Asian International Arbitration Centre (AIAC) Arbitration Rules 2021

By Kang Mei Yee

The Asian International Arbitration Centre (“**AIAC**”) Arbitration Rules 2021 (“**AIAC Arbitration Rules**”) have taken effect as of 1 August 2021.

This article looks at the key provisions of the AIAC Arbitration Rules 2021 and the notable changes from its predecessor, the AIAC Arbitration Rules 2018 that arbitral practitioners, budding and practicing alike, should take note of.

Appreciably, the AIAC Arbitration Rules have introduced clear provisions for the use of technology to remotely participate in the arbitral proceedings.

Further, the AIAC Arbitration Rules have also notably incorporated the Fast Track Procedure for expedient conduct of arbitration.

Read the full article by [clicking this link](#). The AIAC Arbitration Rules 2021 can be accessed at [this link](#).

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Webinars in September 2021

Members of the firm will be addressing various contemporary legal issues in our upcoming Law On-Demand Series. To RSVP, please contact our Knowledge Team at forefront@ganlaw.my

2nd September

Remote Working - Managing Employees' Performance & Disciplinary Issues

Gan Khong Aik
Lee Sze Ching (Ashley)

9th September

*Corporate Rescue Mechanisms - A Breather for Construction Industry (a joint session with **Master Builders Association Malaysia**)*

Gan Khong Aik
Eri Fu Swee Theeng

24th September

Exiting Commercial Contracts - A Look at the Termination Clause

Kang Mei Yee

27th September

Beyond NRP: Managing Tenancy and other Incidental Issues

Tan Min Lee
Lee Hui Juan