

Jointly organised by:



# THE INAUGURAL MASTERCLASS ON ADJUDICATION



7 June 2024, Friday



9:00am - 7:30pm



Asian International Arbitration Centre

Cocktail Networking  
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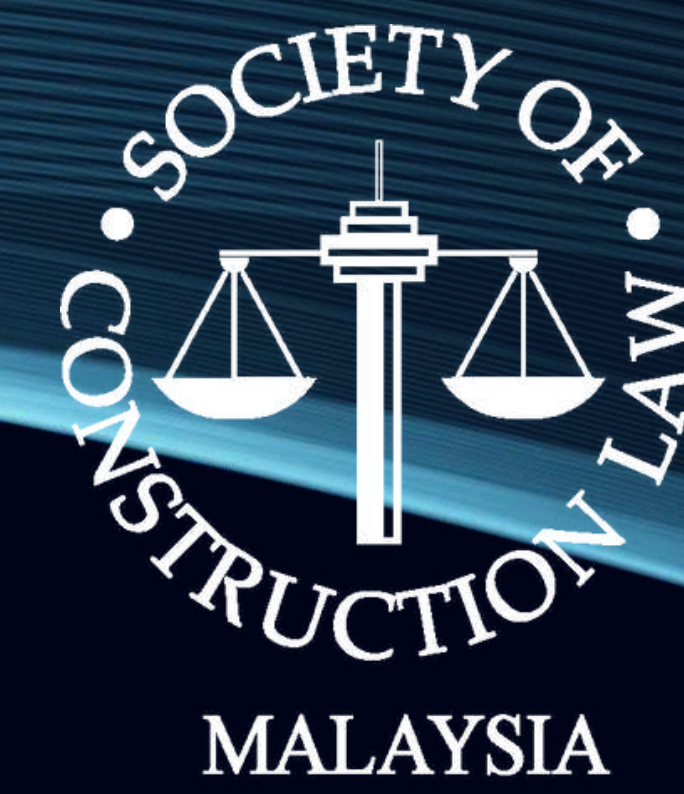
| Esther Ooi

| 03 6206 1549 / 017 372 8192

| [secretariat@myscl.org](mailto:secretariat@myscl.org)



# PROGRAMME



9.00am – 9.30am  
9.30am – 9.40am  
9.40am – 10.00am

Registration and Login  
Welcome Remarks by Organising Chairperson, Kalaiarasan Rasadurai  
Keynote Address by Justice Dato' Mary Lim Thiam Suan (Retired), Chairperson of the Protem Committee for the AIAC Court of Arbitration



**JUSTICE DATO' MARY LIM THIAM SUAN (RETIRED)**  
CHAIRPERSON OF THE PROTEM COMMITTEE  
FOR THE AIAC COURT OF ARBITRATION

10.00am – 11.00am  
11.00am – 11.15am

**Session 1: "Decoding the Decade: Unveiling the Evolution of CIPAA"**  
Question and Answer



**JUSTICE NADZARIN BIN WOK NORDIN**  
HIGH COURT JUDGE  
MODERATOR



**RAJENDRA NAVARATNAM**  
PARTNER,  
AZMAN DAVIDSON & CO  
SPEAKER



**SOH LIEH SIENG**  
FOUNDING PARTNER,  
CONTRACT SOLUTIONS I PLT  
SPEAKER



**SANJAY MOHAN**  
PARTNER,  
SANJAY MOHAN  
SPEAKER

11.15am – 12.15pm  
12.15pm – 12.30pm

**Session 2: "Charting the Course: Evaluating the Future of CIPAA"**  
Question and Answer



**JUSTICE DATO' LEE SWEE SENG**  
COURT OF APPEAL  
JUDGE  
MODERATOR



**KUHENDRAN THANAPALASINGAM**  
PARTNER,  
ZUL RAFIQUE & PARTNERS  
SPEAKER



**THAYANANTHAN BASKARAN**  
PARTNER,  
BASKARAN  
SPEAKER



**HOR SHIRLEY**  
PARTNER,  
RAJA, DARRYL & LOH  
SPEAKER

12.30pm – 1.30pm  
1.30pm – 1.45pm

Lunch and Networking  
**A Bornean Perspective: A Cursory View of Adjudication In the Past Decade**



**TAN SRI DATUK SERI PANGLIMA DAVID WONG DAK WAH**  
CHAIRMAN OF THE BORNEO INTERNATIONAL CENTRE FOR  
ARBITRATION AND MEDIATION (BICAM)  
SPEAKER

1.45pm – 3.00pm  
3.00pm – 3.15pm

**Session 3: "Unlocking Insights: Adjudication Regimes Across Borders"**  
Question and Answer



**JUSTICE DATO' LIM CHONG FONG**  
COURT OF APPEAL  
JUDGE  
MODERATOR



**LAM WAI LOON**  
PARTNER,  
HAROLD & LAM  
PARTNERSHIP  
SPEAKER



**HO CHIEN MIEN**  
PARTNER,  
ALLEN & GLEDHILL  
SINGAPORE  
SPEAKER



**BEN DAVIDSON**  
PARTNER,  
CORRS CHAMBERS  
WESTGARTH, AUSTRALIA  
SPEAKER



**PRISSILLA JOHN**  
SENIOR CASE COUNSEL  
ASIAN INTERNATIONAL  
ARBITRATION CENTRE  
SPEAKER

3.15pm – 5.15pm

**Session 4: The 3 Debates**



**JUSTICE DATO' MARY LIM THIAM SUAN**  
RETIRED FEDERAL  
COURT JUDGE  
MODERATOR



**VATSALA RATNASABAPATHY**  
PARTNER  
ZAIN & CO  
DEBATER



**FOO JOON LIANG**  
PARTNER  
GAN PARTNERSHIP  
DEBATER



**KEVIN PRAKASH**  
PARTNER  
KEVIN PRAKASH  
DEBATER



**ANIZ AHMAD AMIRUDIN**  
PARTNER  
CECIL ABRAHAM &  
PARTNERS  
DEBATER



**ADRIAN SEE JOOI HONG**  
MANAGING PARTNER  
BELDEN  
DEBATER



**NADESH GANABASKARAN**  
PARTNER  
MALEK, GAN &  
PARTNERS  
DEBATER

5.15pm – 5.30pm  
5.30pm – 7.30pm

Closing Remarks by President of the Society of Construction Law, Malaysia, Loshini Ramarmuty  
Cocktail Networking Reception



# DEBATE TOPICS

## Debate 1

### REGISTRATION FEE

Section 27(1) of CIPAA provides that the adjudicator's jurisdiction is limited to the matter referred to adjudication by the parties pursuant to sections 5 and 6. In **View Esteem Sdn Bhd v Bina Puri Holdings Bhd** [2018] 2 MLJ 22, the Federal Court ruled that an adjudicator is obliged to consider all the defences raised by a respondent in the adjudication response, even if such defence was not raised in the payment response. Essentially, the respondent is now allowed to raise new defences available to him at the adjudication response stage. Consequently, parties in some instances have opted not to serve a payment response at all, as they can still raise any defences in the adjudication response. It also allows the respondent to reserve their defences until the later stage of the adjudication proceedings.

House A: This House believes that the respondent ought not be allowed to raise new defences at the adjudication response stage given the strict timelines and scheme of adjudication.

House B: This House believes that there is no procedural unfairness to the claimant if the respondent chooses to raise new defences in the adjudication response stage.

## Debate 2

In **CT Indah Construction Sdn Bhd v. BHL Gemilang Sdn Bhd** [2020] 1 CLJ 75, the principal (respondent) argued that the subcontractor was not entitled to seek direct payment from the principal since the main contractor has been wound up. Thus, any direct payment made would amount to undue preference after the presentation of the winding up petition. The Court of Appeal rejected this argument and held that the principal's liability is imposed by statute where the principal has no discretion and the payment made is not from the assets of the main contractor. Further, direct payment is a separate obligation imposed by statute which exists in parallel with the main contractor's obligation to pay the subcontractor under the adjudication decision. Consequently, in some instances parties have deliberately used adjudication as a tool to obtain direct payment when the main contractor is on the verge of winding up. This decision has been perceived to allow the subcontractor to sidestep the usual insolvency regime and pursue the outstanding payments directly from the principal. This brings about the concerns of the superiority of direct payment in CIPAA over the insolvency regime or the *pari passu* principle.

House A: This House believes that the right to direct payment under section 30 of the CIPAA ought to prevail over the insolvency regime's *pari passu* principle to ensure the underlying objective of CIPAA, 'pay first, argue later', is achieved.

House B: This House believes that the direct payment regime under section 30 of the CIPAA is abhorrent to the long-standing practices in the insolvency regime and the *pari passu* principle.

## Debate 3

Various parties have sought, albeit unsuccessfully, to challenge the extent of the prohibition on conditional payment in section 35 of CIPAA. The Courts have been consistent in its interpretation of section 35 notwithstanding the express words used in section 35(2), i.e. that the instances of conditional payment are not limited to those in sections 35(2)(a) and (b). The interpretation proffered is wide-reaching with little to no limitation at sight. This approach has been viewed by certain quarters as opening of the floodgates, where any and all conditions imposed on payment would be prohibited. For instance, all conditions would be prohibited even if the conditions relate to the contractor's compliance with statutory requirements, i.e. in relation to foreign workers, or even a condition requiring proof of payment to the sub-contractors. In this context, one can only guess how wide the net can be casted pursuant to section 35 and the implications thereon.

House A: This House believes that everything and anything is prohibited as long as there are conditions imposed on the liability or due date of payment.

House B: This House believes that prohibition on conditional payment should be limited to what was the actual mischief which section 35 sought to remedy, pay-when-paid and pay-if-paid clauses.





# REGISTRATION

REGISTRATION FEE		
	Normal Registration	SCL Members, AIAC empanelled Practitioners & Supporting Organisations
 EARLY BIRD Extended till 3 June 2024	RM200.00	RM200.00
 PHYSICAL PASS	RM250.00	RM220.00

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