



Kalaiarasan Rasadurai
Senior Associate

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Kalaiarasan R is a dispute resolution lawyer in the Construction and Engineering practice. He has experience in various stages of construction and engineering projects and has advised clients on a range of issues from contract administration, dispute avoidance, dispute management and resolution of disputes.

Key Practice Areas

Construction Litigation, Arbitration and Adjudication
Oil & Gas, Energy and Engineering Disputes
International Arbitration
Civil Litigation and Commercial Arbitration

Selected Experience

Construction Litigation, Arbitration and Adjudication

Note: This list includes engagements completed prior to joining Skrine.

Arbitration

- ❖ Acted as counsel in an arbitration pursuant to the AIAC Arbitration Rules in relation to construction of a low-cost housing project for a Government-Linked Company.
- ❖ Acting as junior counsel in an ad hoc arbitration pursuant to the PAM Arbitration Rules in relation to construction of a mixed development project consisting of 4 towers of 640 units of apartments involving a total claim of about RM13 million.
- ❖ Acted as junior counsel in an ad hoc arbitration for a Government-Linked Company in relation to a construction dispute concerning a housing project for armed forces involving a claim of about RM18 million.
- ❖ Acted as junior counsel in an arbitration pursuant to the PAM Arbitration Rules in relation to defects in construction of a 3S Centre for an authorized automobile dealer.
- ❖ Acted as junior counsel in commencing an AIAC administered arbitration in relation to a dispute arising from a major Government project in Malaysia involving a claim of about RM24 million.

Litigation

- ❖ Acted as junior counsel in appearing as amicus curiae at the Federal Court for CIPAA related appeals on the issue of the significance of a payment response in an adjudication.
- ❖ Acted as junior counsel in an application for leave to appeal to the Federal Court in relation to an arbitral award which was set aside by the High Court and the Court of Appeal. The questions involve issues of termination of a contract and weight of pleadings in an arbitration.
- ❖ Acted as junior counsel in an application pursuant to section 37 and 42 of the Arbitration Act 2005 where an arbitration Interim Award was successfully set aside as the KL High Court answered all four questions referred, in our favour. (See [2019] 7 MLJ 626 or [2019] 10 CLJ 238)
- ❖ Acted as counsel in stay of proceedings pending arbitration of two separate suits for payment for work done and loss of profit due to termination of contract, for a Government-Linked Company with the amount in dispute of around RM39 million and RM27 million respectively.
- ❖ Acted as co-counsel in applications to the High Court to set aside and/or stay an adjudication award pending the disposal of the arbitration and successfully obtained a conditional stay of the Adjudicated Amount of about RM21 million.
- ❖ Acted as junior counsel in a successful application for direct payment of the adjudicated amount from the principal, pursuant to section 30 of the Construction Industry Payment and Adjudication Act 2012 (CIPAA), at the High Court.
- ❖ Acted as junior counsel in successfully resisting the setting aside of an adjudication award and consequently enforced the same in relation to a dispute arising from a construction of train station yards track works.
- ❖ Acted as junior counsel in an appeal to the Court of Appeal arising from an application to set aside an adjudication award. (See [2018] 10 CLJ 705 or [2017] MLJU 2080)
- ❖ Acted as junior counsel in a suit to claim RM1.9m due from an employer of a design and build project, for the supply and delivery of IBS precast.
- ❖ Assisted in an application pursuant to section 37 and 42 of the Arbitration Act 2005 to set aside a Partial Award delivered in an arbitration.
- ❖ Assisted in an application for setting aside of an adjudication decision in relation to a payment dispute with regards to construction of a theme park.

- ❖ Advised in a dispute between a Consultant and the Project Delivery Partner in relation to, among others, a proposed alternative design for a major Government project and the consequential loss of profits.
- ❖ Advised a listed construction company on the practicality of its internal policy and provided recommendations and/or suggested revision to minimise risks with regards to certain legal and contractual issues in relation to construction projects.
- ❖ Advised and negotiated a possible settlement of a dispute, arising from the construction of two towers of serviced apartments and external façade works for a reputable international construction company.
- ❖ Advised on the strengths and weaknesses of a claim for work done and the appropriate forums available to initiate the dispute. Further advised whether the claims in relation to certain mechanical & electrical works can be referred to adjudication pursuant to CIPAA.
- ❖ Advised on the remedies available to a building owner when the issuance of Certificate of Completion and Compliance is unreasonably withheld or delayed by the Principal Submitting Person.
- ❖ Advise on whether a main contractor is entitled to omit certain works awarded in the contract without the consent of the sub-contractor and the rights of the sub-contractor in this situation, including the right to terminate.
- ❖ Advised a listed company (developer) on its rights in relation to a payment dispute with a contractor who is involved in money laundering investigations.
- ❖ Advised on the rights and remedies available to a sub-contractor in respect of additional liquidated damages claimed by an Employer despite full settlement of the initial liquidated damages claimed.

Adjudication

- ❖ Represented a main contractor in a payment dispute involving a major development for one of the Government's ministry with an amount in dispute of around RM24 million.
- ❖ Represented a main contractor in a payment dispute of about RM4 million and a set off for RM10 million with regards to a construction of a mixed development project involving 640 units of apartments.
- ❖ Represented a sub-contractor to claim for payment for work done arising from a construction of train station yards track works.
- ❖ Represented a Government-Linked Company in defending two separate payment claims for payment for work done in 2

Development Agreements with the amount in dispute of around RM7 million each.

- ❖ Represented a developer in responding to a payment claim from a building management system contractor for a theme park and advised on the way forward.

Oil & Gas, Energy and Engineering Disputes & International Arbitration

Note: This list includes engagements completed prior to joining Skrine.

- ❖ Acted as junior counsel in an international arbitration, with the seat of arbitration in Mumbai, India and the governing law being the laws of the Republic of India, in relation to a major oil and gas joint venture dispute arising from the proposed development of oil and gas marginal fields, presided by a panel of 3 arbitrators with an amount in dispute of around USD148 million.
- ❖ Advised an oil and gas company on the viability to set aside and/or resist enforcement of an international arbitral award pursuant to the Arbitration Act 2005.
- ❖ Advised foreign counsel on the relevant Malaysian law and position for an arbitration in Singapore involving an international oil and gas company.
- ❖ Advised an international oil and gas company on the applicability of CIPAA on onshore and offshore services contracts in the oil and gas industry.
- ❖ Identified laws relevant and applicable to an international oil and gas company and reviewed compliance of material obligations for its operations and offshore assets.
- ❖ Assisted in a review of a solar power project's contracting structure and provided views and recommendation to ensure compliance with domestic laws, regulations and local authority's rules.

Civil Litigation and Commercial Arbitration

Note: This list includes engagements completed prior to joining Skrine.

- ❖ Acted as lead counsel in an after-trial appeal to the High Court in relation to a dispute over a purchaser's liability to pay subcontractors post sale and purchase of a partially completed bungalow. Other issues which arose include assignment, privity of contract, locus standi and interpretation of the SPA.

- ❖ Acted as junior counsel in a lengthy trial over unauthorized dumping of fill causing a major slope failure, soil erosion and the change in slope profile for a renowned developer. Issues in dispute involved complex analysis of soil and slope strength, change in gradient and slope profile with party appointed experts.
- ❖ Acted as junior counsel in a dispute in relation to the supply and quality of ready mixed concrete and claim for damages for rectification arising from the non-conformity of the concrete supplied.
- ❖ Acted as junior counsel in defending an action for trespass in relation to a mixed-development project on behalf of a telco company.
- ❖ Acted as counsel in suits claiming for outstanding professional fees.
- ❖ Acted as junior counsel in a successful winding up petition which was contested.
- ❖ Advised a statutory body on dispute management with regards to certain contracts for sale of land involving issues of delays in completion and valuation of the value in kind units of condominiums.
- ❖ Advised a local broadcasting company on the prospects of success in an ongoing arbitration involving dispute over the non-conformity of the supply of Set-Top-Boxes.
- ❖ Advised on dispute management and the rights and remedies available to a hotel owner with regards to a hotel management agreement.
- ❖ Advised a statutory body on issues regarding back charges for delay in payment with regards to a purchase of medical facility.
- ❖ Advised an international F&B chain operator on the drafting of a suitable and practical arbitration agreement for the terms of use of a mobile application.

Mediation

Note: This list includes engagements completed prior to joining Skrine.

- ❖ Represented a ready mixed concrete supplier in a mediation administered by the KLRCA (now AIAC) Mediation Rules in a dispute involving the supply and quality of ready mixed concrete and claim for damages for rectification arising from the non-conformity of the concrete supplied.
- ❖ Represented a reputable developer in a court annexed mediation over a dispute on unauthorized dumping of fill causing slope failure, soil erosion and the change in slope profile.

Qualifications & Professional Affiliations

Qualifications:

Advocate and Solicitor, High Court of Malaya
LL.B (Hons), Multimedia University

Professional Affiliations:

- Head of Law Reform Sub-Committee and Committee Member, Construction Law Committee of Bar Council Malaysia
- Committee Member, Society of Construction Law, Malaysia

Publications & Talks

Publications:

- Co-author, "*PROSPECTIVITY TRUMPS RETROSPECTIVITY, AND NO, IT'S NOT FAKE NEWS!*", Skrine's Legal Insights; International Law Office; Mondaq, December 2019
- Co-author, "*Extension of Time for Government Contracts – a Sigh of Relief*", Skrine website; Lexology, July 2021

Talks:

- Speaker, "*Introduction & Gap Fillers of the United Nations Convention on Contracts for the International Sale of Goods*" at "*A Star is Born*" workshop organised by the AIAC on 26th January 2019
- Moderator, "*CIPAA: Insolvency and a fresh look at Direct Payment*" webinar organised by Society of Construction Law, Malaysia's on 17.12.2021.
- Speaker, "*Legal Research*" in a Professional Development Session organised by Skrine on 19th November 2021

Accolades

"*Very reliable*" - Benchmark Litigation Asia-Pacific 2019, Client Feedback.