

# OON & BAZUL



*E-Newsletter – January 2014*



Dear Valued Clients,

The year 2013 has been a year of growth for the firm in terms of the size of the Firm as well as the regional reach of the firm.

The Firm has grown rapidly from just 15 fee-earners in 2011 to over 30 fee-earners today, including Partner Nicholas Lum hired in 2011 and Partner Suresh Divyanathan hired in 2012. The most recent addition is Ms Kohe Hasan who joined the Firm as a Partner from an international law firm in November this year. The Firm has always had an excellent reputation for having a strong understanding of the dynamics in cross-border transactions in and around Asia. Kohe's arrival will add strength to the firm's cross-border practice.

Mediation as a form of alternative dispute resolution will be the next big thing after arbitration in Singapore next year. The Ministry of Law has plans to develop Singapore into a centre for international commercial mediation and we as a firm are in support of that initiative. Oon & Bazul is at the forefront of this development and I have personally done several mediations involving commercial cases with a 100% success rate.

We would like to take this opportunity to thank you, our clients for your kind support, without which we will not be able to be where we are today.

On behalf of the partners and the staff of Oon & Bazul, I would like to wish you and your family a happy New Year.

Regards,  
Bazul Ashhab  
Managing Partner

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## Oon & Bazul ranked in Benchmark Asia-Pacific 2013

Oon & Bazul LLP is one of only 11 Singapore firms ranked in the inaugural edition of *Benchmark Asia-Pacific-The Definitive Guide to the Leading Disputes Firms and Lawyers in the Region*.

Our lawyers **Bazul Ashhab** and **Suresh Divyanathan** are also ranked as "Local Dispute Stars".

The publication was quoted as saying the following about the firm and our Partners:

*"The firm is noted for its Malaysia capabilities provided by its association with TS Oon & Partners, located in Kuala Lumpur."*

*"The team has been rapidly expanding with some high-profile hires, such as the lateral move of **Suresh Divyanathan**...now head of the firm's commercial arbitration practice group..."*

*"A key figure at the practice is **Bazul Ashhab**, the firm's head of dispute resolution leading both the litigation and the arbitration practice groups."*

The firm has always had an excellent reputation for our dispute resolution work and this ranking affirms our position as a leading firm in the region.

Managing Partner, Bazul Ashhab said on the favourable ranking:

*"We would not have been able to achieve this without the continuous support of our clients. We are continuing to strengthen our dispute resolution practice even further with the recent hire of Partner, Kohe Hasan from a renowned international firm."*



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## Asia Pacific Legal 500 & AsiaLaw Profiles recognise Oon & Bazul

We continue to be ranked as a leading law firm by *Asia Pacific Legal 500* (2014) and *AsiaLaw Profiles* (2014). Asia Pacific Legal 500 has this to say about our Firm "**Oon & Bazul LLP undertakes a broad range of arbitration, but is particularly known for shipping-related disputes.**"

*AsiaLaw Profiles* recognise our specialisation in cross-border matters - "**the firm has since built a strong reputation for its highly regarded shipping and maritime disputes work, with a particular specialisation in cross-border matters.**"

## Singapore Arbitration: A Snapshot of the year 2013

### I. Record-breaking statistics from the Singapore International Arbitration Centre (SIAC)

Many of you will remember that the SIAC's Annual Report for 2012 revealed a record-breaking year. There was a 25% increase in case load to 235 cases and a record-high amount of SGD 3.61 billion in total quantum of the disputes arbitrated. For the year 2012, parties from 39 different jurisdictions were involved in SIAC arbitrations and for the first time since 2007, parties from Mainland China were the leading source of cases filed. This was followed by India and Indonesia.

At a private reception on 3 December 2013, the SIAC announced to the assembled guests that just that day, the number of cases filed in 2013 had exceeded the total number of cases filed in 2012. Accordingly, we can expect that SIAC's Annual Report for 2013 will reveal another yet record-breaking year. This continues to affirm the SIAC's position as a leading arbitration centre, especially for parties from Asia. We would go so far as to suggest that for Asian arbitration parties, the question is no longer whether they should have an SIAC arbitration; rather, the SIAC ought to be the default choice and if you are not arbitrating there, why not?

### II. Recent developments in Singapore case law

The highly anticipated case of T First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and others and another appeal [2013] SGCA 57 ("First Media v Astro") saw the Singapore Court of Appeal overturning a decision by the Singapore High Court and refusing the enforcement of the bulk of a SIAC Tribunal's USD 250 million award of damages.

The dispute arose from a failed satellite-TV joint venture between companies belonging to the Lippo Group ("Lippo") and companies within a Malaysian media group ("Astro"). Astro had commenced arbitration proceedings in Singapore against Lippo in 2008, seeking approximately USD 250 million in damages. During the arbitration proceedings, the Tribunal had allowed subsidiaries of Astro to be joined as parties to the proceedings, notwithstanding that they were not parties to the arbitration agreement. Between 2009 and 2010, a total of five awards were issued by the Tribunal, all in favour of Astro. These awards total approximately USD 300 million, to be paid by Lippo. Astro then obtained the leave of the Singapore Court to enforce these awards in Singapore. Lippo subsequently applied to set aside the judgment and for leave to apply to resist the enforcement orders on, amongst others, improper service and a lack of jurisdiction of the Tribunal regarding the joinder issue.

The High Court of Singapore had agreed with the arguments of Astro and held that it was not open to an award debtor to wait until enforcement proceedings to raise an objection when it had not made any application to set aside the award within the prescribed time limit under the UNCITRAL Model Law. The Court of Appeal of Singapore reversed the first-instance judgment and held that parties to arbitration are free to choose between the "active" remedy of initiating proceedings to set aside the awards or the "passive" remedy of waiting till the enforcement stage to resist the proceedings. Further, the Court of Appeal held that the Tribunal had mistakenly interpreted the SIAC Rules on joinder in allowing parties outside the arbitration agreement to be joined as parties to the arbitration.

The Tribunal, instead, only has jurisdiction over parties to the arbitration agreement and it cannot extend its jurisdiction through the use of the joinder rules. Consequently, the Court of Appeal ordered the enforcement of only a single award of USD 700,000 and declined enforcement of the remaining awards.

The Court of Appeal's decision has been praised by scholars and practitioners for confirming that despite the Singapore Courts' policy of minimal judicial intervention and pro-arbitration approach; they will not hesitate to control the arbitral process at the necessary juncture. Practically speaking, this judgment will have the effect of allowing award debtors of Singapore arbitrations to choose to defend the award at the enforcement stage, instead of needing to set aside the award at the start in Singapore.

### **III. Concluding remarks**

Recent Singapore cases (including the one above) have confirmed the Singapore judiciary's pro-arbitration stance as well as its support of international arbitration as an autonomous process, subject to minimal curial intervention. It is therefore no wonder that the SIAC's growth has coincided with the rapid development of arbitration in Singapore. In particular, the popularity of Singapore arbitration for Mainland Chinese parties (the leading source of cases for 2012) boils down to Singapore's pro-arbitration approach, its first-class judiciary and its similarity in culture and language to Mainland China.



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