



## Of Q3 2021...

With the easing of the COVID-19 restriction measures, it is not an overstatement to say that the third quarter is filled with readjustments and realignments as many industries resume their business operations. As we weather through the uncertainties, we attempted to share our

perspectives on contemporary issues faced by businesses via the **Law On-Demand** series. We hope you find the sessions helpful and we thank you for sharing your view points with us.

We also take this opportunity to extend our heartiest congratulations to our partner, **Bahari Yeow**, who is recognised among the **Asian Legal Business's Asia Super TMT Lawyers**. Bahari is one of only two lawyers from Malaysia who made it to this list.

In addition, our **Bahari Yeow and Lim Zhi Jian** are also named among the **Leading Lawyers for Intellectual Property in the asialaw 2022 Edition**. We thank our clients and peers for their continuous support!

*Warmest regards,*

**Gan Khong Aik** FCI Arb

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## ALB's Asia Super TMT Lawyers

Our partner, Bahari Yeow is named among the Asian Legal Business's Asia Super 50 TMT Lawyers. Bahari is one of only two lawyers from Malaysia who made it to this list.

In its inaugural list, ALB's Asia Super 50 TMT Lawyers spotlights standout lawyers in the technology, media and telecommunications space in the region, when it comes to client service.

## High Court ordered implementation of Undi 18

Judicial Commissioner Alexander Siew How Wai, in a judicial review application, had ordered the Election Commission and the Government of Malaysia to implement section 3 of the Constitution (Amendment) Act 2019 by 31 December 2021. The decision to defer the implementation of such amendment to after September 2022 was also quashed by the court.

The effects of the amendment and the orders are two-fold. Firstly, the voting age will be lowered to 18 years old from the present 21 years old. Secondly, the automatic voter registration will replace the existing system that requires Malaysians to register as voters before they are qualified to vote in the General Election. These measures must be introduced by the end of this year.



## Apex Court to review contempt decision against online news portal

The Federal Court has fixed 12 October 2021 to hear a review application made by the online news portal that was found guilty of contempt over the offensive comments made by its readers.

Previously, a seven-member panel in *Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd* [2021] 2 MLJ 652, in a six to one decision, found the online news portal liable for contempt of court and imposed a fine in the sum of RM500,000.

## Citizenship for children born overseas to Malaysian mothers

In a momentous decision, the High Court held that children born overseas to Malaysian mothers are entitled to Malaysian citizenship. In arriving at the decision, the court ruled that citizenship rights in Article 14 together with section 1(b) of Part II of the Second Schedule to the Federal Constitution must be read harmoniously with Article 8(2) of the Federal Constitution which prohibits gender discrimination. Therefore, the word “father” must be read to include “mothers” and their children are entitled to citizenship by operation of the law under Article 14.

## Securities Commission Malaysia launched CMP 3

The Securities Commission Malaysia (SC) launched the third Capital Market Masterplan (CMP3) on 21 September 2021. CMP3 serves as a strategic framework for the growth of Malaysia’s capital market from 2021 to 2025. Under CMP 3, the regulator, among others, is committed to adopting principles-based regulations and encouraging greater regulatory technology adoption among market participants.

To promote greater alignment towards the recommendations by the Task Force on Climate-Related Financial Disclosures (TCFD), the SC is also looking into climate disclosures for corporations and capital market intermediaries.

## Revised Reference Rate Framework

On 11 August 2021, the Central Bank of Malaysia (Bank Negara Malaysia) announced the release of the revised Reference Rate Framework (“Framework”) that will be effective on 1 August 2022. Under the Framework, the Standardised Base Rate (“SBR”) will replace the Base Rate as the common reference rate across financial institutions for new retail floating-rate loans. The SBR will be linked to the Overnight Policy Rate (OPR), any changes to the SBR will only occur following changes in the OPR.

## Cryptocurrency as legal tender in El Salvador

On 7 September 2021, El Salvador has become the first country in the world that accepts Bitcoin cryptocurrency as a legal tender.

## Singapore passed Courts (Civil and Criminal Justice) Reform Bill

The Parliament of Singapore passed the Courts (Civil and Criminal Justice) Reform Bill on 14 September 2021. The Bill seeks to support the digital transformation of the Singapore courts by leveraging technology to conduct proceedings in a flexible manner via electronic means.

Various significant changes will be introduced, such as, conduct of remote hearings and documents-only hearings, simplification of court terminology across the statute books, implementation of recommendations of the Civil Justice Commission and Civil Justice Review Committee to reform the Singapore civil justice system including empower court to order parties to resolve disputes by amicable resolution, empower the General Division of the High Court to grant interim relief in aid of foreign court proceedings even where there are no substantive proceedings in Singapore.



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## Is DABUS an inventor?

An artificial intelligence system that incorporates artificial neural networks created by Dr. Stephen Thaler, DABUS ('a **d**evice for the **a**utonomous **b**ootstrapping of **u**nified **s**entience) is a computer program capable of inventing on its own as it can continuously generate new and inventive outputs. DABUS was named as the inventor in patent applications filed by Dr. Stephen in several countries, including the United States (US), United Kingdom (UK), European Union since 2018. The applications in US, UK and Europe were refused on the ground that DABUS is not a natural person in 2019 and 2020.

In July 2021, South Africa became the first country in the world that awarded a patent which names DABUS as its inventor and Dr. Thaler as the patent's owner. The Federal Court of Australia in *Thaler v Commissioner of Patents* [2021] FCA 879 sets a precedent by recognising that an artificial intelligence system can be an inventor under the Australian patent law.

However, such findings are not followed by the English Court of Appeal in *Thaler v Comptroller General of Patents Trade Marks and Designs* [2021] EWCA Civ 1374, where the court found that only a person can be an inventor under the English patent law.

## Asian International Arbitration Centre (AIAC) Arbitration Rules 2021

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.

To read more, click [here](#). The AIAC Arbitration Rules 2021 can be accessed [here](#).

## 亚洲国际仲裁中心 仲裁规则2021

江美仪 著

亚洲国际仲裁中心仲裁规则2021（“AIAC仲裁规则”）于8月1日生效。

本文探讨了多项仲裁员需留意的AIAC仲裁规则要点，以及亚洲国际仲裁中心仲裁规则2018和2021两者之间的显著变化。

在一系列的仲裁规则修改和变化中，必须强调的是AIAC仲裁规则阐明使用远程技术参与仲裁程序。

此外，AIAC仲裁规则引入了快速通道程序以便仲裁程序可以快速进行。

欲了解更多，请点击[此处](#)。您可以点击[此处](#)以浏览亚洲国际仲裁中心仲裁规则2021。

## "Liable jointly and severally"- what is the implication?

*Gan Khong Aik & Lee Sze Ching (Ashley)*

A creditor obtained a judgment in his favour against several judgment debtors, but the judgment did not state that the debtors are liable jointly and severally for the judgment sum. The immediate questions that might arise would include "what are the creditor's rights against the debtors when it comes to enforcement of the judgment?". That was the issue canvassed before the apex court in *Lembaga Kumpulan Wang Simpanan Pekerja v Edwin Cassian Nagappan* [2021] 7 CLJ 823.

The Federal Court clarified a common misconception about joint liability that the liability of two or more debtors is shared and the creditor can only recover in equal proportions against each of the debtors. On this point, the Court referred to section 44 of the Contracts Act 1950 and held that the creditor may recover the entire judgment sum from any of the debtors in a joint liability situation as each debtor is liable for the entire judgment sum.

Next, the Federal Court also examined two divergent views delivered by the Court of Appeal in *Sumathy Subramaniam v Subramaniam Gunasegaran & Another Appeal* [2018] 2 CLJ 305 and *Kejuruteraan Bintai Kindenko Sdn Bhd v Fong Soon Leong* [2021] 5 CLJ 1 when a judgment is silent on the type of liability. Another significance of this decision that must be emphasised is the ruling on the effects of joint liability prescribed by a statute on the judgments, where such liability is not specifically stated in the judgments. To read more, click [here](#).

## Interpretation of Statute & Contract: Apex Court favours "Commerciality" over "Illegality"

*Tan Min Lee & Lee Xin Div*

The specific issue before the Federal Court in *Maple Amalgamated Sdn Bhd v Bank Pertanian Malaysia Bhd* [2021] 8 CLJ 409 was whether an Islamic banking facility known as Bai Bithaman Ajil ("BBA") transaction is invalid for violating section 214A of the National Land Code ("NLC"). On this issue, the apex court affirmed its decision in *Gula Perak v Datuk Lim Sue Beng* [2019] 1 CLJ 153 and held that section 214 of the NLC did not apply to the agreements executed for the BBA as there had not been actual transfer of ownership of the land.

The arrangement under the BBA was merely a means to finance an Islamic facility, no memorandum of transfer was executed and the borrower remained the registered proprietor at all material times.

In dealing with the legality of the BBA, the Federal Court also made broader pronouncements on the applicable legal principles when a Court is asked to invalidate a commercial transaction. Broadly, the apex court ruled that the Court should be slow in invalidating commercial contracts that are in breach of statutory provisions unless there is such clear intention of the legislation.

If there are two possible interpretations, the one which avoids a finding of illegality is to be preferred. This is because the apex court viewed that the public and reasonable commercial people would organise their affairs on the assumption that what they are doing is not prohibited by law. To read more, click [here](#).



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## Adjudicator is Bias for Unreasonable Deadlines & Failure to Account for MCO Restrictions

Foo Joon Liang & Tasha Lim Yi Chien

Whilst an adjudicator has wide discretionary powers under the Construction Industry Payment and Adjudication Act 2012 (CIPAA), can such discretionary power disregard or bypass the restrictions provided in the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) Regulations 2020 [P.U. (A) 91/2020] more commonly known as the 'Movement Control Order' ("MCO")?

The High Court upon scrutinising the adjudicator's conduct in *Itramas Technology Sdn Bhd v Savelite Engineering Sdn Bhd and other cases* [2021] MLJU 1382 held that there was actual bias by the Adjudicator for amongst others, failing to give effect to the restrictions imposed by the MCO.

This article also discusses another novel aspect on the 45-working days provided in section 12 of the CIPAA and the duration of the MCO.

To read more, click [here](#).

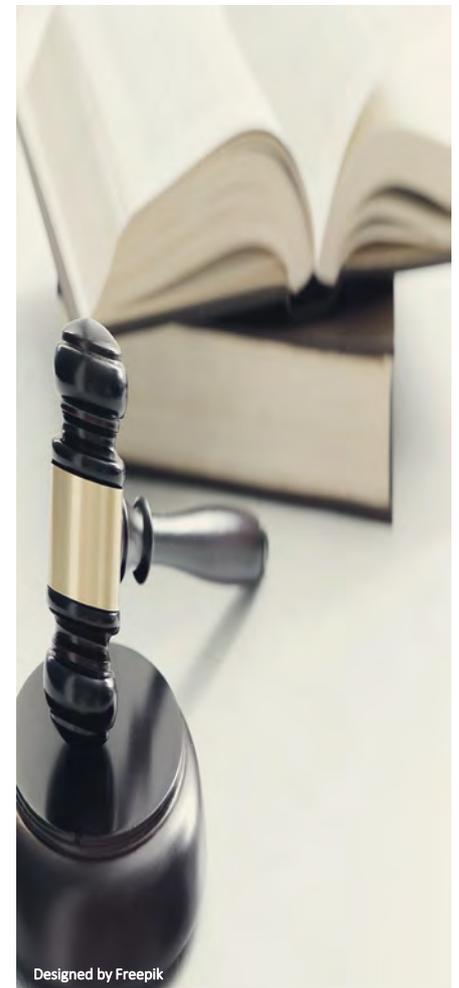
## Covid Act: "Inability to Perform Contractual Obligation" tested in Courts

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 disabilities 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) in June 2021.

Such protection is hence still afforded to eligible business at least until the end of this year. This article discusses several cases which have considered the application of Part II of the Covid-19 Act. To read more, click [here](#).



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

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, however, 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. To read more, click [here](#).

## Challenging compensation for acquired land: high court is the final avenue

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 in *Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd* [2021] 4 MLJ 570 held that the High Court 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 Federal Court's decision and highlights matters that all landowners should be wary of. To read more, click [here](#).

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

Foo Joon Liang & Carissa How

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

However, what about the losing party then seeking to obtain a Fortuna Injunction to stop the presentation of such a petition? This article discusses this issue in light of the Court of Appeal's decision, which ultimately found against the grant of such an injunction sought by RZH Setia Jaya Sdn Bhd.

To read more, click [here](#).



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