



6 Feb 2020, Kota Kinabalu Court Complex - Conference Room

# MALAYSIAN CONSTRUCTION LAW AND DISPUTE RESOLUTION LANDSCAPE ARE THEY WORKING ?



## KEYNOTE ADDRESS

By YAA Tan Sri David Wong Dak Wah  
Chief Judge of Sabah and Sarawak

## WHO SHOULD ATTEND

Developers, Contractors, Project Consultants, Claims Consultant, Public Authorities involved in development and engineering, Advocates & Solicitors and Pupils-in-Chambers.

In Malaysia, most of the construction disputes are resolved through arbitration and statutory adjudication. According to the statistics from the AIAC, majority of the domestic arbitrations registered with the centre concerned the resolution of construction disputes. In the realm of statutory adjudication, the number of cases registered with the AIAC have seen a steady growth since the inception of CIPAA 2012, and it is expected the number of cases registered with the AIAC will reach 1000 in year 2020. It is therefore not an understatement to say that a change in the law and practice of arbitration and statutory adjudication will have a significant impact on the Construction ADR users and other stakeholders.

At Construction ADR Conference 2020, speakers comprising of experienced judges and construction practitioners will discuss the recent developments in the realm of construction arbitration and statutory adjudication, and analyse their implications arising from these developments from the perspectives of different stakeholders, such as contractors, employers, adjudicators, arbitrators and other players. The speakers will also give their views on how the current arbitration and adjudication law and practice may be further improved to better cater to the needs of the construction industry.

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EARLY BIRD RATE BEFORE/ON  
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## THURSDAY 6 FEBRUARY 2020

- 8.00 am REGISTRATION
- 8.50 am **WELCOME ADDRESS**  
**By YBhg Tan Sri James Foong**  
Retired Judge, Federal Court Malaysia and Director  
of Legal Plus Sdn Bhd
- 09.00 am **KEYNOTE ADDRESS**  
**By YAA Tan Sri David Wong Dak Wah**  
Chief Judge of Sabah and Sarawak
- 09.15 am **A REVIEW OF THE STATUTORY ADJUDICATION AND ARBITRAL  
LAW IN MALAYSIA AND PROPOSALS FOR REFORM**  
**By YA Dato' Lim Chong Fong**  
Judge, High Court, Malaya
- The presentation will deal with both CIPAA and arbitral reforms. In the former, there is the need to deal with the ramifications of the Federal Court case of View Esteem Sdn Bhd v Bina Puri Holdings Sdn Bhd (2019) 5 CLJ 479 as well as other cases from the construction courts that exposed the current ambiguity/uncertainty in the statute. Moreover missed opportunities during the initial enactment of the statute including provisions on adjudication review, payment bonds and regulating nominated sub contracting will be discussed. As to the latter, the reintroduction of the appeal/review on law arising from the award as well as on stay of court proceedings involving multi partite disputes will be also be discussed.
- 10.15 am TEA BREAK
- 10.30 am **RECENT JUDICIAL DECISIONS OF THE APPELLATE COURTS AND  
THEIR IMPLICATIONS ON THE PRACTICE OF ADJUDICATION**
- Moderator:  
**By YAA Tan Sri David Wong Dak Wah**  
Chief Judge of Sabah and Sarawak
- Speakers:
- Foo Joon Liang
  - James Monteiro
  - Tan Swee Im
- 11.30 am **TIPS/STRATEGIES ON WINNING (OR DEFEATING A CIPAA CLAIM)**
- Moderator:  
**By YA Dato' Lim Chong Fong**  
Judge, High Court, Malaya
- Speakers:
- Rajendra Navaratnam
  - Grace Chaw
  - Ivan Loo
- 12.30 pm NETWORKING LUNCH
- 2.00 pm **AN UPDATE ON CONSTRUCTION LAW AND PRACTICE IN MALAYSIA**
- Moderator:  
**By YA Dato Lee Swee Seng**  
Judge, Court of Appeal, Malaysia.
- Speakers:
- Choon Hon Leng
  - Lam Wai Loon
  - Ankit R. Sanghvi

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**THURSDAY**  
6 FEBRUARY 2020

3.00 pm **ARBITRATION AMENDMENT ACT 2018: A BOON OR BANE TO THE PROMOTION OF ARBITRATION IN MALAYSIA?**

Moderator:  
**By YA Dato Mary Lim**  
Judge, Court of Appeal, Malaysia.

Speakers:

- Y Bhg Dato Nitin Nadkarni
- Thayanathan Baskaran
- Ashok Kumar

04.15 pm TEA BREAK

04.30 pm **WELCOME SPEECH**  
By Mr Foo Joon Liang, CIArb Chairman

**ARBITRATION AS AN ALTERNATIVE TO DOMESTIC COURTS**  
By Y Bhg Dato' Nitin Nadkarni,  
Partner, Lee Hishammuddin Allen & Gledhill

**CIArb & IT'S ROLE IN MALAYSIAN ARBITRATION**  
By Catherine Chau  
Past – Chairman of CIArb

06.00 pm **CLOSING REMARKS**  
By Mr Roger Chin  
President, Sabah Law Society

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**YAA Tan Sri Datuk Seri Panglima  
David Wong Dak Wah**

The Chief Judge of Sabah and Sarawak

YAA Tan Sri Datuk Seri Panglima David Wong Dak Wah read law at University of New South Wales, Sydney, Australia. He also obtained a B.Com (majoring in accountancy) from the same University. From 1978 to 1979 Tan Sri Datuk David was attached to a Public Accounting Firm in Sydney as a qualified auditor. In 1979 he was admitted as a Barrister of the New South Wales Supreme Court in Australia.

In 1980, Tan Sri David was admitted to the Sabah Bar and he practiced as an Advocate and Solicitor in Sabah until 1992. In 1992, Tan Sri David practiced in Sydney until 1996. In 1997 he returned to Sabah and practised until 2005. Tan Sri David was appointed a Judicial Commissioner of the High Court of Sabah and Sarawak in Kuching on 29 August 2005 and elevated as a Judge of the High Court of Sabah and Sarawak with effect from 11 April 2007. On 15 January 2009 Tan Sri David was transferred to the High Court of Kota Kinabalu, Sabah until his elevation to the Court of Appeal Malaysia on 8 January 2013.

He was appointed as Judge of the Federal Court on 27 April 2018 and Chief Judge of Sabah & Sarawak on 11 July 2018.



**Justice Dato' Mary Lim**

Judge  
Court of Appeal, Malaysia

Justice Dato' Mary Lim read law at the University of Leeds. She was called to the English Bar by the Honorable Society of Lincoln's Inn.

She obtained a Master of Laws degree from the University of Western Australia. Dato' Mary Lim served various positions in the Attorney General's Chambers until her elevation to the High Court Bench where she was the first Judge of the Construction Court in Kuala Lumpur. Dato' Mary Lim is a qualified advocacy trainer with Bar Council Malaysia and has conducted numerous courses on this subject. She has also delivered many public lectures of various topics associated with the law both nationally and internationally. Justice Dato' Mary Lim was elevated as Judge, Court of Appeal on 21 March 2016.

She recently taught at the Advanced Advocacy Course at Keble College Oxford.



**Justice Dato' Lee Swee Seng**

Judge  
Court of Appeal, Malaysia

Justice Dato' Lee Swee Seng graduated with Bachelor of Laws (Hons) degree from University of Malaya and obtained his Master of Laws from the same university. He also holds an MBA degree from University of Southern Cross, Australia. Justice Dato' Lee was called to the Malayan Bar in February 1985 and was in active legal practice until May 2010 when he was appointed a Judicial Commissioner of the High Court of Malaya.

He was made a Judge of the High Court of Malaya in 2014 and promoted to The Court of Appeal on 8 August 2019. He has presented numerous papers and spoken at seminars and conferences on corporate and securities law, intellectual property, franchise and competition law, mediation, contractual disputes and many other topics. He was also a visiting fellow of Taylor University Law School and a part-time lecturer with UM Law Faculty for the LLM Masters Programme.

Justice Dato' Lee is a trained advocacy trainer with Bar Council Malaysia and has conducted numerous courses on this subject.



**YA Dato' Lim Chong Fong**

Judge  
High Court, Malaya

Yang Arif Dato' Lim Chong Fong is a Penangite born in 1962. He studied at the Wellesley Primary School and the Penang Free School. He is a Pengakap Raja. He graduated with a Bachelor degree in Building from the National University of Singapore and a Bachelor degree in Laws from the University of London.

He is also a Chartered Arbitrator, Chartered Builder, Chartered Quantity Surveyor and Barrister at Law. He has worked as QS in the construction industry and practiced as construction lawyer and arbitrator from 1985 to 2013. He was ranked as a leading lawyer in construction dispute resolution by Chambers & Partners, Asialaw Profiles and The International Who's Who of Construction Lawyers. He has undertaken research on security of construction payment as a Fulbright scholar at the William S. Richardson School of Law in Hawaii, USA and subsequently appointed by the Construction Industry Development Board Malaysia to formulate the draft Construction Industry Payment and Adjudication bill. In 2010, he graduated with a Master of Laws degree from the University of Malaya through the submission of his dissertation entitled "Malaysian Construction Industry Payment - Strategies for Reform".

He was Honorary Advisor (Contracts) of the Master Builders Association Malaysia and was appointed by the Minister of Works in 2013 as a member of the Expert Panel to review the Malaysian construction industry practices following the construction accident at the Penang Second Bridge Project.

YA Dato' Lim has been appointed as Judicial Commissioner of the High Court of Malaya on 15 January 2014 and confirmed as Judge of the High Court of Malaya on 30 January 2017. He is presently serving at the Kuala Lumpur High Court (Intellectual Property Court) after having served at the Shah Alam and Penang High Courts. He is a trained mediator by the AIAC and has also served as the Advisor of the Mediation Centre of the Penang Courts.



**Ms Tan Swee Im**

Barrister-at-Law  
39, Essex Chambers

Swee Im Tan is a Barrister-at-Law (Middle Temple), a Fellow of the Chartered Institute of Arbitrators, a Fellow of the Malaysian Institute of Arbitrators, a Fellow of the Asian Institute of Alternative Dispute Resolution, a Fellow of the Chartered Institute of Building, a Fellow of the Malaysian Society of Adjudicators, a Fellow of the Dispute Board Federation an arbitrator, adjudicator and mediator on the panel of the Asian International Arbitration Centre, a qualified adjudicator, a Malaysia Construction Industry Development Board Accredited Mediator, and holds a Diploma in International Commercial Arbitration. Swee is also an Advocate and Solicitor of the High Court of Malaya, and a consultant at Tan Swee Im, Siva & Partners, a legal firm in Malaysia which she founded, which focuses on the construction, infrastructure and energy sectors. She was in-house counsel for a public listed company and is experienced in arbitration matters.

She was a key member of the drafting team on the first independent power plants in Malaysia, the Kuala Lumpur International Airport, the Malaysia-Singapore Second Crossing projects and many other major projects in Malaysia as well as internationally. Swee is one of only five lawyers in Malaysia named in Who's Who Legal for the practice area of Construction. Swee's experience in the construction industry ranges from the early procurement strategy stage, contract drafting, advisory during the project life, through to dispute resolution.

She is known for her logical and practical approach to matters, with a great ability to keep the big picture in mind without losing focus on the detail. Solution orientated without getting lost in the law, she is a sought after resource by industry stakeholders.



### Mr Choon Hon Leng

Partner - Dispute Resolution  
Raja, Darryl & Loh

Hon Leng's niche is in Infrastructure Projects with clients that are Government-owned infrastructure companies. He was appointed to draft and prepare the new Turnkey Construction agreement for the conversion of the then-existing Project Delivery Partner model for the Klang Valley Mass Rapid Transit 2 Project to a Turnkey Contractor model, making the contract (for both above-ground and underground portions) a fixed price contract and reducing the project cost from RM39.35 billion to RM30.53 billion.

Another such client is the Perumahan Rakyat 1Malaysia Corporation (PR1MA), an agency established under the Perumahan Rakyat 1Malaysia Act 2012 as part of the Government's initiative to address the need for sustainable housing and community living in urban areas in Malaysia. We were engaged to advise and review PR1MA's entire existing business, development and contractual models for the development of PR1MA projects. After completing the review, we provided the client with recommendations, worked with the client to modify/streamline the existing structure and then prepared the necessary documentation for implementation. This is a substantial exercise which is still ongoing and will have implications on the Government's affordable housing scheme/programme, which affects the lives of citizens in Malaysia. Construction law being Hon Leng's foundation, his experience in this regard includes pre-contract negotiation, contract documentation, project advice, post-dispute negotiation and formal dispute resolution (including construction adjudication under the Construction Industry Payment and Adjudication Act 2012).

He has also acted as lead counsel in several construction arbitrations, notably as the lead counsel for an arbitration held in the People's Republic of China involving Malaysian and Chinese entities where the proceedings were conducted wholly in Mandarin under the CIETAC arbitration rules. Over the years, Hon Leng has been invited as speaker and presented papers at construction conferences on various topics, including loss and expense claims, arbitration, dispute handling, project management and contractual issues.

Hon Leng has been elected as the Vice-President of the Chartered Institute of Arbitrators (Malaysia Branch) for 2019-2020.



### Y Bhg Dato' Nitin Nadkarni

Partner  
Lee Hishammuddin Allen & Gledhill

A lawyer with a reputation for energy and construction disputes. Nitin is the Head of the Firm's International Arbitration Practice. Nitin's main area of practice is in international arbitration, focusing on oil & gas, energy, construction and engineering, and infrastructure projects. Nitin has more than 30 years' experience representing major governmental organisations, multinational corporations, national and international contractors, sub-contractors, and high-profile individuals in arbitration and litigation. Nitin has acted as counsel or sat as arbitrator in disputes arising from projects in or arbitrations seated in Malaysia, Singapore, Korea, London, Switzerland, Vietnam, United Arab Emirates, Sudan, Paris and Algeria under ad hoc and institutional rules such as AIAC, ICC, SIAC, and LCIA rules. He has been consistently ranked by Chambers & Partners as a leading lawyer (Band 1 from 2013-2019) who is very polished and sought-after, and by Asia Pacific Legal 500 as a leading dispute resolution, and real estate and construction lawyer who is very highly regarded for construction disputes.



### Mr Lam Wai Loon

Founding Partner  
Messrs Harold & Lam Partnership

Lam Wai Loon is a founding partner of Messrs. Harold & Lam Partnership. He sits as an arbitrator and is a qualified adjudicator to adjudication disputes under the Construction Industry Payment and Adjudication Act 2012 ("CIPAA 2012"). In addition to the legal qualifications, he obtained a Master Degree in Business Administration from the Heriot-Watt University, Scotland. He is a Fellow of the Chartered Institute of Arbitrators (U.K.), and is on the Asian International Arbitration Centre's panel of arbitrators and adjudicators. Wai Loon has spoken at conferences on arbitration, adjudication and construction law, and has contributed various articles to legal publications. His recent publications include a co-authored book titled 'Construction Adjudication In Malaysia', and a co-authored Chapter on 'Arbitration In Malaysia' published in the text titled 'International Commercial Arbitration In Asia' [3rd Edition, 2013, JurisNet LLC]. Wai Loon is the Deputy Chairman of the Expert Advisory Committee for the Asian International Arbitration Centre ("AIAC"), the President of the Malaysian Society of Adjudicators [2019-2020], immediate Past President of the Society Construction Law, Malaysia [2017-2018] and the Past Chairman of the Chartered Institute of Arbitrators, Malaysia Branch [2016-2017]. He is also a committee member of the AIAC CIPAA Regulations Committee, and an approved AIAC Tutor & Examiner of the AIAC Adjudication Training Programme.

**Mr Ivan Loo**

Partner  
SKRINE

Ivan is the co-head of the Construction and Engineering practice. His expertise lies in the construction industry where he appears as lead counsel in arbitration, adjudication and litigation proceedings on construction related disputes. Ivan also regularly sits as arbitrator in both international and domestic arbitrations conducted under various rules of arbitration including the Asian International Arbitration Centre ("AIAC"), the Singapore International Arbitration Centre ("SIAC"), the International Chamber of Commerce ("ICC"), and UNCITRAL. He is also sits as adjudicator under the Construction Industry Payment & Adjudication Act 2012 and as mediator with the Malaysian Mediation Centre.

**Ankit R Sanghvi**

Partner  
Halim, Hong & Quek

Ankit has represented a number of multi-national and government linked companies in Malaysia, both in an advisory capacity as well as lead counsel at all levels of the Malaysian Courts. His main practice areas are corporate and commercial litigation with a primary focus on complex commercial and corporate disputes specifically involving fraud, conspiracy, breach of trust, breach of fiduciary duties, breach of statutory duties and breach of contract. Ankit's areas of practice also include insurance law and domestic and international arbitration as well as claims involving negligence and defamation. Ankit has also been involved in numerous legal disputes concerning land law and has acted for various developers and banking institutions on a variety of claims including claims for liquidated damages, specific performance and prohibitory injunctions. He has recently successfully defended several developers in a claim initiated by 400 Orang Asli for an order that the parcels of land registered in the names of the developers be expunged of the titled registrar due to the competing native customary rights of the Orang Asli on those very same lands. Although the High Court decided that the Orang Asli had established native customary rights over the lands in concern, the lands registered in the names of the developers stayed to remain as such and the Orang Asli were instead ordered to seek for compensation from the state government for their loss of usage of the lands.

Ankit is also a trained and registered adjudicator of the Asian International Arbitration Centre (AIAC) and is on the AIAC panel of Adjudicators.

**Mr Ashok Kumar**

Partner  
SKRINE

Ashok is the co-head of the Construction and Engineering practice in Skrine. He is an experienced dispute resolution lawyer with an extensive experience in Construction, Infrastructure and Energy Project Disputes. He sits regularly as an arbitrator in both ad-hoc and institutional commercial arbitrations. His active arbitration and dispute resolution practice as Lead Counsel spans a variety of construction, corporate and commercial disputes. His portfolio of work includes advising various multinational companies specialised in their disputes involving civil building construction, the oil and gas industry, aviation, refinery plant maintenance, energy, telecommunication, infrastructure and health maintenance industries. Ashok was the former Chairman of the Chartered Institute of Arbitrators, Malaysia Branch. He is also on the panel of arbitrators for the Asian International Arbitration Centre ("AIAC"), the Singapore International Arbitration Centre ("SIAC"), the Hong Kong International Arbitration Centre ("HKIAC") and the International Chamber of Commerce Malaysia ("ICC"). He continues to have numerous appointments as sole arbitrator.

He has been at the forefront in developing the jurisprudence in the Malaysian arbitration law, the Arbitration Act 2005 and has published several commentaries on recent case law as he was directly involved in setting out its implications on the arbitral regime in Malaysia.

**Mr James P Monteiro**

Principal Partner  
James Monteiro, Advocates & Solicitors

James is the principal partner of the Firm and has over 20 years of experience as an Advocate & Solicitor. James is experienced in the areas of Energy and Construction & Engineering, including project advisory, risk management and dispute resolution. James has acted for a variety of clients both foreign and local, large multi-nationals, PLCs and GLCs.

- Founding Member and Current Chairman of the Society of Construction Law Malaysia
- Member of the Malaysian Institute of Arbitrators
- Former member of Bar Council Malaysia's Sub-Committee on Construction Law
- Past-President of the University of Hertfordshire Alumni Association of Malaysia



**Mr Foo Joon Liang**

Advocate & Certified Adjudicator (AIAC)  
Co-Founder, Gan Partnership

Foo Joon Liang was called to the Malaysian Bar in 2000 and has extensive experience in complex arbitration and litigation. He has advised a wide range of clients including the state government, Ministry of Works, developers and contractors, and government-linked companies, financial institutions and securities and broking houses across a broad spectrum of litigation matters in Court and in arbitration, with his main focus being construction and securities transaction disputes. He is also involved in advisory work, and regularly appears as counsel at all levels of the Malaysian courts. Joon Liang is a Fellow of the Chartered Institute of Arbitrators, United Kingdom, and is currently the Treasurer of the Malaysian Chapter of the Chartered Institute of Arbitrators. He also sits on the panel of arbitrators of the Kuala Lumpur Regional Centre of Arbitration.

Joon Liang is the co-author of the 2nd edition of the book "Legal Guide to Debt Recovery Malaysia", published in 2007.



**Mr Rajendra Navaratnam**

Partner  
Azman Davidson & Co

Rajendra Navaratnam is a lawyer who obtained his first degree in Electrical Engineering and started his career as an Engineer in the Power industry. He has worked in wide and various capacities in the then National Electricity Board of Malaysia, ranging from construction and maintenance of high voltage transmission lines and substations, test and instrument functions, culminating in managing international procurement contracts, for about 10 years before he retrained in law and started his legal career with Azman Davidson and Co in 1988 which has a major construction/arbitration practice. He became a Partner in 1993.

Rajendra practises primarily in the areas of construction law and insurance in litigation, arbitration, advisory and transactional work, as well as in intellectual property litigation.

The matters Rajendra has handled include the following:

- Sat as arbitrator in international and domestic arbitrations involving, construction law, insurance and trade disputes.
- Acted as counsel in the Court of Appeal and the Federal Court.
- Acted for and advised employers, contractors and sub-contractors on construction issues, and mainly Insurers on insurance claims with technical content.
- Acted for employers and contractors in various arbitrations and court suits involving delay, extension of time, liquidated damages, value of work done, defects, termination of contract, valuations, prolongation and disruption claims, etc.
- Advised and acted for insurers on insurance claims involving contractor's all risk, professional indemnity, industrial all risk, machinery breakdown, business interruption policies, in particular those with technical content.
- Advised on draft standard conditions of contracts for construction works.
- Drafted and vetted main contracts, sub-contracts and consultancy agreements of construction projects.
- Resolution of contractual disputes and claims with foreign and domestic contractors.
- Conducted major tort litigation.
- Advised on intellectual property matters and conducted intellectual property litigation.





**Ms Grace Chaw Hei Hei**

Advocate & Certified Adjudicator (AIAC)  
Grace Chaw & Co

Grace Chaw Hei Hei graduated from Monash University, Australia and is a practising lawyer and the principal of Grace Chaw & Co., a firm of advocates and solicitors based in Kota Kinabalu, Sabah. Grace Chaw specialises in civil litigation and dispute resolution with a specific focus on contractual, construction and land disputes. She is committed to civil litigation through trial practice and appellate advocacy in the Malaysian civil courts.

She is empanelled as Adjudicator under Asian International Arbitration Centre (AIAC) to conduct statutory adjudication under Construction Industry Payment & Adjudication Act 2012. She regularly acts as counsel for claimants to resolve construction related payment disputes by way of statutory adjudication. She advocates the use of statutory adjudication as a novel alternative dispute resolution procedure to obtain a swift interim decision on payment disputes.

She represents construction industry players including landowners, developers, contractors, consultants as well as other commercial and private entities as Advocate in trial and appellate courts covering contractual, construction and tortious disputes involving landowners, unpaid interim or progress claims for work done, non-compliance, differing site conditions, liquidated damages for delay, obligations under defect liability period, joint venture disputes and other legal issues arising from administering of construction contracts, contract claims errors or omissions.



**Mr Thayanathan Baskaran**

Partner  
A. Baskaran & Co

Thayanathan Baskaran is a partner with Baskaran, Kuala Lumpur, and an associate member of Crown Office Chambers, London. Thaya's primary area of practice is construction law. He drafts various building and engineering contracts, advises on disputes arising from such contracts and appears as Counsel to resolve these disputes. Thaya also sits as an adjudicator, arbitrator and mediator. Thaya was appointed as an adjudicator in the fifteenth statutory adjudication registered in Malaysia and now regularly sits as an adjudicator. Thaya is on the panel of several international arbitration centres and has been appointed as arbitrator in a variety of commercial disputes. Thaya also sits as a mediator in Kuala Lumpur and Singapore. Thaya is the author of Arbitration in Malaysia: A Commentary on the Malaysian Arbitration Act published by Kluwer Law International in 2019. Thaya is an editor of Construction Law International, a magazine of the International Bar Association. Thaya was the Chair of the Chartered Institute of Arbitrators Malaysia Branch (2017-19) and the President of the Society of Construction Law Malaysia (2016-17). Thaya is recognized as an Arbitration Future Leader in Who's Who Legal 2020, which states that he 'comes highly recommended for his impressive arbitration practice and has been involved as counsel in a variety of complex construction disputes'.

Thaya is also ranked as a Dispute Resolution Star in Benchmark Litigation 2019. Thaya is described 'as the best example of the new wave of Asian practitioners who offer great talent and fresh ideas' in Global Arbitration Review 2018, which adds 'He is incredibly smart, agile and resourceful'.

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