

SEMINAR ON Practical Construction Law

21 Nov 2019 (Thursday) | 8:45 am to 6:00 pm

Bayview Hotel Georgetown Penang

25-A, Farquhar Street
10200 Georgetown
Penang

The Bar Council Construction Law Committee is organising this one-day seminar, which will include a comprehensive review of some of the more practical aspects of construction law, including the much-talked about Construction Industry Payment and Adjudication Act 2012 ("CIPAA 2012"). It will focus on particular topics of interest and, after setting out general principles, will seek to answer some of the more common questions and problems that arise. A glimpse of these topics and some of the questions and problems, are provided below. Attendees are encouraged to bring along their own questions, which will be answered throughout the seminar.

Speakers

Choon Hon Leng | David Tan Chik Tiam | Ng Ziyang | Chan Kheng Hoe | Kelvin Ng Chun Yee | Raja Kumar Raja Kandan | Nadesh Ganabaskaran

Programme

8:45 am Registration and Refreshments

9:20 am **Welcoming Remarks** by
T Kuhendran, *Co-Chairperson, Bar Council Construction Law Committee*

Panel A | 9:30 am to 12:30 pm

(1) Tenders

- How much reliance can tenderers place on information given to them during the tender, such as soil investigation reports, tender clarifications and answers to questionnaires?
- Can a tenderer or employer withdraw from a tender?
- Can I start the works with merely a letter of intent, or do I need to have a signed letter of award or contract?

(2) Variations

- Can the contractor make claims without written instructions?
- What happens if the contract procedures for variations are not complied with?
- Can the contractor claim loss of profits for omitted works?
- Can the employer omit a substantial portion of the works as part of a variation order?
- Can the employer engage a third party to carry out the omitted works?
- What happens if the variation goes beyond the scope of the contract?
- Must variation works follow the contract rates?

(3) Payments

- Is retention money trust money, and is it to be placed in separate accounts?
- "Pay when paid" clause – where are we now?
- Can a contractor suspend, go slow or terminate if payment is not made?
- Can a sum that was previously certified be revised?
- Can a subcontractor claim direct payment from the employer, and can an employer pay directly to the subcontractor?



Registration Fees

| | |
|-------------------------------------|-------|
| Members of the Bar | RM160 |
| Members Admitted from 1 July 2011 | RM106 |
| Law Students and Pupils in Chambers | RM106 |
| Non-Members | RM320 |

CPD Code: T3/211119/BC/PG193652/6

Registration for the event will begin at 8:45 am

Lunch | 12:30 pm

Panel B | 1:30 pm to 6:00 pm

(4) Performance Bonds

- Is unconscionable conduct a ground to restrain payment under a performance bond?
- If so, what situations amount to unconscionable conduct?
- Which situations do not amount to unconscionable conduct?
- When must the call on the bond be made – before or after termination?
- Under what circumstances can a contractor prevent a call on the performance bond?

(5) Termination

- Can the contractor terminate the main contract even if there is no termination clause?
- Can the contractor get an injunction restraining the employer from terminating?

Tea Break | 3:30 pm to 4:00 pm

(6) Time

- Does the programme form part of the contract?
- Who owns the float in a programme?
- How do you deal with concurrent delays in terms of extension of time / loss and expense?
- Does an entitlement to extension of time mean entitlement to loss and expense?
- Will a contractor lose an entitlement to extension of time / loss and expense if notice requirements in contract are not met?
- What is a reasonable time to respond to applications for extension of time / loss and expense? Can extensions of time / loss and expense be decided after the expiry of original completion or after practical completion?
- Can time be shortened due to omission of works?
- In what circumstances will the employer lose a right to liquidated damages?
- Is there any alternative to extensions of time when works are delayed?

(7) Adjudication

- Review of the adjudication process, from payment claim up to decision
- Is adjudication limited to payment issues only?
- Effect of CIPAA on back-to-back payment arrangements and default payment provisions
- Can a party ignore the adjudication if the adjudicator has no jurisdiction?
- What are the options available to a winning party?
- Can the losing party have the decision stayed or set aside?
- Can the respondent claim a set-off by reason of delay damages?



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About the Speakers

Choon Hon Leng was admitted as an advocate and solicitor of the High Court of Malaya in 2003. He obtained his degree from the University of Sheffield, UK. He has been a partner of Raja Darryl & Loh since 2009.

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 CIPAA 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 (China International Economic and Trade Arbitration Commission) arbitration rules. Over the years, Hon Leng has been invited as speaker and presented papers at construction conferences on various topics, including loss and expenses 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 ("CIArb") for 2019–2020. AsiaLaw Profiles in its 2017 publication listed Hon Leng as a Rising Star Lawyer; Leading Lawyer in its 2018 and 2019 publications; and Distinguished Practitioner in its 2020 publication.

David Tan Chik Tiam was admitted as an advocate and solicitor of the High Court of Malaya in 2001. He obtained his law degree from the University of Keele, UK and was admitted to the Roll of Solicitors of the Senior Courts of England and Wales. He has also been admitted as an advocate and solicitor of the High Court of Sabah and Sarawak.

Prior to his legal practice, he held the position of Legal Manager in Ho Hup Construction Company Berhad and Bina Puri Construction Sdn Bhd (subsidiary of Bina Puri Holdings Berhad). He also joined the legal work force in a few public-listed companies as in-house counsel with experience in the area of construction law before his legal practice. He ventured into the area of construction arbitration and adjudication, and assisted numerous property developers, construction companies and project management consultancy firms in arguing and winning arbitration or adjudication cases. He advises local and foreign construction companies in construction matters and CIPAA-related matters.

He is currently the panel arbitrator and panel adjudicator of the Asian International Arbitration Centre ("AIAC", formerly KLRCA); Fellow of the Malaysian Institute of Arbitrators ("MIArb"), Fellow of the Malaysian Society for Adjudicators; Fellow of the Asian Institute of Alternative Dispute Resolution ("AIADR"), and many others.

Ng Ziyang was admitted as an advocate and solicitor of the High Court of Malaya in 2005. He obtained his law degree from King's College London. He focuses on construction litigation and represented clients in courts and in adjudication proceedings under CIPAA 2012.

Ziyang is also on the panel of adjudicators of the AIAC, as well as a Fellow of the AIADR.

Chan Kheng Hoe was admitted as an advocate and solicitor of the High Court of Malaya in 1998. He obtained his law degree from the University of Malaya.

Among Kheng Hoe's area of practice is construction dispute resolution, and he advises clients on arbitration, litigation, adjudication and mediation of construction disputes. He represented clients from the full spectrum of the construction industry, including developers, main contractors, sub-contractors, suppliers and consultants, relating to both public infrastructure works as well as private projects.

He is a member of, among others, the AIAC and Fellow of the CIArb. He is invited regularly to speak and writes articles on construction law.

Kelvin Ng Chun Yee was admitted as an advocate and solicitor of the High Court of Malaya in 2005. He obtained his degree from the University of Nottingham, UK.

Kelvin has more than a decade of experience in dispute resolution, notably in construction law, and has represented clients at the High Court and Appellate Courts. Kelvin is also experienced in the area of arbitration.

Kelvin is a Fellow of the Singapore Institute of Arbitrators and a member of the Chartered Institute of Arbitrators. He is also a panel adjudicator under CIPAA 2012. He is a contributor on Janab's Key to Law, Practice and Legal Remedies (2nd ed) on the chapters on "Specific Reliefs Act and Agency".

Raja Kumar Raja Kandan was admitted as an advocate and solicitor of the High Court of Malaya in 2008. He obtained his law degree from University Kebangsaan Malaysia.

He has served as lead / assistant counsel in arbitration / adjudication / mediation proceedings in primarily construction-related disputes, as well as insurance disputes, at the High Court and Appellate Courts.

Raja Kumar is an associate member of the CIArb and a Certified Adjudicator.

Nadesh Ganabaskaran read law at the University of West of England and was admitted as a Barrister-at-Law of Middle Temple. Nadesh returned to Malaysia and began his legal career in the Building and Construction Dispute Resolution, Litigation and Arbitration Department of a local firm. Prior to joining Malek, Paulian & Gan as a partner, Nadesh completed his MSc degree in Construction Law and Alternative and Dispute Resolution at Kings College London.

Nadesh's areas of experience include building and construction advisory, construction dispute resolution and litigation, construction arbitration, and commercial arbitration and adjudication.

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Registration for the event will begin at 8:45 am

I would like to register for the event (all fields must be completed):

Name: _____

(Tick where applicable)

Member of the Bar (Membership No): _____

Pupil in Chambers (Petition No): _____

Others (NRIC No): _____

Email: _____

Name of Firm / Organisation: _____

Address: _____

Tel: _____ Fax: _____

Signature: _____ Date: _____

The personal information that you provide to the Bar Council, whether now or in the future, may be used, recorded, stored, disclosed or otherwise processed by or on behalf of the Bar Council for the purposes of facilitation and organisation of this event, research and audit, maintenance of a participant database for the promotion of this event, and such ancillary services as may be relevant.

Payment options:

- (1) Direct deposit to Hong Leong Bank Berhad (Account No: 002-00-76064-5; SWIFT Code: HLBBMYKL); or
- (2) Cheque or bank draft, payable to "Malaysian Bar".

All payments must be made in advance of the event, and include all bank charges. Registration will be confirmed once proof of payment is provided by email or fax, and full payment is received.

Places are limited and registration is on a first come, first served basis.

Cancellations must be made in writing. There will be no refunds for cancellations made after **18 Nov 2019 (Monday)** but substitutions are allowed. The organiser reserves the right to modify, cancel or postpone the event, should circumstances arise that make such action necessary, whereupon all registration fees paid will be refunded.

- (1) Materials (if any) will be emailed only. No printed notes will be provided.
- (2) No recording of the event is permitted via any means at any time.
- (3) No part of the event content may be used / reproduced in any form without the written and explicit consent of the Bar Council and speaker(s).

Points for the Continuing Professional Development ("CPD") Scheme will not be awarded to Members of the Bar and pupils in chambers who arrive more than 15 minutes late, are not present throughout the event, or leave before its scheduled end.

Please direct all correspondence (including completed registration forms and proof of payment) and enquiries to:

Florence Laway

(03-2050 2104; florence@malaysianbar.org.my)

Rajeswari Gunarasa

(03-2050 2089; rajeswari@malaysianbar.org.my)

Fax: 03-2032 2043



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