



Dr. Sivasangaran Nadarajah

Advocate and Solicitor, High Court of Malaya

LLB (Hons.) (University of London), Certificate of Legal Practice
B.Sc.(Eng.)(Hons.)(King's College London, University of London)
Ph.D. (Engineering, King's College London, University of London)
Diploma in International Arbitration (Chartered Institute of Arbitrators)
FCI Arb, FAIADR, Member of the Malaysian Bar and Selangor Bar

Adjudicator · Arbitrator · Mediator · Patent Agent

Practice Area:
Construction & Engineering, Infrastructure and Projects
Information Technology and Software

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Dr. Nadarajah brings hands-on construction industry and engineering knowledge to legal practice, from his former Mechanical Engineering career. He sees commercial and practical risks and business drivers associated with engineering projects and leverages this to deliver solutions to complex issues.

At **SIEMENS** he developed a novel wastewater treatment. At **NCR** he wrote fresh 4th generation programming language software. As a consultant, he oversaw the planning, design, construction and delivery of **Mechanical Engineering Building Services**, including for the largest building in Malaysia (**Berjaya Times Square**) - besides dealing with the complexities of a huge building, he helped project manage its construction through the 1998 Asian Financial crisis challenges, together with extensive value engineering.

He advises clients from procurement and structuring to negotiating and drafting contracts - and he was involved in preparing suites of works contracts (for large **construction/projects** - for infrastructure works, including for one of the largest projects in Malaysia, the Kuala Lumpur Mass Rapid Transit rail system "MRT"; tenders for Power Plants; etc.), **IT** and commercial agreements.

He appears as counsel in **dispute resolution** matters (in litigation, arbitration and adjudication), as an **Arbitrator** (sole and presiding) and an **Adjudicator** (in construction disputes). He has also delivered a final and binding **Expert Determination** for AIAC's first such appointment (for an ad hoc matter).

EMPANELMENT

- Arbitrator (Asian International Arbitration Centre ("AIAC") & Thailand Arbitration Center ("THAC")).
- Adjudicator (AIAC, Hong Kong International Arbitration Centre ("HKIAC") & Hong Kong Institute of Construction Adjudicators ("HKICAdj").
- Mediator (Malaysian Mediation Center ("MMC") – under Bar Council's (Malaysia) auspices - & AIAC).
- Patent Agent (Intellectual Property Corporation of Malaysia ("MyIPO")).

EDUCATION

Brickfields College, Malaysia.

King's College London, University of London, U.K.

Trinity College, Glenalmond, Perthshire, U.K.

Bishop Cotton Boy's School, Bangalore, India.

Chartered Institute of Arbitrators.

EXPERIENCE IN LEGAL MATTERS

He worked as a Lawyer (Advocate & Solicitor) at:

- At Messrs. S. Nadarajah & Co.
- At Messrs. K.C Hue & Co. (formerly known as Wong Hue Ho & Co.)
- At Messrs. Christopher & Lee Ong (formerly known as Christopher Lee & Co.)

CONTRACT PREPARATION

He drafted contracts, individually or as part of a legal team, and sometimes with the client or other professionals who provided technical or financial advice.

In relation to [construction matters and projects](#), Dr. Nadarajah has drafted and negotiated construction works contracts (comprising of both main and sub-contracts; Design & Build (“**D&B**”) contracts/Engineering, Procurement & Construction (“**EPC**”) contracts; Engineering, Procurement & Construction Management (“**EPCM**”) contracts; Partnering Agreements; supply contracts; Operation & Maintenance (“**O&M**”) contracts; and related Employer’s Requirements (“**ER**”). He has also advised on the conduct of various tender exercises in support of construction projects and assisted with the supervision of those tender exercises; by advising, negotiating, drafting or review of the request for qualification (for pre-qualification of bidders), the instruction to tenderers/request for bid proposals and the ensuing tender evaluations. In addition, he has prepared other general corporate and commercial agreements in support of infrastructure projects (such as for land-related matters) as well as other ventures.

The foregoing was employed for:

- [Infrastructure Projects](#): the Ringgit Malaysia (“**RM**” or currency code “**MYR**”) 21 Billion (Line 1 - Sungai Buloh to Kajang) Klang Valley MRT project; the Klang Valley Light Rail Transit (“**LRT**”) system (rolling stock & upgrading of wayside) project; the RM 634 Million Bus Rapid Transit (“**BRT**”) project in Sunway; a proposed highway.
- [Power Projects](#): the new electricity generation power plants for commencement of operations in 2016-2019 (for the following projects: RM 3 Billion, 1000–1400MW gas fired power plant; RM 6 Billion, 1000 MW coal fired power plant; and RM 11.7 Billion, 2x1000 MW coal fired power plant); a 132 KV electricity distribution capital project established in the Kulim Hi-Tech Park; photovoltaic plants (for the proposed solar power generation facilities in Malaysia under the Feed-In-Tariff mechanism of the Sustainable Energy Development Authority of Malaysia); a RM 1.9 Billion biomass power generating project in the United Kingdom; and a power project in Bangladesh.
- [Other Projects](#): for a global manufacturer and marketer of differentiated chemicals.

He has prepared contracts in relation to [IT projects](#), including for infrastructure as a service (“**IaaS**”) and software as a service (“**SaaS**”) projects, involving: Supply of Goods Agreement; Hardware Servicing

Support and Maintenance Agreement; Web Hosting {IaaS} Agreements - including Data Center Co-Location Services with Ancillary Interconnectivity Services {IaaS} Agreement; Data Center's Web Hosting Personal Data Protection Notice; Broadband Services Agreements including the D&B Agreement for the Supply and Maintenance of an Internet Network to a Data Center; Software License and Distribution {Reselling of SaaS} Agreement; and Hardware Distribution Agreement.

DISPUTE RESOLUTION

He acted as counsel (in: litigation matters; arbitration matters – with Arbitration at AIAC – including in persuading the tribunal in 1 matter to terminate the arbitration commenced by the Respondent; and statutory adjudication matters - 3 ran concurrently - Adjudication at AIAC) or acted in advisory capacity for the resolution of: construction industry disputes involving claims for works, variations, deductions, back charges extension of time, loss and expense incurred by prolongation of the contract (due to the employer's delay), liquidated damages (“LD”), retention monies, warranty issues, suspension of works, termination of contract and quantified damages; an operation's environmental requirement obligations; a claim for damages due to soil settlement on an adjoining property arising from basement excavation; the Power Purchase Agreement (“PPA”) for the sale of electricity (by on-going involvement in the operation phase and in relation to the constructed installation).

He also acted as the arbiter, including conducting proceedings inquisitorially (when the Respondent did not participate), and, where necessary, inter alia, deliberating on: the procedural steps; the weight to be given to the evidence; whether the claim was not proved, etc. viz.:

↳ As the Adjudicator (in Adjudications conducted at AIAC - for payments claims under the Construction Industry Payment & Adjudication Act 2012 (“CIPAA”)) with **Adjudication Decisions** discussing on the following specific issues besides the construction matter dispute topics (outlined above):

- ↳ on the claim against a wrong party.
- ↳ on setting aside the whole Adjudication Proceedings as the Payment Claim was raised before payment became due.
- ↳ whether a sub-claim for zero sum, when all payments of the certified sum had been made (including during the proceedings) towards some certificates constitute a claim for “payment” under the Act when the basis of the aggregated claim was partly founded on said certificates.
- ↳ whether the payment claimed for works against a contract made on multiple dates was appropriate in light of having claimed for such works as a variation order to an earlier contract.
- ↳ whether payment was due for sums certified (when unchallenged – as no response was made to the claim), albeit issued by the trade related certifier and not the certifier named in the contract.
- ↳ whether a cross claim may be raised.
- ↳ whether the claim based on the Claimant's progress claim, for which interim payment certifications and payments were made, was displaced by the Respondent's Final Account (which the Claimant has not accepted) and whether, based on case law, a progress claim can be defended by a final claim.

- ↪ where ensuing construction did not meet dimensions set by statute, whether the contractor must construct works to such dimensions (per its duty to comply with Laws) or to within construction tolerances (permitted under the Contract), in an employer designed works.
- ↪ on the use of a start work order corresponding to the movement control order imposed due to the pandemic to restart works stopped by a stop work order imposed when an accident arose on site – involving different events and regulators.
- ↪ on the claim that time was set at large for the contracted performance as the contract did not factor events which needed extension of time.
- ↪ whether the builder is liable for costs incurred by the employer in rectifying defects when an agreement had been entered into by the parties with a third party who accepted responsibility for rectifying the works.
- ↪ on withholding of certificate of making good defects, final account, payment certificate or payments.
- ↪ on when do the Certificate of Practical Completion and Certificate of Making Good Defects take effect (i.e. as stated in the certificate as when works completed or when the certificates were issued subsequently – as deliverable documents were outstanding, whilst the fault for delay was disputed).
- ↪ on the giving of notices.
- ↪ on whose BQ applies.
- ↪ whether the Respondent identified the particulars it required for evaluation.
- ↪ on disputes to amounts previously agreed.
- ↪ on entitlement to insurance compensation.
- ↪ on recouping retention sum for a terminated downstream contract (by prime contract's termination).
- ↪ on performance and the scope of maintenance works.
- ↪ on management charges and provision of personnel.
- ↪ on costs claimed.
- ↪ whether extinguishing the outstanding sums due from the employer to the builder, pursuant to an agreement, precluded pre-award interest claims which accrued (previously & subsequently).
- ↪ whether a “no more claims” term could be employed to settle.
- ↪ whether parties agreed to a cost savings goodwill discount.
- ↪ following a jurisdictional challenge that the initial Notice of Adjudication was filed before the expiry of the timeline for its filing, considered the novel point(s) on whether an amended Notice could replace and cure an erroneous initial Notice and whether the registration of the Adjudication based on the earlier Notice is material.
- ↪ whether interest was due for late part payments of progress claims (including those made during the proceedings) when claiming the balance - even when the contract entitles accrual of interest.

↳ Acting as Arbitrator (Arbitration at AIAC) for appointments dealing with:

- ↪ in relation to the construction industry - on:

- remedial works losses;
- liquidated damages - for delay and compensation to end users;
- payment of retention sum; and
- payment of performance bond.

↪ payment of outstanding debt.

↪ alleged wrongful entry into contract with another party.

In the capacity:

↪ [As Sole Arbitrator](#)

- ❖ domestic arbitration
- ❖ international arbitration

↪ [As Presiding Arbitrator](#)

- ❖ domestic arbitration

↪ [Acted as the Determiner](#) for an [Expert Determination](#) (Ad Hoc Matter – through an AIAC appointment)
- where Parties requested AIAC to “... appoint an Expert (preferably with experience in assessing delay/extension of time for building construction projects) for the Parties to adjudicate and determine the Disputes.” (which “... determination shall be final and binding ...”):

↪ ***Rendered an award*** - for the delay related dispute and the associated claimed loss and expense.

EXPERIENCE IN MECHANICAL ENGINEERING (CONSULTANCY)

He worked as a Consultant at:

- Vekatesan & Associates Sdn. Bhd. / Nair Ven Oscar Faber Sdn. Bhd. / Perunding NVOF Sdn. Bhd.
 - ↳ (the firm in merger formed Nair Ven Oscar Faber & later became Perunding NVOF; now AECOM).
 - ↳ (Telekom HQ project thru Zainuddin, Nair and Ven Associates Sdn. Bhd.)
- Jurutera Perunding Valdun Sdn. Bhd.

Some of the projects in which he oversaw the [Mechanical Engineering Building Services](#) include:

- mixed developments (for which he led his team for the services listed below) viz. the mega projects of:
 - ↳ Berjaya Times Square (see https://en.wikipedia.org/wiki/Berjaya_Times_Square).
This is regarded as the world's largest building built in a single phase of construction and ranked the largest building in Malaysia and currently tenth largest building in the world by floor area. The building has a built-up area of 700,000 sq. m (7,500,000 sq. ft), comprising twin 31 storey hotel towers, housing 1200 apartments, above a 250m long 16 storey shared podium of hotel, office, retail outlets, restaurants, cinemas, theme parks & an amusement park with an indoor roller coaster. In addition, there are 6 basement levels - 5 for car parking facilities and 1 for retail; and
 - ↳ Vision City (now renamed as Quill City - see https://en.wikipedia.org/wiki/Quill_City):
Comprising a building for retail outlets and 3 office towers (of 29, 31 and 33 storeys).

The consultancy task involved: liaising with the local authorities; designing; calling tenders, evaluating the offers and recommending to clients on the award of contracts; overseeing/supervision of the construction of works, including site inspections, testing and commissioning; administering the contracts; or conducting value engineering, for the Mechanical Engineering Building Services, comprising:

- ↳ air conditioning and mechanical ventilation systems;
- ↳ fire protection (NFPA/LPC) systems;
- ↳ plumbing systems; or
- ↳ LPG piping installations; etc.

at the above-mentioned mixed developments and at:

- 2 Ministry Buildings at the New Government Administration Center at Putrajaya.
- National Laboratories for the Department Of Chemistry, Malaysia (at Petaling Jaya, Ipoh, Malacca, Kota Kinabalu, Kuching).
- MAS cargo complex at KLIA (Kuala Lumpur International Airport).
- 34 storey Novotel, Kuala Lumpur.
- Telekoms Headquarters, Kuala Lumpur (74 storey office tower, 5 storey auditorium, hawker centre, multipurpose staff facilities and podium) – see https://en.wikipedia.org/wiki/Telekom_Tower.
- Four, 4 storey Asrama Sarawak hostel blocks, 3 storey central block and master's house at University Malaya, Kuala Lumpur.
- 3 storey Malaysian Basketball Association stadium and 8 storey carpark/hostel block, Kuala Lumpur.
- 3 storey extension to Amoda annex, Kuala Lumpur.
- Renovations in Kuala Lumpur (3 floors for PB Securities at Wisma Sabre; 3 floors for K N & Kenanga at Pernas International; 4 floors for KAF - Seagroatt & Campbell at Wisma Hamzah – Kwong Hing).

PUBLICATIONS AND PRESENTATIONS

IN RELATION TO LAW

He was a *speaker* at:

- The MyIPO-PHAMA IP Seminar 2011 “Malaysia Medicines: The Way Forward in Intellectual Property” on the topic of “*Malaysian Patent Law – Pharmaceuticals*”.
- AIAC (which was previously known as Kuala Lumpur Regional Center for Arbitration “**KLRCA**”):
 - ↳ Evening Talk in January 2016 on Competition Law on “*Bid Rigging – Are you at Risk*”;
 - ↳ CIPAA Refresher Course in December 2017 and January 2018 on “*Effective Decision Writing*”;
 - ↳ ASIA ADR WEEK 2018 on “*Drafting a Concrete Clad Decision*”;
- Selangor Bar (in 2018 and 2019) & KL Bar (in 2018):
 - ↳ “*An overview of CIPAA, Breach of Natural Justice & Excess of Jurisdiction*”; and
- University Malaya at its Engineering Faculty (in 2019):
 - ↳ “*An overview of CIPAA*”
- PAM – in 2020 (On the areas of Breach of Natural Justice & Excess of Jurisdiction under CIPAA).

He was a *moderator* at:

- the KLRCA Talk in February 2015 on “*Mediating Data Protection Breaches & Disputes*”; and
- Public Lecture Series 2015 at Brickfields College in May 2015 on “*Rolling out PDPA (Personal Data Protection Act) Compliance Programme – Business Issues and Practical Challenges to Manage*”.

He *authored*:

- “*An analysis of the Federal Court’s decision in View Esteem Sdn. Bhd. v Bina Puri Holdings Berhad*”; Malaysian Law Journal [2018] 2 MLJ i.
- “*Res Judicata In The Construction Industry Payment Adjudication Act 2012 (‘CIPAA’) Proceedings*”; Current Law Journal [2019] 10 CLJ i.
- “*An Analysis of the Federal Court’s Decision in Jack-In Pile (M) Sdn Bhd v Bauer (Malaysia) Sdn Bhd (2019) and Are Conditional Payments Void by the Federal Court’s Decision in CIMB Bank Berhad v Anthony Lawrence Bourke & Anor (2019)*”; The Law Review 2019 (AMR), at 407.
- “*Injuncting a Call on an On-demand Performance Bond for Unconscionability*”; Christopher Lee & Co’s Quarterly, Issue 4: November 2012

He *co-authored*:

- “*Can An Administrative Directive Effectively Impact Jurisdiction?*”; ASIA ADR WEEK 2018 (Booklet)
- “*Competition law and the Airline Industry*”; Christopher Lee & Co’s Quarterly, Issue 2: November 2011

He *acted as an arbitrator (as presiding arbitrator or co-arbitrator) in moot competitions*:

- 12th, 14th & 17th Lawasia International Moot (Malaysia National Level) – in 2017, 2019 & 2022; and
- AIAC–ICC (2018 & 2019) 2nd & 3rd Pre-Moot(s); AIAC (2022 & 2023) 6th & 7th Pre-Moot(s); 2022 12th Moot Shanghai; and (2023) XI Rio Pre-Moot, for the Willem C. Vis International Commercial Arbitration Moot.

IN RELATION TO ENGINEERING

He has also *co-authored* technical papers which have been published in The Transactions of the Society of Automotive Engineers (“**SAE**”) in Detroit, USA, in the Proceedings of the Institution of Mechanical Engineers (London, UK), conferences and symposiums, which include:

"An Experimental Study of Velocity and Reynolds Stress Distributions in a Production Engine Inlet Port Under Steady Flow Conditions."

SAE Technical Paper 900058, 1990 (International Congress and Exposition, Society of Automotive Engineers, Detroit, Michigan, USA 26th February – 2nd March 1990) and SAE Transactions Journal of Engines. 20pp. (<http://papers.sae.org/900058/>)

"Swirl Centre Precession Under Steady Flow Conditions."

Proceedings of the Eurotech conference organised by the Institution of Mechanical Engineers (U.K.), Birmingham, U.K. 2nd to 4th July 1991. 6pp.

"Measurements And Simulation Of The Flow Around A Poppet Valve."

8th. Symposium on Turbulent Shear Flows, Munich, Federal Republic of Germany, Sept. 9-11, 1991, Proceedings. Vol. 1 (A92-40051 16-34). 6pp. (<http://adsabs.harvard.edu/abs/1991tsf.....1...13L>)

"Measurement Of Turbulence Scales, Moments And Spectra In Engine Flows."

Second Seminar on Experimental Methods in Engine Research and Development, Institution of Mechanical Engineers (U.K.). 7pp.

"The Turbulence Structure of the Annular Non-Swirling Flow past an Axisymmetric Poppet Valve".

Proceedings of the Institution of Mechanical Engineers, Part C: Journal of Mechanical Engineering Science June 1, 1998, vol. 212, no. 6, pp. 455-471. 17pp. (<http://pic.sagepub.com/content/212/6/455.short>)

"The Effect of Swirl on the Annular Flow past an Axisymmetric Poppet Valve"

Proceedings of the Institution of Mechanical Engineers, Part C: Journal of Mechanical Engineering Science June 1, 1998, vol. 212, no. 6, pp 473-484. 12pp. (<http://pic.sagepub.com/content/212/6/473.short>)

He *authored*:

"A Rotating Grating Unit Designed for Reynolds Stress Measurements".

Internal Report, Mechanical Engineering Department, King's College, EM/91/05. 10 pp.

"Calculation of Velocity Moments and Turbulence Scales from Time-Resolved Measurements".

Internal Report, Mechanical Engineering Department, King's College, EM/91/07. 11 pp and program listings.

"Calculation of the Length Scales, Turbulence Production and Dissipation of the Turbulence Kinetic Energy: Mathematics and Programming".

Internal Report, Mechanical Engineering Department, King's College, EM/91/15. 12 pp.

"A Comparison of the Measured and the Computed Reynolds Stress".

Internal Report, Mechanical Engineering Department, King's College, EM/91/16. 19 pp.