

Seminar on

# Practical Construction Law

24 May 2023 (Wednesday) | 9:30 am to 5:30 pm  
 Raja Aziz Addruse Auditorium  
 Level 2, Wisma Badan Peguam Malaysia  
 2 Leboh Pasar Besar, 50050 Kuala Lumpur

6 CPD Points will be allocated.

**Registration Fees**

Members of the Bar	RM100
Pupils and Law Students	RM80
Non-Members	RM200

[Register online here](#)

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 arising hence. An overview of these topics and some of the questions and problems are provided below. Attendees are encouraged to participate with their own questions, which will be answered throughout the seminar.

**Speakers**

T Kuhendran | Darshendev Singh | Andrew Heng Yeng Hoe | Janice Tay | Nadesh Ganabaskaran | Choon Hon Leng | Deepak Mahadevan

**Panel A | 9:30 am to 12:30 pm****(1) Tenders**

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

**(2) Variations**

- Can a contractor make claims without written instructions?
- What happens if non-compliance of the contract procedures for variations occurs?
- Can a contractor claim loss of profits for omitted works?
- Can an employer omit a substantial portion of the works as part of a variation order?
- Can an 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, delay or terminate work 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?

Lunch | 12:30 pm

**Panel B | 2:00 pm to 5:00 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 a contractor terminate the main contract even if there is no termination clause?
- Common law termination vs contractual termination
- The effects of wrongful termination
- Can a contractor get an injunction to restrain the employer from terminating?

**(6) Time**

- Does a programme form part of the contract?
- Who owns the float in a programme?
- How does one 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 an employer lose the 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?

**Speakers****T Kuhendran, Partner, Zul Rafique & Partners**

T Kuhendran is the head of the construction dispute resolution practice group at Zul Rafique & Partners. He holds a Bachelor of Laws (Hons) degree from the University of Leicester, United Kingdom. He is a Solicitor of the Supreme Court of England & Wales and was admitted as an advocate and solicitor to the High Court of Malaya in 1992. He is also a fellow of the Chartered Institute of Arbitrators ("FCIArb"), Chairman of the Bar Council Committee on Construction Law, arbitrator, adjudicator, and mediator of the Asian International Arbitration Centre ("AIAC").

With experience that spans almost three decades, Kuhendran is principally involved in dispute resolution, particularly in construction and engineering-related disputes. Apart from his experience in dispute resolution, he has also advised on different aspects of construction and engineering law. In addition, he has drafted and vetted various construction and engineering-related contracts.

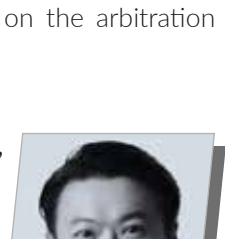
Besides being active in the field for alternative dispute resolution matter as mediator and arbitrator, Kuhendran has also appeared at all levels of the Malaysian Courts, from the High Court to the Federal Court.

Kuhendran has also been recognised as a "Recommended Lawyer" in 2023 by Legal 500 Asia Pacific and in "Band 3 for Dispute Resolution - Construction" by Chambers Asia Pacific in 2023.

**Darshendev Singh, Partner, Lee Hishammuddin Allen & Gledhill**

Darshendev's primary area of practice is commercial dispute resolution with a focus on complex disputes relating to construction, engineering, oil and gas, and infrastructure projects. Besides regularly sitting as an arbitrator and an adjudicator, Darshendev also represents clients in international and domestic arbitration, litigation, mediation, and adjudication.

A former chairperson of the Young Members Group of the Chartered Institute of Arbitrators ("CIArb") (Malaysia), Darshendev is a frequent speaker in international circuits and contributes to global publications on the arbitration and constructions law landscape.

**Andrew Heng Yeng Hoe, Senior Partner, Zain Megat & Murad**

Andrew is a senior partner at Zain Megat & Murad and leads its construction and energy team. He provides both litigation and advisory services to clients in the construction, infrastructure, renewable energy, environmental, banking and insurance, property development as well as manufacturing industries.

Andrew represents clients across a spectrum of construction disputes in arbitrations, adjudications and in the courts, including applications pursuant to the Arbitration Act 2005 and CIPAA 2012, restraining demands on performance bonds and construction-related tortious claims (professional negligence, occupiers' liability, nuisance and trespass). Andrew also represents Investigating Committees in Disciplinary Proceedings conducted by statutory bodies that govern construction professionals.

Andrew's experience includes handling disputes arising from construction of airport, highway, rails infrastructure, waste to energy plant, large scale solar plant, solid waste treatment plant, waste water treatment plant and electrical transmission towers. Andrew also advised both international and local clients on compliance of regulatory requirements by the Construction Industry Development Board (Malaysia).

Andrew is also an accredited adjudicator and mediator empanelled with the AIAC.

**Janice Tay, Partner, Wong & Partners**

Janice is a partner in Wong & Partners (member firm of Baker & McKenzie International) and heads the construction and engineering disputes team in Malaysia.

Apart from being a litigator, she is a qualified arbitrator, adjudicator and mediator. Janice is recognised by The Legal 500's "Arbitration Powerlist - South East Asia region", and is part of the International Chamber of Commerce ("ICC") Malaysia Delegation to ICC Commission on Arbitration & ADR (2022- 2024). She has advised and represented clients in arbitrations relating to projects in Malaysia, Singapore, Thailand, India, Hong Kong, Saudi, Sudan, Vietnam, and Indonesia.



Janice was the President of the Society of Construction Law and currently sits in committees of the Bar Council Arbitration & Construction Committee and the Young Members Group of CIArb (Malaysia), amongst others. She also tutors in her spare time and is passionate about diversity.

Janice was the President of the Society of Construction Law and currently sits in committees of the Bar Council Arbitration & Construction Committee and the Young Members Group of CIArb (Malaysia), amongst others. She also tutors in her spare time and is passionate about diversity.

Janice was the President of the Society of Construction Law and currently sits in committees of the Bar Council Arbitration & Construction Committee and the Young Members Group of CIArb (Malaysia), amongst others. She also tutors in her spare time and is passionate about diversity.

**Nadesh Ganabaskaran, Partner, Malek, Gan & Partners**

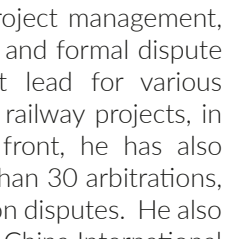
Nadesh read law at the University of West of England and was admitted as a Barrister-at-Law of Middle Temple. Nadesh returned to Malaysia and began his legal career in the building and construction dispute resolution, litigation and arbitration field. Prior to joining Malek, Gan & Partners as a partner, Nadesh completed his MSc in Construction Law and Alternate Dispute Resolution at King's College, London.

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

**Choon Hon Leng, Partner, Sanjay Mohan**

Hon Leng has been practising in the area of construction law since he commenced practice 20 years ago. He has advised various figures in the construction industry, including employers, main contractors, subcontractors and consultants in projects of various sizes and types. His experience includes tender preparation, pre-contract negotiation, contract documentation, project management, project advice, post-dispute negotiation and formal dispute resolution. He has acted as project lead for various infrastructure projects, especially urban railway projects, in Malaysia. On the dispute resolution front, he has also represented clients as counsel in more than 30 arbitrations, most of which are centred on construction disputes. He also has experience in representing clients in China International Economic and Trade Arbitration Centre ("CIETAC") where he conducted the entire proceedings in Mandarin. He is the immediate past Chairman of CIArb (Malaysia).

Over the years, Hon Leng has been invited as speaker and presented papers at various construction and arbitration related conferences. Other than construction, he also has substantial experience in servicing clients from other industries such as telecommunications, pharmaceutical, manufacturing and information technology. In recent years, he has regularly received recognitions from major publications including Asia Pacific Legal 500, Chambers and Partners, asialaw and Benchmark Litigation in the areas of construction and dispute resolution.

**Deepak Mahadevan, Partner, Azmi Fadzly Maha & Sim**

Deepak practises in the field of civil and commercial dispute resolution with a primary focus in construction and engineering disputes. His experience in this area includes advisory and drafting services for all stages of the project life cycle and formal dispute resolution (whether through litigation, international and domestic arbitration, contractual adjudication or statutory adjudication under the CIPAA).

In addition to his experience as counsel, he is also a qualified adjudicator with AIAC, and frequently sits as an adjudicator in CIPAA disputes. Deepak is also a member of the Bar Council Arbitration and Construction Law Committee.

**Terms and Conditions**

- Materials will be emailed only. No printed notes will be provided.
- No recording of the event is permitted via any means at any time.
- 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).
- Registration will be confirmed once proof of payment is received, and will be allocated on a first come, first serve basis.
- Registration for the seminar will close at 3:00 pm, a day before the seminar commences. Cancellations must be made in writing. There will be no refunds for cancellations made fewer than three working days before the seminar, but substitutions are allowed.
- No additional registration will be accepted once the closing date has passed, or if the event is full.
- The CPD Department may not permit future registrations if you fail to attend a CPD event after registering, unless you provide an acceptable and valid reason.
- The organiser reserves the right to modify, cancel or postpone the event, should circumstances arise that makes such action necessary, whereupon all registration fees paid will be refunded.
- Points for the 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.

Organised by  
 Bar Council Arbitration and Construction Law Committee



Should you have any enquiries, please contact:

**Florence Laway**  
 (florence@malaysianbar.org.my)  
**Florence Andan**  
 (florence.andan@malaysianbar.org.my)  
**Rajeswari Gunarasa**  
 (rajeswari@malaysianbar.org.my)