



Centre for
Cross-Border
Commercial Law in Asia

Herbert Smith Freehills-SMU Asian Arbitration Lecture

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**DON'T SHOOT THE SHERIFF: THE THREAT OF LEGAL CLAIMS AGAINST ARBITRATORS
AND ARBITRAL INSTITUTIONS**

22 October 2020, Thursday

Programme

5.00pm - Welcome Remarks by Mr Alastair Henderson,
Managing Partner, Southeast Asia, Herbert Smith Freehills

5.05pm - Lecture by Ms Loretta Malintoppi,
Independent Arbitrator, 39 Essex Chambers

5.45pm - Panel Discussion

Ms Loretta Malintoppi, Independent Arbitrator, 39 Essex Chambers

Mr Kevin Nash, Deputy Registrar & Centre Director,
Singapore International Arbitration Centre

Ms Foo Yuet Min, Director, Dispute Resolution department,
Drew & Napier LLC

Moderator - Mr Alastair Henderson,
Managing Partner, Southeast Asia, Herbert Smith Freehills

6.15pm - Q & A

6.30pm - Closing remarks

6.35pm - End of webinar

The webinar is open to the public and registration is free

Please register **online**

Public CPD Points	1 point (based on 100% attendance)
Practice Area	Alternative Dispute Resolution
Training Category	General

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About the Herbert Smith Freehills - SMU Asian Arbitration Lecture Series

Herbert Smith Freehills is the only firm to hold a Band 1 ranking in Chambers for international arbitration work across the Asia-Pacific region. Winner of the Asian Legal Business award for Southeast Asia International Arbitration Law Firm of the Year in 2016, 2017 and 2018 and Indonesia Arbitration Law Firm of the Year 2017 (Hiswara Bunjamin & Tandjung in association with Herbert Smith Freehills), we have been described as a 'dispute resolution powerhouse that consistently tops the rankings across the world'.

With a team of more than 30 disputes specialists based in Singapore, Bangkok, Kuala Lumpur and Jakarta (through our longstanding association with leading law firm Hiswara Bunjamin & Tandjung) to handle cases throughout the region, we are widely recognised as Southeast Asia's pre-eminent disputes specialists.

Our lawyers represent global and regional investors, international and local corporations, and governments and state-owned entities in major domestic and cross-border disputes, as well as conducting arbitrations in all major industry sectors including energy, construction, manufacturing, finance, international trade, telecoms and investment disputes. Our team of arbitration specialists acts as counsel and advocates before tribunals across the region and under all main rules including ICC, SIAC, AAA/ICDR, BANI, TAI, KLRCA, LCIA, UNCITRAL and ICSID. Members of the team serve as arbitrators in regional and international cases.

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About the Organisers

Centre for Cross-Border Commercial Law in Asia

The Centre for Cross-Border Commercial Law in Asia (CEBCLA) facilitates research in all areas of commercial law especially in the Asian context. CEBCLA aims to be the leading Asian centre of research in commercial law which is informed by a variety of research methods including doctrinal, theoretical, empirical, historical and comparative perspectives. The goal is that CEBCLA will act as the meeting point and first port of call for scholars, leading practitioners, governments and policy makers pursuing rigorous, informed and significant research in commercial law in Asia.

<http://cebcla.smu.edu.sg/>

Singapore Management University

A premier university in Asia, the Singapore Management University (SMU) is internationally recognised for its world class research and distinguished teaching. Established in 2000, SMU's mission is to generate leading edge research with global impact and produce broad-based, creative and entrepreneurial leaders for the knowledge-based economy. It is known for its interactive and technologically-enabled pedagogy of seminar-style teaching in small class sizes.

Home to about 8,800 students, SMU comprises six schools: School of Accountancy, Lee Kong Chian School of Business, School of Economics, School of Information Systems, School of Law and School of Social Sciences, offering a wide range of bachelor's, master's and PhD degree programmes in various disciplines.

With an emphasis on generating rigorous, high impact cross-disciplinary research that addresses Asian issues of global relevance, SMU faculty collaborates with leading foreign researchers as well as partners in the business community and public sector through its research institutes and centres.

<http://www.smu.edu.sg>

Herbert Smith Freehills

In March 2017 Herbert Smith Freehills was described by Chambers Global as a 'Dispute resolution powerhouse that consistently tops the rankings across the world'. We were recognised as a global specialist that is 'internationally renowned for its market-leading practice ... Their extensive network and excellent, user-friendly disputes lawyers in each of their offices are attributes that few other firms are able to match. Extensive praise is levelled at the firm for the consistency of its advice across all of its offices'.

in Band 1 by Chambers and Partners for International Arbitration in Asia-Pacific, and winner of the Asia Legal Business award for Southeast Asia International Arbitration Law Firm of the Year consecutively in 2016 and 2017, we are widely recognised as the pre-eminent dispute resolution practice in Southeast Asia. With a specialist team of more than 30 disputes lawyers operating throughout the region from bases in Singapore, Jakarta, Bangkok and Kuala Lumpur, we are widely recognised as the pre-eminent disputes specialist in this region.

Our lawyers represent global and regional investors, international and local corporations, and governments and state-owned entities in major domestic and cross-border disputes, as well as conducting arbitrations in all major industry sectors including energy, construction, manufacturing, finance, international trade, telecoms and investment disputes. Our team of arbitration specialists acts as counsel and advocates before tribunals across the region and under all main rules including ICC, SIAC, AAA/ICDR, BANI, TAI, KLRCA, LCIA, UNCITRAL and ICSID. Members of the team serve as arbitrators in regional and international cases.

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Synopsis of Lecture & Download Paper

DON'T SHOOT THE SHERIFF: THE THREAT OF LEGAL CLAIMS AGAINST ARBITRATORS AND ARBITRAL INSTITUTIONS

While arbitrators and arbitral institutions should be held accountable if they act unlawfully or in bad faith, increasingly they also face serious legal attacks by parties dissatisfied with awards. These attacks may allege lack of arbitrator independence and impartiality, and arbitrators may also be accused of violations of due process or unequal treatment of the parties.

Surprisingly, these claims are not limited to jurisdictions less familiar with international arbitration. They are also emerging in venues where international arbitration has a long tradition, such as France and the United Kingdom.

These claims raise important issues concerning institutional and arbitrator immunity. In prolonging the dispute through collateral attacks, they can also undermine the finality and efficiency of arbitration as a dispute resolution process. Moreover, as parties' conduct becomes more aggressive, such accusations may exacerbate 'due process paranoia'. Finally, there is an obvious practical impact for arbitrators – particularly full-time arbitrators – who must be mindful of the risks and consider professional indemnity insurance, and for institutions who should address their own and their arbitrators' insurance position and generally be more transparent about the coverage that they provide.

The lecture will review some of the most recent claims against arbitrators and institutions alike to draw some lessons and propose concrete solutions to address the problem in future.

Click **HERE** for the powerpoint slides.

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Speaker / Panellist



Ms Loretta Malintoppi

Loretta Malintoppi is an independent arbitrator with 39 Essex Chambers, based in Singapore.

Loretta is dually qualified (Paris and Rome Bars) and specializes in international commercial arbitration, investment arbitration and public international law. She sits as arbitrator in proceedings under a variety of arbitration rules,

including ICSID, ICC, UNCITRAL, SCC, SIAC, LCIA and DIAC.

Loretta also appears as counsel and advocate in State-to-State disputes before the International Court of Justice and in ad hoc arbitrations. She is a past member and a Vice-President of the ICC International Court of Arbitration. She currently is a member of the Governing Board of ICCA and was appointed to the ICSID Panel of Arbitrators by the Chairman of the World Bank.

Loretta is one of the co-authors of The ICSID Convention – A Commentary published by Cambridge University Press in 2009. She is also a member of the Editorial Board of The Law and Practice of International Courts and Tribunals, editor of the International Litigation in Practice Series, and a member of the editorial advisory board of the Journal of World Investment and Trade.

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Panellists

PANELLISTS



Mr Kevin Nash

As Deputy Registrar & Centre Director of the Singapore International Arbitration Centre (SIAC), Kevin assists with the administration of all cases filed with SIAC and the supervision of SIAC's multinational Secretariat.

Since joining SIAC in 2012, Kevin has overseen the administration of thousands of international cases under all versions of the SIAC Rules and the UNCITRAL Arbitration Rules, among others, and has significant experience in SIAC cases involving Expedited Procedure, Emergency Arbitration and the Early Dismissal of Claims and Defences. He worked closely on the revisions to the SIAC Rules 2013, the SIAC Rules 2016, the SIAC Investment Arbitration Rules 2017, and will lead the SIAC Secretariat Sub-Committee on the drafting of the seventh edition of the SIAC Rules with an expected release in the third quarter of 2021.

Kevin is a frequent speaker on contemporary issues in arbitration and conducts training sessions for arbitration stakeholders around the world. He is a Member of the Singapore delegation at UNCITRAL Working Group II (Dispute Settlement) and represents SIAC as an observer at UNCITRAL Working Group III (ISDS).

Kevin holds a B.A. from Mount Allison University and a J.D. from Osgoode Hall Law School. Kevin worked at one of Canada's prominent 'Seven Sister' law firms and then went on to study an LL.M. in International Commercial Arbitration at Stockholm University. He is qualified as a Barrister and Solicitor with the Law Society of Upper Canada.



Ms Foo Yuet Min

Yuet Min is a Director in the Dispute Resolution department of Drew & Napier LLC. She regularly appears before the Singapore courts for a variety of commercial matters, including complex banking and finance disputes as well as arbitration-related court proceedings to enforce or set aside arbitral awards and to obtain interim relief. She has also successfully handled high-value matters ranging from offshore drilling contracts and construction matters to disputes relating to commercial rights to major sports events and private equity disputes, among others. Much of her work also involves SIAC and ICC arbitrations, both as counsel and as arbitrator.

Yuet Min has particular experience and interest in dealing with multilingual proceedings, and has conducted a bilingual international arbitration under the UNCITRAL Arbitration Rules. Yuet Min speaks English, Mandarin, Malay and the Hokkien dialect.

Before joining Drew & Napier in 2008, Yuet Min was a Justices' Law Clerk at the Supreme Court of Singapore. Yuet Min is recommended by the Legal 500 Asia-Pacific, the India Business Law Journal and Who's Who Legal: Arbitration – Future Leaders. In 2016, she was also identified by Asian Legal Business as one of 40 bright legal minds in the region under the age of 40.

MODERATOR



Mr Alastair Henderson

Alastair is the South East Asia Managing Partner of Herbert Smith Freehills. An Arbitration specialist, Alastair has more than 20 years' experience handling major disputes across many sectors and industries, concerning a wide variety of trade, commercial and financial activities, with particular experience of oil, gas and power, construction and engineering, infrastructure and projects, and major foreign investment. He is very familiar with disputes in or concerning the countries of Southeast Asia, as well as international cases outside the region. His clients include governments and public bodies, state-owned and independent companies, international banks, and other multinational and leading regional companies.

Alastair has served as sole arbitrator, co-arbitrator and presiding arbitrator and has handled many cases as counsel under the rules of the ICC, LCIA, SIAC, HKIAC, KLRCA, SI Arb, CIETAC, Thai Arbitration Institute and Indonesian National Arbitration Institute (BANI), UNCITRAL rules and pure ad hoc cases. He is a Fellow of the Singapore Institute of Arbitrators; a national committee member of the Chartered Institute of Arbitrators.

Alastair is consistently ranked as a leading international arbitration expert in Asia by legal directories.

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Registration

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