



CIPAA IN CONSTRUCTION DISPUTE RESOLUTION

23 APRIL 2019, ASIAN INTERNATIONAL ARBITRATION CENTRE, KUALA LUMPUR



KEYNOTE ADDRESS

Dato' Lee Swee Seng
Judge, High Court, Malaya

The construction industry has traditionally looked to arbitration as an alternative to court resolution of its disputes. For some time, it was the speed and flexibility of arbitrations that gave it the edge. As construction strove for efficiency, the need for even more expeditious mechanisms to resolve disputes and to free up cash flow for people on the ground became more acute. Statutory adjudication under the Construction Industry Payment and Adjudication Act 2012 (CIPAA) came to the fore.

It has been five years since CIPAA came into force. This conference looks at the way in which statutory adjudication has altered the landscape of construction dispute resolution. The discussions in this conference cannot be timelier, given the landmark decisions by the Malaysian courts in 2017 and 2018, including the Federal Court's in *View Esteem Sdn Bhd v Bina Puri Holdings Bhd* [2017] 1 LNS 1378 and the Court of Appeal's in *Bauer (Malaysia) Sdn Bhd v Jack-in-Pile (M) Sdn Bhd & Anor Appeal* [2018] 1 LNS 427, both of which have each set on foot a wave of other decisions which sparked much debate. Where do we now stand? How do the courts look at decisions handed down from statutory adjudications – are the beneficiaries of these adjudication decisions assured of timely payment? Is CIPAA retrospective in its application? What now is the position of pay-when-paid clauses in pre-existing arms-length contracts? Have adjudications spawned more arbitrations?

These are but some of the current issues that will be discussed at this seminar by eminent Judges well known in the arena of construction dispute resolution, and experienced industry persons who will share insights and their practical experiences in several key areas of construction dispute resolution.

WHO SHOULD ATTEND

Construction legal practitioners, arbitrators, adjudicators, contractors, architects, quantity surveyors, project managers or consultants, developers, property owners, government departments, public bodies, local authorities, universities, multi-national corporations, trade associations, small and medium enterprises, architects, engineers, building surveyors, Advocates & Solicitors and Pupils-in-Chambers

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The Honourable Society
of Lincoln's Inn Alumni
Association, Malaysia



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OF ADJUDICATORS**

Venue Sponsor:



**EARLY BIRD RATE
BEFORE/ON
15 APRIL 2019**

T U E S D A Y
23 APRIL 2019

C O N F E R E N C E
P R O G R A M M E

8.00 am Registration

9.00 am **WELCOME ADDRESS**
By YA Bhg Tun Azmi Zaki
Retired Chief Justice, Malaysia and
Chairman of Legal Plus Sdn Bhd



9.05 am **A QUICK UPDATE ON CIPAA FROM THE
ADJUDICATION AUTHORITY**
Speaker : Vinayak Pradhan
Director (Acting), AIAC

09.45 am **KEYNOTE ADDRESS :**
"The Judicial Dilemma – The Difficulty In Setting The Right Parameters
For CIPAA 2012"
Speaker : YA Dato' Lee Swee Seng
Judge, High Court, Malaya

10.45 am **COFFEE BREAK**

11.15 am **DECISIONS FROM THE APEX COURT, AND THEIR IMPLICATIONS**
Speakers

Ms Tan Swee Im, Barrister, 39 Essex
Mr Lam Wai Loon, Founding Partner, Harod & Lam Partnership
Mr Foo Joon Liang, Partner, Gan Partnership
Mr James Monteiro, Principal Partner, James Monteiro
Advocates & Solicitors

1.00 pm **LUNCH BREAK**

2.00 pm **THE RULES OF NATURAL JUSTICE :
"TO CONSIDER OR NOT TO CONSIDER"**

The Speakers will discuss
(1) the difficult concept of the rules of natural justice;
(2) the difficult situations in practice encountered by the Adjudicator as
well as the parties during the adjudication proceedings; and
(3) the potential answers to these problems.

Speakers

Mr Rajendra Navaratnam, Partner, Azman Davidson & Co
Mr Kevin Prakash, Partner, Mohanadass Partnership Advocates & Solicitors
Mr Choon Hon Leng, Partner, Raja, Darryl & Loh
Mr Faisal Moideen, Partner, Moideen & Max Partners Advocates & Solicitors

Moderator

YA Dato' Mary Lim
Judge, Court of Appeal, Malaysia

3.15 pm **TEA BREAK**

3.30 pm **IS CIPAA TOO EXPENSIVE AND COMPLEX ?**
Ar. Steven Thang, Committee Member of Malaysian Institute of Architects
Ar. Anthony Lee Tee, Group COO & Transformation Officer of Bina Puri
Holdings Berhad
Ir. Chong Thaw Sing, Chartered Arbitrator, Adjudicator and Mediator
Kuala Lumpur, Malaysia
Sr. Ong Hock Tek, Managing Director, BKEntrusty

Moderator

YA Dato' Lim Chong Fong
Judge, High Court, Malaya

4.45 pm **CLOSING ADDRESS**
YBhg Tan Sri James Foong
Retired Judge of the Federal Court, Malaysia
and Director of Legal Plus Sdn Bhd





Justice Dato' Lee Swee Seng

Judge
High Court, Malaya

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 is currently the Judge of the Construction Court in Kuala Lumpur. 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.



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' Lim Chong Fong

Judge
High Court, Malaya

Justice 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.

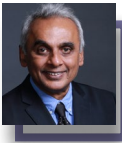


Mr Vinayak Pradhan

Director (Acting)
Asian International Arbitration Centre

Vinayak Pradhan was appointed as Acting Director of the Asian International Arbitration Centre (AIAC) on 21st November 2018. He is a Consultant with SKRINE, an Associate Member of Littleton Chambers, London and is on the panels of Conciliators and Arbitrators of ICSID, a Member of the Permanent Court of Arbitration and of the Court of Arbitration for Sport. Vinayak is currently Vice Chair of the ICC Commission on Arbitration.

Vinayak is a Fellow of the Chartered Institute of Arbitrators, a Fellow of the Malaysian Institute of Arbitrators and a Fellow of the Australian Centre for International Commercial Arbitration.



Mr Rajendra Navaratnam

Partner
Azman Davidson & Co

Rajendra Navaratnam has a first degree in Electrical Engineering and practised engineering in the Power industry for 10 years before he retrained in law. He began his legal career with Azman Davidson & Co in 1988. He became a Partner of Azman Davidson & Co in 1993, where he practises at present. Rajendra practises primarily in the areas of technology, construction and insurance law in both litigation and arbitration. He also appears as appellate counsel up to the Federal Court. He sits as Arbitrator in both international and domestic arbitrations, and is a member of the ICC Court of Arbitration for the 2018-2021 session. He is on the panel of arbitrators of the AIAC, SIAC, HKIAC, VIAC, KCAB, PIAC, CI Arb, MI Arb and IEM. He is a Fellow of the CI Arb and MI Arb, is a Chartered Arbitrator and is on the approved faculty list of the CI Arb. Rajendra has also authored chapters on arbitration and construction law in Malaysia in practitioner's textbooks, in particular "Arbitration in Malaysia: A Practical Guide (Thomson Reuters, Sweet and Maxwell) 2016" and "Construction Law and Practice (European Lawyer Reference) – Jurisdictional Comparisons (2nd Ed) 2016" respectively.



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 has extensive arbitration experience. 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 Lam Wai Loon

Founding Partner
Messrs Harold & Lam Partnership

Lam Wai Loon is a founding partner of Messrs. Harold & Lam Partnership. He is a Chartered Arbitrator (CI Arb, UK) and is a qualified adjudicator to adjudicate disputes under the Construction Industry Payment and Adjudication Act 2012 ("CIPA Act 2012"). Wai Loon is the current President of the Society Construction Law, Malaysia [2017-2018], the Immediate Past Chairman of the Chartered Institute of Arbitrators, Malaysia Branch and, and the Deputy President of the Malaysian Society of Adjudicators [2016-2017].

His legal publications include a co-authored text titled 'Construction Adjudication In Malaysia' (2nd Edition, Sweet & Maxwell, 2018), a Chapter on 'Arbitration In Malaysia' published in the text titled 'International Commercial Arbitration In Asia'; and Chapter 17: Construction Adjudication in the recently published text "Arbitration In Malaysia: A Practical Guide".



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 had wide involvement in dispute resolution and advisory work. He has advised a wide range of clients including the state government, Ministry of Works, developers and contractors, government-linked companies, financial institutions and securities and foreign and local broking houses across a broad spectrum of litigation matters in Court and in arbitration, with his main focus being construction, insurance and securities transaction disputes. He is also involved in advisory work, and regularly appears as counsel at all levels of the Malaysian courts, in arbitration and adjudication.

Joon Liang is a Fellow of the Chartered Institute of Arbitrators, United Kingdom, and is currently a director of the Malaysian Chapter of the Chartered Institute of Arbitrators, United Kingdom. He also sits on the panel of arbitrators of the Asian International Arbitration Centre (AIAC) and is certified by the AIAC as an adjudicator. Apart from appearing as counsel in arbitration and adjudication, Joon Liang also sits as adjudicator and as arbitrator in both construction and non-construction related disputes. Joon Liang's recent matters include his involvement as counsel in an ongoing series of litigation involving the highly publicised collapse of a pedestrian bridge in a major development in the Klang Valley, and appearing as counsel in the Commission of Inquiry initiated by the State of Penang on the devastating collapse of a hill-slope in Tanjung Bungah. He has also acted in several disputes arising from construction projects and power plants in both East and West Malaysia, including the disputes on the development of the Port Klang Free Zone, the construction of the landmark Putrajaya Mosque as well as a large consolidated development in Penampang. Joon Liang also acted in *View Esteem Sdn Bhd v Bina Puri Holdings Bhd [2017] 1 LNS 1378*, the first decision to have been delivered by the Federal Court on CIPAA.

Joon Liang authored the Malaysian chapters on "Arbitration" and "Dispute Resolution" for the international publication of "Getting the Deal Through" over several years until 2015.



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 specializes 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
- Sub-Committee of the Malaysian Bar Council Sub-Committee on Construction Law
- Past-President of the University of Hertfordshire Alumni Association of Malaysia



Mr Choon Hon Leng

Partner - Dispute Resolution
Raja, Darryl & Loh

Hon Leng has advised various players in the construction industry, including employers, main contractors, subcontractors and consultants in projects of various sizes and types. 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, Hong 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.

In addition, Hon Leng has spread his wings to intellectual property and technology. He began with representing clients in dispute resolution - so far he has already handled disputes such as those relating to copyright infringement, trademark infringement, patent infringement, passing off, breach of confidentiality, projects on procurement and/or upgrading of software and/or IT outsourcing - and has developed his expertise to dispute management, advising on matters as complex as infrastructure building, network sharing, network services, equipment procurement / upgrading and data security.



Mr Kevin Prakash

Partner
Mohanadass Partnership, Advocates & Solicitors

Kevin has an active practice in dispute resolution and has been involved in complex disputes in various forms since being called to the Malaysian Bar in 1998. He is regularly engaged in trial and appellate advocacy at the High Court or the superior Courts in Malaysia and as counsel in arbitration. He has wide experience in diverse types of disputes including corporate and commercial disputes, contractual, civil and shipping disputes. His principal practice is in engineering and construction disputes and has represented a diverse set of clients including employers, main contractors and subcontractors in court litigation and arbitration.



Mr Faisal Moideen

Partner
Moideen & Max Partners, Advocates & Solicitors

Faisal Moideen is the founding and managing partner of Moideen & Max, a dispute resolution and advisory practice that involves various areas of law ranging from construction arbitration, employment, constitutional and administrative law, aviation, shipping and insurance law, and general dispute resolution and alternative dispute resolution. Faisal Moideen's career as a litigator began in one of Malaysia's oldest law firm and his experience spans close to 15 years.

Faisal Moideen advocated the first case on the Construction Industry Payment Adjudication Act 2012 in the country and by doing so, assisted the court in the interpretation and function of the said Act in the early days of its inception. Faisal Moideen is also a trainer for the Advocacy Training Course run by the Bar Council.



Ar. Anthony Lee Tee

Group Chief Operating Officer and Transformation Officer
Bina Puri Holdings Berhad

Ar. Anthony Lee Tee has been a Registered Practising Architect since 1995, and continues to practice as an Accredited Architect, Independent Building Inspector and Forensics Building Inspector, Certified Trainer. He is a director of the Architect Centre Sdn Bhd. He has 30 years' experience in project coordination and in bridging communication with foreign-based client, consultants and with Japanese, Korean, Malaysian, Australian, India and Chinese contractors/sub-contractors. He is involved in projects in Thailand, Brunei, Sabah and Sarawak.

Anthony's experience has seen him being appointed as an expert witness in numerous dispute resolution matters in and outside Malaysia, including in international arbitrations.

Anthony has now taken on the position as the Group Chief Operating Officer and Transformation Officer of Bina Puri Holdings Berhad. He oversees the entire operations for the Bina Puri Group of Companies, particularly its property and construction businesses. In this position, Anthony sees the impact of disputes on an industry player and appreciates the importance of a competent and efficient dispute resolution process. Having been on the side of a claimant as well as a respondent in a number of dispute resolution processes including CIPAA adjudications, Anthony has experienced the benefits and disadvantages of dispute resolution processes first-hand.





Sr. Ong Hock Tek ("HT")

Arbitrator/Adjudicator/Mediator/Reg. QS/Cert. Constr.
PM VM Practitioner/Master Trainer
Managing Director, BK Entrusty

Sr. Ong Hock Tek ("HT") is a Fellow of eight professional institutions. Being a Chartered Quantity Surveyor and Civil Engineering Surveyor, Chartered Builder, Registered Quantity Surveyor (BoQS) and Certified Construction Project Manager in Malaysia, he is a well-qualified multidisciplinary and specialist consultant, experienced in pre and post contract quantity surveying duties, commercial and contractual administration/management of various types of construction projects, gained from over 30 years of working experience with architectural, quantity surveying and project management professional firms, civil engineering and building contractors and specialist consultants.

His specific experience and expertise include contracts management/administration, claims preparation/defense, dispute resolution, risks and value management, specializing in alternative dispute resolution, particularly in arbitration advisory and support services, documentation and proceedings. He also acts as an Arbitrator, Mediator, Negotiator and/or Expert (quantum) on various commercial and contractual disputes/differences between the contracting parties, at both main and sub-contract levels on diverse types of project in the construction industry.

He completed his formal arbitration training through the International Commercial Arbitration course at Keble College, Oxford University, UK, and was awarded the Diploma in International Commercial Arbitration in December 1998, subsequently admitted as a Fellow of The Chartered Institute of Arbitrators, UK in March 1999. He also completed his formal mediation training in 2000 through the Accredited Mediation course (Modules 1, 2 & 3) organised by CIDB and Global Mediation Services Ltd, Australia and a further 6-day mediation course for litigation in 2010 by Pepperdine University, California, USA and subsequently completed the then KLRCA Adjudication Conversion Course in July 2012.

HT has been a Mediator, Arbitrator and currently Panel Adjudicator of KLRCA/AIAC, a Panel Arbitrator of the Singapore Institute of Arbitrators, an Accredited Mediator and Value Manager, as well as a Certified Construction Project Manager with CIDB, a Regional Convenor of Institution of Value Management, Australia, past Deputy President of Chartered Institute of Building Malaysia and 1st Treasurer-General of Institution of Surveyors Malaysia. He is supportive and active in social and charitable organizations for many years, which include Ti-Ratana Welfare Society and Lighthouse Club, the latter being the Past President of Lighthouse Club, Kuala Lumpur.

Being a Master Trainer (Master Trainers, New York), he has organised as chair or jointly and/or delivered as speaker in many public and in-house conferences, seminars and workshops for professional institutions and private/public listed companies in several subject areas, particularly construction contracts, ADR, risks and value management.

He has also lectured part-time for bachelor and master degree programmes in the same areas for several years and has been a regular contributor to the Master Builders Journal on construction contract and management issues since 2002. He can be contacted via htong@entrusty.com or htong@bkasiapacific.com.



Mr Chong Thaw Sing, FCIArb

Chartered Arbitrator, Adjudicator and Mediator
Kuala Lumpur, Malaysia

Mr. Chong is a full-time dispute resolver as an arbitrator, adjudicator and early neutral evaluator. He is dual-qualified in engineering and in law. After practising for about twenty years in the construction industry as a consulting engineer, a project manager and a contractor, in 1999 he responded to the calling to become a full-time dispute resolver. To accomplish the objective, he has equipped himself with further qualifications in Diploma in Arbitration, Masters in Construction Law and the LLB degree. Mr. Chong is amongst a handful of Malaysians who has successfully developed a thriving second career in dispute resolution. His portfolio of cases comprises about 60% of cases in construction disputes and the rest in other commercial disputes and investment disputes. Mr. Chong ability and knowledge in resolving construction disputes is undoubtedly fortified by the many years he spent in various capacities in the offshore and onshore construction industry.

Professionally, he had contributed much to the development of arbitration and adjudication in Malaysia. In the early part of his new profession, he spent nearly six years from 2002 to 2008 serving Chartered Institute of Arbitrator Malaysian Branch in various capacities including as branch chairman from 2006 to 2008. Under his leadership, the CIArb Malaysia Branch along with the Australian Branch launched the Asian version of the diploma course in arbitration study. He was amongst the pioneer group of teachers that taught in the KLRCA (later AIAC) Adjudication Training course.



Ar. Steven Thang Boon Ann

Council Member
Malaysian Institute of Architects [PAM]

Ar Steven Thang Boon Ann is currently PAM Council Member and Chairs the ADR Committee and Co-Chair both the Practice Committee and Conservation Committee. He also chairs the PAM Contract 2006 Review sub-committee. He has appeared many times in courts as an expert witness, and serves as advisor to parties that are seeking legal redress.

He represents PAM and chairs several technical committees in SIRIM and CIDB. Ar Steven Thang is a certified Adjudicator, certified Thermographer and a registered building conservator.

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