

Thayananthan Baskaran



PRACTICE OVERVIEW

Thaya's primary area of practice is construction law. He drafts various building and engineering contracts, advises on disputes arising from such contracts and appears as Counsel to resolve these disputes. Thaya also sits as an adjudicator, arbitrator and mediator.

Thaya has drafted building and engineering contracts based on Malaysian standard forms, such as PWD and PAM, English standard forms, such as IChemE, JCT and NEC, and international standard forms, such as FIDIC. Thaya has also drafted bespoke contracts and was involved in drafting the pioneer Alliance Contract and Project Delivery Partner Agreement used in Malaysia. In 2015, Thaya was appointed to the Consultation Group for the Association of Consultant Architects, Kent, and Association for Consultancy and Engineering, London, new suite of Project Partnering Contracts 2015, which comprises the Framework, Project and Term Alliance Contracts.

Thaya has advised on disputes arising from several projects from inception to completion. Major projects he is, or has been, involved in, include the Refinery and Integrated Petrochemical Development Project in Pengerang, the Langkat Centralised STP, the North South Expressway Fourth Lane Widening Project, the Klang Valley Mass Rapid Transit, the two Penang Bridges and various phases of the Electrified Double Track Project, all in Malaysia, and the National Highway Development Project in India. Thaya has advised on projects throughout Asia and in Europe. He has a particular interest in railway projects and has advised on every major Malaysian railway project during his years in practice.

Thaya has appeared as Counsel in several domestic and international arbitrations governed by the ICC, KLRCA, PAM and UNCITRAL rules. He also appears as Counsel in the High Court of Malaya and the appellate courts of Malaysia in relation to construction disputes. The judgements in some of the cases he has appeared in have been published in law reports. Thaya has appeared as Counsel in court annexed and private mediations. Recently, Thaya has appeared as Counsel in adjudication proceedings.

Thaya has been appointed as arbitrator in a variety of commercial disputes, including disputes arising from development agreements and joint venture agreements. Thaya was appointed as an adjudicator in the fifteenth adjudication registered by the KLRCA under the Malaysian Construction Industry Payment and Adjudication Act 2012 (CIPAA) and now regularly sits as an adjudicator. Thaya also sits as a mediator in Kuala Lumpur and Singapore.

Thayananthan Baskaran | 10-2-4 Contessa | Jalan Kapas | Bukit Bandaraya | 59100 | Kuala Lumpur | Malaysia
| 2 Crown Office Row | Temple | London | EC4Y 7HJ | United Kingdom
| Mobile: +60 12 324 2421 | thaya@baskaran.org | www.baskaran.org

Drafting¹

- Refinery and Petrochemical Integrated Development Project, Pengerang, Malaysia (approx USD 20 billion):
 - Design and Build and Conventional Main Contracts and License Agreements;
- National Highway Development Project, India (approx USD 2.7 billion):
 - Public Private Partnership in Annuity Projects, Model Concession Agreement, prepared by the Planning Commission, Government of India, and reviewed on behalf of the Construction Industry Development Board of Malaysia;
- Langat Centralised Sewerage Treatment Plant and Sewerage Network Connection, Malaysia (approx USD 611 million):
 - Design Build Operate Main Contract and related Subcontracts;
- North South Expressway Fourth Lane Widening, Shah Alam to Seremban, Malaysia (approx USD 123 million):
 - Management Contract, Works Contracts, Nominated Subcontracts and Supply Contracts;
- Klang Valley Mass Rapid Transit, Sungai Buloh to Kajang Line, Malaysia (approx USD 16.6 billion):
 - Project Delivery Partner Agreement, Works Contracts, Nominated Subcontracts, Supply Contracts and Consultancy Agreements; and
- Penang Second Crossing, Malaysia (approx USD 1 billion):
 - Subcontracts, Supply Contracts and Consultancy Agreements.

Advisory²

- 5,000 Tonnes per day Fully Integrated Cement Production Facility, Bukit Sagu, Kuantan, Pahang, Malaysia
 - Claims for defects and delays for a total sum as yet unquantified;
- Manjung 4 1,000 MW Ultra-Supercritical Coal-Fired Steam Power Plant, Malaysia:
 - Claims for variation and loss & expense for delay in excess of USD 60 million;
- Tanjung Bin 2,100 MW Coal-Fired Power Plant, Malaysia:
 - Claims for defects in excess of USD 115 million;
- Prai 350 MW Combined Cycle Gas Turbine Power Plant, Malaysia:
 - Claims for recovery of negative Available Capacity Payments in excess of USD 33.5 million;
- Royal Malaysian Air Force Helicopter Hangar, Kuantan, Malaysia:
 - Claims for variations in excess of USD 5.5 million;
- Sustainability of Sewerage Services in Malaysia:
 - Proposal for the privatisation of the sewerage industry valued at approx USD 1 billion; and

¹ For reasons of brevity, only recent key projects are included. A complete list or a list by specific area may be provided on request.

² For reasons of brevity, only recent key projects are included. A complete list or a list by specific area may be provided on request.

- Electrified Double Track Project between Seremban and Gemas, Malaysia:
 - Claims for loss & expense for delay in excess of USD 23.5 million.

Dispute Resolution³

International Arbitration

As Counsel:

- *Malaysian Subcontractor v. Indian Main Contractor*
 - Claims for variations and loss & expense for delay in excess of USD 10 million;
 - Laws of Malaysia, seated in Kuala Lumpur and governed by the KLRCA Arbitration Rules;
- *German Contractor v. Malaysian Employer.*
 - Claims for unpaid certified sums, variations, loss & expense for delay and recovery of liquidated damages in excess of USD 9 million;
 - Laws of Malaysia, seated in Kuala Lumpur and governed by the KLRCA Arbitration Rules;
- *Malaysian-Singaporean Joint Venture Subcontractor v. Japanese Joint Venture Main Contractor.*
 - Claims for work done and retention sum in excess of USD 3.4 million;
 - Laws of Malaysia, seated in Kuala Lumpur and governed by the KLRCA Arbitration Rules;
- *Malaysian Subcontractor v. Malaysian Main Contractor.*
 - Claims for work done, variations and loss & expense for delay in excess of USD 8.5 million;
 - Laws of Qatar, seated in Singapore and governed by the ICC Arbitration Rules; and
- *Indian Joint Venture Partners v. Malaysian Joint Venture Partner.*
 - Claims for loss of profit and wasted expenditure in excess of USD 84 million;
 - Laws of India, seated in Mumbai and an ad-hoc arbitration.

Domestic Arbitration

As Arbitrator:

- *Joint Venture Partner v. Joint Venture Partner.*
 - Claim for specific performance for transfer of land;
 - Ad-hoc arbitration, appointed by the KLRCA; and
- *Owner v. Developer.*
 - Claim for general damages to be quantified;
 - Ad-hoc arbitration, appointed by the KLRCA.

As Counsel:

- *Contractor v. Employer.*
 - Claims for work done, variations, loss & expense for delay and loss of profit in excess of USD

³ The party's name, which is underlined, is the party represented.

- 4.2 million;
- o Governed by the UNCITRAL Arbitration Rules;
- *Contractor v. Employer:*
 - o Claims for work done, variations, loss & expense for delay and loss of profit in excess of USD 39.7 million;
 - o Ad-hoc arbitration;
- *Contractor v. Employer:*
 - o Claims for work done, acceleration, loss & expense for delay and loss of profit in excess of USD 38.9 million;
 - o Ad-hoc arbitration; and
- *Contractor v. Employer:*
 - o Claims for work done, variations, loss & expense for delay and loss of profit in excess of USD 8.9 million;
 - o Ad-hoc arbitration.

Adjudication

As Adjudicator:

- *Consultant v. Employer*
 - o Claim for value engineering services in excess of USD 100 thousand;
 - o Governed by the KLRCA Adjudication Rules, appointed by the KLRCA; and
- *Subcontractor v. Main Contractor*
 - o Claim for unpaid certified sum in excess of USD 400 thousand;
 - o Governed by the KLRCA Adjudication Rules, appointed by the KLRCA.

As Counsel:

- *Subcontractor v. Main Contractor*
 - o Claim for variations, acceleration and loss & expense for delay in excess of USD 1.5 million;
 - o Governed by the KLRCA Adjudication Rules;
- *Subcontractor v. Main Contractor*
 - o Claim for unpaid certified sum in excess of USD 4 million;
 - o Governed by the KLRCA Adjudication Rules; and
- *Subcontractor v. Main Contractor*
 - o Claim for unpaid certified sum in excess of USD 6 million;
 - o Governed by the KLRCA Adjudication Rules.

Mediation

As Mediator:

- Main Contractor v. Employer
 - Claims for retention sums, variations and loss & expense for delay in excess of USD 200 thousand;
 - Ad-hoc mediation, appointed by agreement of the parties.

As Counsel:

- Subcontractor v. Main Contractor
 - Claim for loss & expense for delay in excess of USD 10 million;
 - Ad-hoc mediation; and
- Consultant v. Employer
 - Claim for value engineering services in excess of USD 5 million;
 - Ad-hoc mediation.

Reported Cases

- Humboldt Wedag GmbH & Anor v. Perak-Harjoong Simen Sdn Bhd [2015] 4 CLJ 774;
- LKD Trading Sdn Bhd v. Mega Element Sdn Bhd [2015] 1 LNS 279;
- Duta Arif Sdn Bhd v. Charterfield Development Corporation Sdn Bhd, Putrajaya Holdings Sdn Bhd & the Government of Malaysia [2014] 1 LNS 1845;
- Wonder Glow Malaysia v. Google Malaysia Sdn Bhd & U Mobile Sdn Bhd [2014] 1 LNS 1798;
- UEM Genisys Sdn Bhd v. Shimizu Corporation & Anor [2012] 1 LNS 602;
- Gabungan Pertiwi Sdn Bhd v. Pembinaan BLT Sdn Bhd [2011] 1 LNS 816;
- Teamforce Builders Sdn Bhd v. Prinsiptek (M) Sdn Bhd [2011] 1 LNS 652;
- VPN Marketing (M) Sdn Bhd v. Datuk Saravanan Murugan & Projek Penyelenggaraan Lebuhraya Berhad [2010] 1 LNS 342;
- VPN Marketing (M) Sdn Bhd v. Datuk Saravanan Murugan & Projek Penyelenggaraan Lebuhraya Berhad [2010] 1 LNS 1200;
- Bina Par Development Sdn Bhd v. Manoharan Paranjothy [2009] 1 LNS 415;
- Total Safe Sdn Bhd v. Tenaga Nasional Berhad & Anor [2009] 1 LNS 420;
- Putrajaya Holdings Sdn Bhd v. Digital Green Sdn Bhd [2008] 10 CLJ 437; and
- Nafas Abadi Holdings Sdn Bhd v. Putrajaya Holdings Sdn Bhd [2004] 1 LNS 127.

ACADEMIC QUALIFICATIONS

- LLB (Hons), King's College, London;
- Diploma in Investment Analysis, Research Institute of Investment Analysts Malaysia, Kuala Lumpur; and
- Diploma in International Arbitration, Chartered Institute of Arbitrators, London.

PROFESSIONAL QUALIFICATIONS

- Barrister, Gray's Inn, London;
- Advocate & Solicitor, High Court of Malaya;
- Fellow, Chartered Institute of Arbitrators, London;
- Fellow, Dispute Board Federation, Geneva;
- Fellow, Hong Kong Institute of Arbitrators;
- Fellow, Malaysian Institute of Arbitrators, Petaling Jaya;
- Fellow, Malaysian Society of Adjudicators, Kuala Lumpur;
- Fellow, Singapore Institute of Arbitrators;
- Certified Adjudicator, Kuala Lumpur Regional Centre for Arbitration;
- SMC Associate Mediator, Singapore Mediation Centre; and
- Incorporate, Chartered Institute of Building, Bracknell.

PANELS

- The Dispute Board Federation, Geneva:
 - Expert Panel;
- Hong Kong International Arbitration Centre:
 - List of Arbitrators;
- Indonesian National Board of Arbitration:
 - Panel of Arbitrators;
- Kuala Lumpur Regional Centre for Arbitration:
 - Panel of Adjudicators, Arbitrators, Emergency Arbitrators and Mediators;
- London Court of International Arbitration:
 - Database of Neutrals; and
- Singapore International Arbitration:
 - Reserve Panel of Arbitrators.

PROFESSIONAL COMMITTEES AND OTHER PROFESSIONAL ACTIVITIES

- Vice Chairman, Chartered Institute of Arbitrators Malaysia Branch, 2015-;
- Vice President, Society of Construction Law Malaysia, 2014-;
- Assistant Secretary, King's College London Alumni Malaysia, 2015-;
- Asia Representative, International Chamber of Commerce (ICC) Young Arbitrators Forum, 2014-;
- Member, ICC Consultative Task Force for the Revision of the ADR, Expertise and Dispute Board Rules, 2014-;
- Committee Member, ICC Malaysia Arbitration Committee, 2016-;
- Committee Member, Malaysian Bar Council Human Rights Committee, 2015-;
- Committee Member, Malaysian Bar Council Construction Law Committee, 2015-;
- Committee Member, Malaysian Chapter of the Honourable Society of Gray's Inn, 2015-;
- Judge, Philip C Jessup International Law Moot Competition, 2013-;
- Judge, LawAsia International Moot Competition, 2014-; and
- Marshal, Technology and Construction Court, Queen's Bench Division, High Court of Justice of England and Wales, 2012.

EDITORIAL POSITIONS

- Co-Editor, Construction Law International, 2014-; and
- Co-Editor, Construction Law Digest, 2011-.

PUBLICATIONS

Chapters

T Baskaran, 'Malaysia' in MJ Moser (ed), *Arbitration in Asia* (Rel 7, 2nd edn, Juris Publishing 2015);

- and C Abraham, 'Malaysia' in A Respondek (ed), *Asia Arbitration Guide* (4th edn, Respondek & Fan 2015);
- 'Malaysia' in O Aitken and L Bier (eds), *ADR in Construction* (1st edn, IBA 2014);
- and C Abraham, 'Malaysia' in K Nairn and P Heneghan (eds), *Arbitration World* (4th edn, European Lawyer 2012);
- and C Abraham, 'Malaysia' in MJ Moser and J Choong (eds), *Asia Arbitration Handbook* (1st edn, OUP 2011); and
- C Abraham and M Zayd, 'Malaysia' in L Mistelis and L Shore (eds), *World Arbitration Reporter* (2nd edn, Juris Publishing 2010).

Articles

T Baskaran, '*Dispute Boards in Malaysia: the Klang Valley Mass Rapid Transit Experience*' (2015) 95 Dispute Board Federation Newsletter;

- and S Sivanesan, '*KLRCAs i-Arbitration Rules: Innovative Resolutions*' (2015) 17 KLRCAs Newsletter

12;

- *'Recent Amendments to the Malaysian Arbitration Act'* (2012) 28 Arbitration International 533; and
- and I Ismail, *'If and When: The Interpretation of "Pay When Paid" Clauses'* (2011) 1 Construction Law Digest 3.

Reviews

T Baskaran, Review of The Commercial Mediator's Handbook by Cyril Chern (2015) 5 Construction Law Digest 183;

- Review of Legal Theory of International Arbitration by Emmanuel Gaillard (2015) 2 Berita Timbangtara 5; and
- Review of Wilmot-Smith on Construction Contracts by Richard Wilmot-Smith QC (2015) 4 Construction Law Digest 19.

PRESENTATIONS

T Baskaran, *'The Question of Defects'* (Malaysian Bar Council Practical Construction Law for Practitioners Seminar, Kuala Lumpur, 23rd August 2015);

- *'What is the best seat of arbitration in Asia? Malaysia'* (ICC YAF Asia Chapter Regional Conference, Singapore, 19th September 2014);
- *'Time, Architects and Other Cases from 2013'* (Malaysian Institute of Arbitrators and Society of Construction Law Malaysia Annual Review of Arbitration and Construction Law conference, Petaling Jaya, 19th July 2014); and
- *'Concrete Cracks, Repairs and Rehabilitation: Legal Issues'* (American Concrete Institute Kuala Lumpur Chapter, Concrete Cracks, Repairs and Rehabilitation Seminar, Petaling Jaya, 29th May 2014).

TEACHING

- Lecturer, Brickfields Asia College, Certificate in Construction Law & Practice course;
- Tutor, Chartered Institute of Arbitrators, Diploma in International Commercial Arbitration, Accelerated Route to Fellowship and Introduction to International Arbitration courses;
- Tutor, Kuala Lumpur Regional Centre for Arbitration, Adjudication Training Programme and Construction Industry Payment and Adjudication Act 2012 Practical Course;
- Speaker, Asian Law Students' Association International Conference, Workshop on Alternative Dispute Resolution, 2012;
- Speaker, Malaysian Bar Council Sub-Committee on Construction Law, Introductory Course on Construction Law, Arbitration and Adjudication Seminar, 2011; and
- Speaker, Asian Law Students' Association Malaysia National Forum, Workshop on International Commercial Arbitration, 2010.