

Report on Adjudication and CIPAA Course

TUNNELLING AND UNDERGROUND SPACE TECHNICAL DIVISION



by Ir. Dr. Ooi Teik Aun

THE Institution of Engineers, Malaysia (IEM), Pertubuhan Akitek Malaysia (PAM), Malaysian Institute of Arbitrators (MIArb) and The Royal Institution of Surveyors Malaysia (RISM) jointly organised short courses on Construction Law and ADR. These consisted of:

1. Construction Law (Completed on 17th and 18th May)
2. Arbitration (Completed on 29th June 2013)
3. Mediation (Postponed twice due to poor response)
4. Adjudication and
5. Expert Determination (Scheduled for 13 December 2013).

On 21st September, 2013 the course on Adjudication was held at Wisma IEM with about 50 participants. The course lecturers were Ir. Harbans Singh K.S and Ms. Ann Quah Ean Lin from KL Regional Centre for Arbitration (KLRCA).

In Malaysia, contractual adjudication has seen its advent in the PAM Contracts 2006 Forms for building works. Statutory adjudication was introduced by the proposed Construction Industry Payment and Adjudication Act 2012 (CIPAA). The CIPAA was passed by the Parliament and gazetted in June 2012 as Act 746.

CIPAA encompasses mainly works and services inclusive of those involving the Construction Industry. Other than issues pertaining to payments, it gives practitioners the opportunity to be accredited and to become adjudicators on the panel of the relevant appointing body, i.e. KLRCA.

The lecture was delivered by Ms. Ann Quah head of Business Development at the KLRCA, who introduced adjudication and the essential features of CIPAA. The CIPAA 2012 is aimed primarily at addressing cash flow problems in the construction industry. From July 2012, the KLRCA has been conducting courses and registering accredited adjudicators in preparation for the implementation of CIPAA. The important timelines in the adjudication proceedings and the role of KLRCA were explained. KLRCA drafted the CIPAA Regulations, which was handed over to the Minister of Works. The decision as to when CIPAA will be implemented rest with the Minister.

In the second part of the lecture Ir. Harbans Singh K.S, who is a Professional Engineer, Chartered Engineer, Arbitrator, Mediator, Adjudicator, Advocate and Solicitor (non-practising), focused on the legal effects and implications of CIPAA on the Construction Industry. He is a regular contributor to The Ingenieur, the Malayan Law Journal, The Law Review and other professional publications.



Ms. Ann Quah delivering her lecture



Ir. Harban delivering his lecture on CIPAA Regulations

He explained the differences between Adjudication and Arbitration, the processes of adjudication and the role of KLRCA as the sole appointing authority in CIPAA.

In summary:

1. Adjudication proceedings are confidential (Section 20)
2. The power of the adjudicator not affected by non-compliance by parties (Section 26)
3. Payment disputes can be concurrently referred to adjudication, arbitration or the court (Section 37)
4. The whole process – from initiation to delivery of adjudicator's decision – requires approximately 100 working days, similar to 'Fast-Track' Arbitration
5. Regulations to be made by Works Minister upon KLRCA's recommendations (Section 39)
6. On-going disputes under construction contracts which have started in court or arbitration before CIPAA's coming into operation, are unaffected (Section 41)
7. The Works Minister is empowered to exempt any person or class of persons or any contract, matter or transaction from all or any provisions of the Act (Section 40).

The lectures were very informative and there was active discussion from the floor. The session concluded with presentation of certificates of appreciation to the speakers. ■

Ir. Dr. Ooi Teik Aun is the current Chairman of Dispute Resolution Practice (DRP) Subcommittee. He is also an advisor for Consulting Engineering Special Interest Group (CESIG) as well as that of Tunnelling and Underground Space Technical Division (TUSTD). Ir. Dr. Ooi is an Honorary Fellow of IEM, Fellow of the Malaysian Institute of Arbitrators and Past President and is ICE Country Representative for Malaysia. He is Organizing Chairman of the International Tunnelling and Underground Space Conference in March 2015 in Kuala Lumpur as well as Chairman of the Foundation Course promoted by the International Tunnelling Association (ITA-AITES) to be held in Kuala Lumpur in February 2015. He is President of Southeast Asia Geotechnical Society (2010-2016).