



UNDER THE SBL SCHEME



CIPAA IN CONSTRUCTION DISPUTE RESOLUTION

CONSTRUCTION INDUSTRY PAYMENT & ADJUDICATION ACT 2012

2 November 2018, Pacific Sutera Harbour Resort, Kota Kinabalu



KEYNOTE ADDRESS
YAA Datuk David Wong Dak Wah
The Chief Judge Sabah & Sarawak

WHO SHOULD ATTEND

Developers, Contractors, Project Consultants, Claims Consultant, Public Authorities involved in development and engineering, Advocates & Solicitors and Pupils-in-Chambers.

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 four 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.

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FRIDAY
02 NOV 2018

- 8.30 am Registration
- 9.00 am WELCOME ADDRESS
By **YBhg Tan Sri James Foong**
Retired Judge of the Federal Court, Malaysia
and Director of Legal Plus Sdn Bhd
- 
- 9.05 am KEYNOTE ADDRESS :
YAA Datuk David Wong Dak Wah
The Chief Judge of Sabah & Sarawak
- Chairman of Session :
Mr Roger Chin, Vice President, Sabah Law Society
- 09.45 am **The Adjudication of Construction Disputes – Common Challenges Observed**
From the perspective of the Construction Court
- YA Dato' Lee Swee Seng**
Judge, High Court, Malaya
- 10.45 am Coffee Break
- 11.15 am **The Year That Was – Key CIPAA Decisions in 2018**
2018 saw several landmark decisions shaping statutory adjudication in Malaysia. We look at where these decisions leave us.
- the enforceability of pay-when-paid provisions;
 - the extent to which a non-paying party can assert a set off for delay damages.
- Mr Foo Joon Liang**
Advocate & Certified Adjudicator (AIAC)
- 12.15 pm **Giving Effective Expert Evidence in Construction Dispute Resolution – The Dos and Don'ts from of an Expert**
YBhg Datuk Ar. Ho Jia Lit
Principal of Arkitek Summaz, Sabah
- 1.15 pm **Lunch**
- 2.15 pm **Four Years On – Has CIPAA Met The Purpose Of Its Enactment?**
We hear from YA Dato Lim Chong Fong who was instrumental in the enactment of CIPAA.
- YA Dato Lim Chong Fong**
Judge, High Court, Malaya
- 3.15 pm **CIPAA in Construction Dispute Resolution – What do the stakeholders say?**
A panel discussion by several stakeholders in construction disputes on the benefits and shortcomings of CIPAA.
- YA Tuan Hakim Ravinthran Paramaguru**, Judge, High Court Sabah & Sarawak
Mr Brendon Soh, President of the Sabah Law Society
Ar. David Cheah Ming Yew, Principal of DCDA Architect
Ar. Anthony Lee Tee, Group COO, Bina Puri
Ms Grace Chaw, Advocate & Certified Adjudicator (AIAC)
- Moderator**
YA Dato' Mary Lim
Judge, Court of Appeal, Malaysia
- 5.00 pm **Closing remarks by**
YBhg Tan Sri James Foong
Retired Judge of the Federal Court, Malaysia
and Director of Legal Plus Sdn Bhd
- 5.10 pm Networking Tea
- Emcee : Ms Daphne Wong, Advocate & Solicitor, High Court, Sabah



Justice Datuk David Wong Dak Wah

The Chief Judge of Sabah and Sarawak

Justice Datuk David Wong Dak Wah read law at University of New South Wales, Sydney, Australia. He also obtained a B.Com (majoring in accountancy) from the same University. From 1978 to 1979 Datuk David was attached to a Public Accounting Firm in Sydney as a qualified auditor. In 1979 he was admitted as a Barrister of the New South Wales Supreme Court in Australia.

In 1980, Datuk David was admitted to the Sabah Bar and he practiced as an Advocate and Solicitor in Sabah until 1992. In 1992, Datuk David practiced in Sydney until 1996. In 1997 he returned to Sabah and practised until 2005. Datuk David was appointed a Judicial Commissioner of the High Court of Sabah and Sarawak in Kuching on 29 August 2005 and elevated as a Judge of the High Court of Sabah and Sarawak with effect from 11 April 2007.

On 15 January 2009 Datuk David was transferred to the High Court of Kota Kinabalu, Sabah until his elevation to the Court of Appeal Malaysia on 8 January 2013.

He was appointed as Judge of the Federal Court on 27 April 2018 and Chief Judge of Sabah & Sarawak on 11 July 2018.



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 the Malaysian Bar Council 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' 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 the Malaysian Bar and has conducted numerous courses on this subject.



Justice Ravinthran Paramaguru

Judge
High Court, Sabah & Sarwak

Justice Ravinthran Paramaguru graduated with Bachelor of Laws (Hons) degree from the University of Malaya in 1986. He read in the chambers of Sutherson & Co in Penang from April of 1986 until September of 1986 when he joined the Judicial and Legal Service as a Magistrate in Penang. He was transferred to Kota Kinabalu in June of 1990. Since then he served as Magistrate, Deputy Registrar and Sessions Court Judge in Kota Kinabalu, Tawau and Kuching until he was appointed as a Judicial Commissioner in January of 2009.

He was appointed as a Judge of High Court in Sabah and Sarawak in January of 2013. He is currently based in the Kuching High Court.



YA Dato' Lim Chong Fong

Judge
High Court, Malaya

Yang Arif 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.



Datuk Ar. Ho Jia Lit

Principal
Arkitek Summaz, Sabah

Datuk Ar. Ho Jia Lit graduated with a Bachelor of Architecture (Hons) from Deakin University, Australia. He is co-founder of Arkitek Summaz which was nominated for the 1995 Aga Khan Award for Architecture for The Sabah Parks Administration and Research Centre at Kinabalu Parks [an earthquake resistant building] and Distinction Award for Mount Kinabalu Golf Course Complex and Clubhouse at Kundasang in the BHP-PAM Colorbond Award 1994. Ar. Ho has extensive experiences in Nature and Eco-Tourism related works surrounding islands and the jungles of Sabah, under the Sabah Wildlife Department, Sabah Parks and the Sabah Forestry Department. Ar. Ho designed and supervised the construction of the [200 acres] Lok Kawi Wildlife Park in Kota Kinabalu.

Ar. Ho was PAM Sabah Chapter's drafting school Principal and Lecturer. He provided workshop lectures on Building Construction and Technology to applicants for the Real Estate Agents Licensing Registration Board. He was the past Chairman of [PAM] Sabah Chapter for [2009-2010]. Presently he is a member of Lembaga Arkitek Malaysia [LAM] Practice Committee [2009-2018] and was a Council member of [PAM] KL for [2009-2010]. He was a committee member in the Dewan Bandaraya Kota Kinabalu [DBKK] High Risk Development Technical Committee and "Traffic Technical Sub-Committee" as PAM's representative from 2009- 2010. Ar. Ho is currently a Member of the Central Board [Lembaga Pusat Perancang Bandar Dan Desa] appointed by the State Government via the Ministry of Local Government and Housing.

Ar. Ho was called as expert witness in the High Court at Kota Kinabalu to give expert interpretation on approved development plans and building plans under sale and purchase agreements vis-à-vis as-built plans. Ar Ho's expert opinion affected developers' liability under the agreements and its remedies available to the purchasers. He was also appointed to give expert opinion on what constitutes architectural consultancy services and the conditions of engagements of architects which was accepted by the civil courts. In one of the High Court cases, David Wong Dak Wah (as he then was) found Ar. Ho, the expert witness, "to be sufficiently experienced and qualified and [his] evidence to be credible".





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 extensive 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.



Ar. David Cheah

Principal
DCDA Architect

Ar. David Cheah is an Architect, Urban Planner, Adjudicator and Chartered Arbitrator. He is currently practising as an architect and town planner involved in a wide variety of architectural and urban planning work ranging from commercial, residential and retail projects. Other than being appointed as arbitrator and adjudicator in construction arbitrations, he has also been involved in expert witness work for arbitration/litigation. Apart from his experience in dispute resolution, he has also advised contractors and employers on aspects of the design and construction of building projects and professional negligence for contracts.

He has a degree in Architecture, Master's degree in Urban Planning, Master's degree in Construction Law and Arbitration, taught jointly by the National University of Singapore (NUS) and King's College, University of London and a Diploma in Arbitration from CEM, UK. He was also the past president of the Chartered Institute of Arbitrators, Malaysia Branch. David is a 'Chartered Arbitrator' listed on the panel of Chartered Arbitrators CI Arb (UK) and on the AIAC panel of Adjudicators.

David has also seen and experienced the impact CIPAA has had on the practices of consultants.



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Ms Grace Chaw Hei Hei

Advocate & Certified Adjudicator (AIAC)
Grace Chaw & Co

Grace Chaw Hei Hei graduated from Monash University, Australia and is a practising lawyer and the principal of Grace Chaw & Co., a firm of advocates and solicitors based in Kota Kinabalu, Sabah. Grace Chaw specialises in civil litigation and dispute resolution with a specific focus on contractual, construction and land disputes. She is committed to civil litigation through trial practice and appellate advocacy in the Malaysian civil courts.

She is empanelled as Adjudicator under Asian International Arbitration Centre (AIAC) to conduct statutory adjudication under Construction Industry Payment & Adjudication Act 2012. She regularly acts as counsel for claimants to resolve construction related payment disputes by way of statutory adjudication. She advocates the use of statutory adjudication as a novel alternative dispute resolution procedure to obtain a swift interim decision on payment disputes.

She represents construction industry players including landowners, developers, contractors, consultants as well as other commercial and private entities as Advocate in trial and appellate courts covering contractual, construction and tortious disputes involving landowners, unpaid interim or progress claims for work done, non-compliance, differing site conditions, liquidated damages for delay, obligations under defect liability period, joint venture disputes and other legal issues arising from administering of construction contracts, contract claims errors or omissions.



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.



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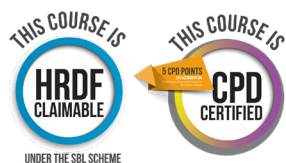
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2 November 2018 | Pacific Sutera Harbour Resort, Kota Kinabalu

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