

Leong Kah Wah

HEAD, SHIPPING & INTERNATIONAL TRADE

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Our Partners > Leong Kah Wah

Leong Kah Wah specialises in shipping and international trade and has appeared as lead counsel in landmark Court of Appeal judgments of the STX Mumbai and the Bunga Melati 5. He was appointed as a Senior Accredited Specialist (Maritime and Shipping) by the Singapore Academy of Law.

Kah Wah is ranked in Band 1 in *Chambers* and *"is widely viewed as a prominent litigator in the market."* In *Legal 500 Asia Pacific*, he is acknowledged as a leading individual and is described as *"an outstanding and experienced wet shipping lawyer and a good advocate who proposes solutions rather than disagreeing with opposing counsel for the sake of it"*.

Besides shipping and international trade, he has extensive experience in handling commercial disputes in Court litigation, arbitration and mediation. His perspective on commercial disputes is highly sought after as his expertise is developed from his regular appointments as counsel, arbitrator and mediator on diverse commercial areas and industries. He is most comfortable arguing from first principles, as can be seen from his win in *Re: Attilan Group Ltd* [2018] 3 SLR 898, where the Singapore High Court agreed with his arguments in a green field area on the requirements of super priority financing in a scheme of arrangement. His acute sense of commercial fairness can also be seen in the published decisions he has delivered on tribunals constituted by the Income Tax Board of Review to hear and decide tax appeals.

Kah Wah is deservedly ranked as one of the world's most prominent shipping lawyers by *Who's Who Legal: Transport* (2021), as well as a 'Distinguished Practitioner' by *asialaw Leading Lawyers* (2021) and a 'Litigation Star' by *Benchmark Litigation Asia-Pacific* (2020).

EXPERIENCE

Shipping

- Lead counsel for the Hanjin Ras Laffan in a collision with the Mount Apo which recently went to trial which involved issues on title to sue, unsafe crossing in a traffic separation scheme and impact of the radio communications, with electronic data and 3D simulations (*The Mount Apo* [2019] 4 SLR 909).
- Lead counsel for the Meghna Princess in a collision with the Dream Star in an appeal to the Court of Appeal which involved issues on when the crossing rule applied and impact of the radio communications on the apportionment of liability (*The Dream Star* [2018] 4 SLR 473).
- Lead counsel for the Eurohope in successfully challenging the arrest, with the seminal judgment that a Singapore arrest cannot be used to obtain security for a foreign court action (*The Eurohope* [2017] 5 SLR 934).
- Lead counsel for the owners of the Silvia Ambition, in seeking recourse from the Singapore Courts for an arrest in Lebanon effected by bunker suppliers for an invoice incurred by time charterers (*Best Soar Ltd v Praxis Energy Agents Pte Ltd* [2018] 3 SLR 423).
- Lead counsel for bunker suppliers in an appeal to the Court of Appeal, overturned the High Court decision where the claim was struck out and arrest was set aside at first instance. In reviving the claim and maintaining the arrest, the five-Judge Court of Appeal (a first for a shipping matter) handed down a seminal judgment on anticipatory repudiatory breach of an executed contract, effect of a group insolvency on a SPV, and wrongful arrest when the arrest was not successfully challenged (*The STX Mumbai* [2015] 5 SLR 1).
- Lead counsel for bunker suppliers in yet another landmark seminal judgment where the Court of Appeal laid down the now oft-cited five-step test for the invocation of admiralty jurisdiction and clarified the confusion on a merits test for an arrest, seemingly caused by an earlier decision of the Court in the *Vasiliy Golovnin* (*The Bunga Melati 5* [2012] 4 SLR 546).
- Lead counsel for ANL in their COA dispute with Djakarta Lloyd, which was highly contentious and a series of judgments on beneficial ownership under Indonesian law and its effect on a Singapore arrest, whether agency expenses under the special circumstances amounted to sheriff's expenses and intervention and priority of an agent's claim for the determination of priorities (*The Makassar No. 1* [2011] 1 SLR 982; *The Makassar No. 2* [2012] SGHC 175).
- Lead counsel for cargo interests in a claim under their marine open cover policy against their cargo underwriters, involving damage to a specialised high precision equipment and machinery for the semi-conductor industry, with complex issues on cargo handling in air transit, sufficiency of packing and whether the total loss claim was justified (*UMCI Ltd v Tokio Marine & Fire Insurance Co Pte Ltd* [2008] 3 SLR 930).
- Lead counsel for the owners of the Pacific Vigorous in a misdelivery claim where the plaintiff had received partial payment of the price, and the claim was for the balance deducted for off-spec cargo, and the judgment considered the complex issue of acquiescence and estoppel for a misdelivery claim (*The Pacific Vigorous* [2006] 3 SLR 374).
- Lead counsel for cargo interests in a claim for total loss arising from the grounding of the Patraikos 2 at the Horsburgh Lighthouse, which involved complex issues on negligent navigation, unseaworthiness caused by the incompetent officer on watch, title to sue and damages (*The Patraikos 2* [2002] 4 SLR 232).

Other Significant Reported Decisions as Lead Counsel

- *PT Sariwiguna Binasentosa v Sindo Damai Shipping Ltd and Others* [2015] 5 SLR 45 – Mareva injunction and summary judgment obtained for a misdelivery claim.
- *Regalindo Resources Pte Ltd v Seatrek Trans Pte Ltd* [2008] 3 SLR 930 – Resisted an anti-suit injunction against a Rule B attachment.
- *The Feng Hang* [2002] 2 SLR 205 – Successfully defended a misdelivery claim at a trial where the cargo of chrome ore was finally abandoned by cargo interests to the port authority after protracted delays and failed negotiations.
- *The Ching Ho* [2001] 3 SLR 84 – Successfully challenged a renewal of an admiralty writ and a misinterpretation of a document, and on-going negotiations were not sufficiently good reasons for extension.

- *Er Joo Nguang v PP* [2000] 2 SLR 645 – Successfully defended a freight forwarder from a criminal charge for criminal breach of trust as an agent for his role in releasing cargo to the receivers without production of the original bill of lading.

International Arbitration

- Appointed as sole arbitrator in a charterparty dispute governed by English law and subjected to the SCMA Rules, which involved consideration of the tribunal's jurisdiction, and the liability and quantum of the demurrage and/or detention of the vessel.
- Appointed as sole arbitrator in disputes arising from two related coal contracts, governed by Singapore law and subjected to the SIAC Rules, which involved the issues of existence of the contract, their main terms and the quantum of damages.
- Lead counsel in a dispute involving letters of indemnity governed by English law and subjected to LMAA Rules, which involved a misdelivery claim, whether all reasonable defences have been taken upstream, shipowners' consent and acquiescence and quantum of damages.
- Lead counsel in a palm oil commodity contract dispute governed by the PORAM Rules, which involved issues of a chain or string contract, having been fulfilled, and a second contract being made in mitigation and whether such a step in mitigation was an intervening act, proper parties to the contracts and the quantum of damages.
- Instructing solicitor to a QC in a charterparty dispute governed by English law and subjected to LMAA Rules, which involved the cause of the rupture of the ship's tank during cargo operations, review of the port systems, whether charterers were in breach of their obligation to provide a safe berth and the quantum of damages.
- Lead counsel in a dispute arising out of a finance lease agreement for the oil and gas industry, which dispute is governed by English law and subjected to LMAA Rules, which involved issues of due performance under the lease agreement, breach of the same and legality of the termination of the agreement and the repossession of the vessel, and the quantum of damages.
- Lead counsel in a dispute over a cargo of liquefied petroleum gas, governed by the HKIAC, which dispute arose out of a sale contract and the issues involved repudiatory breach for the failure to open a letter of credit; whether the termination was lawful; whether there were actionable misrepresentations; and also, the quantum of damages.
- Lead counsel in a dispute involving a monorail system and train developer governed by the SIAC Rules. The dispute was about the designers' claim for outstanding fees and expenses, with a substantial counter-claim and the issues included the design schematics provided that were substantially unfit for their intended purpose, amounting to a total failure of consideration; whether the outstanding fees and expenses were incurred in accordance with the contract because there were significant overlaps and the work covered by these fees/expenses was not authorised; and the quantum of damages of the counter-claim because a substantial amount of rectification work was done in-house, and also, whether the delay caused to the projects was due to other causes, not the deficient design.
- Lead counsel in a dispute arising out of a natural gas condensate sale contract governed by the Rules of the KLRCA, now known as the AIAC, and the central issue was the rejection of the vessel when she called at the FSO for loading. It was a technical issue because the mooring equipment of the vessel was incompatible with the FSO's mooring chain. The issues included the compliance of the vessel's mooring equipment with industry standards set by OCIMF; whether there was a waiver because of the acceptance of the nomination of the vessel; who took the risk of rejection, due to an operational or safety reason imposed by the FSO operators; whether there was any recoverable losses as an alternative vessel was fixed to load the cargo.
- Lead counsel in a dispute over a cargo of US yellow soybeans in a trade arbitration conducted under the Rules of GAFTA and the main issue was a failure to progress the arbitration and the interaction with parallel Indonesian Court proceedings where an order on jurisdiction to hear the dispute was obtained.
- Lead counsel in a dispute involving a vessel (a car carrier), in a dispute governed by the SIAC Rules. The issues involved a shipyard's repairs to the vessel and the nature of the dispute involved the work done by the shipyard. After completion, the vessel sailed to a load port, loaded a full cargo of cars, and then sailed for the discharge port. Whilst enroute, there was an explosion on the vessel and the vessel was disabled and had to be towed to Singapore. The issues included whether there were negligent repairs in the failure to properly re-assemble an engine part, resulting in the dislodgement of the said part and causing an

explosion when it impacted the crankshaft whilst in full operation; whether the conflicting expert opinion may be reconciled in support of the respective cases; whether the supervision of repairs, and eventual acceptance of the same, amounted to either an intervening act, or waiver of the negligence; whether the shipyard's standard terms and conditions applied, either to exclude or limit their liability; whether there was contributory negligence; and lastly, the quantum of recoverable damages.

Mediation

- Appointed as a mediator in an investment dispute arising from loans and investments made to a real estate/property ownership and development group. Two separate investors brought proceedings against the group and directors for breach of the investment agreements and deeds of guarantee.
- Appointed as a mediator in an employment dispute where a senior executive in a digital cable and satellite television group was allegedly wrongfully terminated due to his alleged misconduct and breaches of fiduciary duty and fidelity duties.
- Appointed as a mediator in a shareholders' dispute arising from a joint venture between a Singapore entity and a Myanmar entity. The allegations involved breaches of directors' duties; oppression by the majority shareholders; business diversion, lack of accounting of revenue and profit, and failure to provide access to accounts and records.
- Appointed as a mediator in an employment dispute over the post-resignation conduct of the employee amounted to an unlawful use of confidential information of the company, and if so, the damages suffered by the company.
- Appointed as a mediator in a dispute over two sale contracts for the sale of marine mooring equipment, fabricated by the seller and upon completion of the equipment for the first contract, the buyer refused to take delivery. For the second contract, the buyer refused to provide items to be procured by the buyer for the completion of fabrication, and the damages suffered by the seller.
- Appointed as a mediator in an employment dispute over the amount of compensation due to the employee arising from an equity interest held in the company and its valuation.
- Appointed as a mediator in a shareholders' dispute arising from a failed business venture on fish farming and the issues involved fraudulent misrepresentation with respect to the valuation of the main asset, which valuation induced each of the shareholders to purchase shares of the company.
- Appointed as a mediator in a dispute arising from the construction industry between a construction company and a competitor for false allegations and malicious prosecution for alleged patent infringement and the issues involved misrepresentation, ownership of the patent and causation of the substantial financial losses and damages.
- Appointed as a mediator in a dispute arising from the logistics industry between a logistics company and its customer for mis-delivery and an account of the outstanding inventory where only partial shipments were made, leaving outstanding inventory which the logistics company failed to release or deliver or account to its customer.
- Appointed as a mediator in a shareholders' dispute arising from the motor car spare parts supply chain, where two groups of minority shareholders were alleging oppression and were seeking a buy out or a winding up.
- Appointed as a mediator in an IT dispute arising from an agreement between an IT designer and its customer for various defects from an enterprise system which system had been accepted and was functioning well, with the user acceptance testing duly endorsed.
- Appointed as a mediator in a shareholders' dispute arising from the F&B industry for breach of fiduciary duties where the sole director was said to have set up a competing business, submitted fraudulent claims with the Inland Revenue Authority of Singapore under the Productivity and Innovation Credit Scheme, entering into related-party transactions and general mismanagement of the accounts.
- Appointed as a mediator in a dispute arising from the construction industry between a construction contractor and its sub contractor, a supplier of numerous types of scaffolding and formwork products, who was not paid, and for failure to return all the equipment and/or for damaged returned equipment that had to be repaired or was beyond repair.
- Appointed as a mediator in a dispute arising from the logistics industry where a freight forwarder was alleged to have misdelivered the cargo, and/or for its delivery up to the rightful owner and render accurate

representations as to the status of the shipment and/or for tracing towards its traceable proceeds and/or any assets acquired directly or indirectly with those proceeds.

- Appointed as a mediator in a shareholders' dispute arising from the precision engineering industry where a group of minority shareholders was alleging oppression where the allegation was that the way the company was mis-managed, and for a conspiracy to injure the minority's interest.
- Appointed as a mediator in a dispute between a textiles company and its finance manager for misappropriation of funds where the dispute involved a company, suing their employee, its finance manager, for a systematic misappropriation of company's funds for a long period of time. There were parallel criminal proceedings against the employee.
- Appointed as a mediator in a dispute arising from the logistics industry where a customer was suing their freight forwarder for its failure to secure a prompt release and delivery up of their containers from the ocean carriers or port authority, with a counter-claim for outstanding freight, storage and detention charges.
- Appointed as a mediator in a dispute between a Singapore law firm and their client for unpaid fees incurred from an acquisition of shares and the dispute involved the scope of the retainer and the necessity of items of work done and whether the firm was entitled to look towards the parent company for payment of their fees when the retainer was with a subsidiary.
- Appointed as a mediator in a dispute arising out of a ship management agreement and a related investment agreement where the operator alleged that the managers have not rendered proper ship management services or at all after the operator's account executive was terminated and there was no account of the ship operation expenses thereafter.
- Appointed as a mediator in a dispute arising from the shipping industry where various main line carriers were claiming against their freight forwarders and their subsidiaries for demurrage and detention charges incurred due to the failure of the forwarders to clear the containers at the various discharge ports for intra Asian voyages.
- Appointed as a mediator in a shareholders' and a related employment dispute in a fire and safety equipment business and the disputes led to the removal of a director from the company. This also resulted in several suits commenced between the parties.
- Appointed as a mediator in a tenancy dispute between owners of a commercial property, and the corporate tenants, secured by personal guarantors where the claim was in respect of a tenancy agreement, rental arrears and sums due under the agreement and for misrepresentation where the commercial property owners were said to have fraudulently induced the tenants to sign the agreement misrepresenting that the agreement would be held off until the necessary licenses have been obtained.
- Appointed as a mediator in a sale of goods dispute between suppliers of petrochemical products to its customer where the claim was in respect of an oral agreement and the legal issues include repudiation, misrepresentation, unjust enrichment and proper measure of damages.
- Appointed as a mediator in a shareholders' dispute arising out of the electrical component industry where the minority shareholder was alleging oppression and that it was founded on a quasi partnership between a main shareholder and minority shareholder, and there was inequality in treatment and remuneration of the directors and shareholders.
- Appointed as a mediator in a dispute arising out of the construction industry between a property developer and its contractors in relation to a project for a multi-storey multi-user business park development with two levels of basement car park, with various issues of breach of contract, delays and defective work and damages.
- Appointed as a mediator in a dispute arising out of the maintenance of a condominium between a MCST and its developers and contractors, in relation to various defective construction works at a condominium development and the MCST was holding the developer and their contractors responsible.
- Appointed as a mediator in a family dispute between the matriarch, who was illiterate and she co-signed a banking facility with her family members with her home as collateral and after the bank called in the default, the family members were unable to pay resulting in an internal family dispute over responsibility and contribution.
- Appointed as a mediator in a shareholders' dispute between an international F&B hospitality chain and restaurant operators/owners and their shareholders, and the issues arose out of a shareholders'

agreement pursuant to which a joint venture company incorporated to run food and beverage business.


Tax

- Appointed as a member of the tribunal constituted by the Income Tax Board of Review to hear an appeal arising out of commercial property managed by the trustee of a REIT. Delivered the grounds of decision involving a novel point of law as to what amounts to control under Section 24(1) of the Income Tax Act such that capital expenditure allowances for a commercial building may be maintained despite the sale of the same for the purpose of restructuring a REIT (*GCC v The Comptroller of Income Tax* [2019] SGITBR 1).
- Appointed as a member of the tribunal constituted by the Income Tax Board of Review and delivered the grounds of decision in a dispute over whether a payment received on termination of employment was a redundancy payment and whether such payment was a gain or profit from employment under Section 10(1)(b) of the Income Tax Act (*GBS v The Comptroller of Income Tax* [2017] SGITBR 1).
- Appointed as a member of the tribunal constituted by the Income Tax Board of Review and delivered the grounds of decision in a dispute over the corporate structure of a medical practice and whether it satisfied Section 33(1) of the Income Tax Act, whether any exemptions apply to treat the compensation paid as part of the income of the tax payer (*GBF v The Comptroller of Income Tax* [2016] SGITBR 1).
- Appointed as a member of the tribunal constituted by the Income Tax Board of Review and delivered the grounds of decision in a dispute over whether business losses from trading contracts from the business of trading certain commodities and derivatives should be allowed under Section 10(1)(a), read with Section 37(3), of the Income Tax Act, and also, whether the losses may be considered as a deductible under Section 14(1) of the Act.

MEMBERSHIPS / DIRECTORSHIPS

- Director, Singapore Chamber of Maritime Arbitration
- President, Maritime Law Association of Singapore
- Principal Mediator, Singapore Mediation Centre
- Fellow, Chartered Institute of Arbitrators (FCIArb)
- Fellow, Singapore Institute of Arbitrators (FSIArb)
- Principal Lecturer and Subject Co-ordinator, Admiralty Practice, Singapore Institute of Legal Education
- Panel of Arbitrators, Singapore Chamber of Maritime Arbitration
- Panel of Arbitrators, Singapore International Arbitration Centre
- Member, Advisory Board, Centre for Maritime Law, National University of Singapore
- Senior Trainer, Law Society Advocacy Committee
- Counsel, Law Society of Singapore (disciplinary matters)
- Senior Mediator, Law Society Mediation Scheme

Location(s)

 Singapore

Practice Area(s)

- › Shipping & International Trade
 - › International Arbitration
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Qualifications

- LLB (Hons), National University of Singapore
 - Advocate & Solicitor, Singapore
 - Snr. Acc. Spec. (Maritime and Shipping), Singapore Academy of Law
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