



# THE INSTITUTION OF ENGINEERS, MALAYSIA

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## WORKSHOP ON DISPUTE AVOIDANCE – NO.1

Organised by the Subcommittee on Dispute Avoidance and Resolution Practice, PPC, IEM

Date : 25 August 2016 (Thursday)  
Time : 5.30pm to 7.30pm  
Venue : C&S & TUS Lecture Room, 2<sup>nd</sup> Floor, Wisma IEM, Petaling Jaya  
Panel : Ir. Khoo Choong Keow, Ir. Leon Weng Seng and Ir. N D Gong

BEM Approved  
CPD/PDP Hours:  
2.0  
IEM16/HQ/287/W

### INTRODUCTION

The Subcommittee on Dispute Avoidance and Resolution Practice (DARP) is launching a series of Workshops aimed at training Engineers to gain skills in Dispute Avoidance by dealing with ISSUES which arise and resolving such ISSUES expeditiously before they fester and become full-blown DISPUTES. The Workshops will be conducted on case studies submitted by participants. This will provide the maximum benefit to those who submit case studies as it would give them direct experience of the problems they encounter.

### SYNOPSIS

In Construction Contracts, when disputes arise they are usually resolved by one or more of the following methods :-

●Negotiation ●Mediation ●Adjudication ●Expert Determination ●Arbitration ●Litigation

Engineers and other construction professionals who are embroiled in **DISPUTES** find that the resolution processes can be :-

●Tedious and time consuming ●Bewildering ●Unproductive ●Frustrating ●Costly (even for successful party)

In some cases, the conventional dispute resolution processes are not utilized. Parties avoid disputes or negotiate to settle on the advice of :-

●Dispute Resolution (Review) Boards (DRB) ●Dispute Resolution (Review) Advisor (DRA) ●Dispute Adjudication Board (DAB)

In order to avoid dispute, one must distinguish between an ISSUE and a DISPUTE. An ISSUE arises when two (or more) Parties have differences of opinions (or views) about a certain subject matter (technical, contractual or legal, personal preferences). An ISSUE can usually be resolved through discussion (or negotiation) during which each party presents his opinion (or views) supported with facts, reasons or rationale. Sometimes the Parties can compromise as it could become clear that neither party is absolutely right or wrong. This is what negotiation is about. At other times the Parties cannot reach a consensus. In such situation, third Party assistance is enlisted. This third Party can be :-

●Mediator ●Expert Determination ●DRB ●DRA ●DAB

On dealing with ISSUES, we are not talking about Dispute Resolution, but getting to a consensus on an ISSUE by the Parties themselves, if necessary on the advice of a neutral Party who is an expert on the issue at hand. This expert function is increasingly being taken up by DRB, DRA and DAB.

Yours sincerely

Ir. Dr. Ooi Teik Aun

Chairman, Subcommittee on Dispute Avoidance and Resolution Practice, PPC, IEM

Participants in this workshop shall note that the workshop is not intended to provide advice on the resolution of Disputes and the sole purpose of the workshop is for sharing of knowledge in the practice of Dispute Avoidance.

### ADMINISTRATIVE FEE

- Kindly be informed that an administrative fee of RM15 is payable for talks organized by IEM. GST is inclusive.
- The fee would be used to cover overhead costs, building maintenance expenses as well as contribute to Wisma IEM Building Fund.
- All contributions will be deeply appreciated by IEM. Student Members are however exempted.

### CPD HOURS CONFIRMATION

Name of Member	:
Membership No.	:
Date	:
Signature	:

## BIODATA OF PANEL

### **Ir. Khoo Choong Keow**

**PROFESSIONAL QUALIFICATIONS** •B.Sc (Glasgow) in Civil Engineering, 1963 •Dip. ICARB •P.Eng •Chartered Engineer  
•Chartered Arbitrator •FIEM •FICE •FCIARB •FMIARB •MASCE •MACEM

**ENGINEERING EXPERIENCE** His fields of experience include **dams; tunnels; water supply; sewerage; drainage & irrigation; flood control; highways; structures; residential, commercial & industrial buildings; aquaculture; reclamation; and project management.**

**EXPERIENCE IN ARBITRATION AND ADR** Since 1984 appointed by **IEM, KLRCA, the High Court of Malaya** and directly by **Parties** for more than 50 cases of **arbitration, mediation and contractual adjudication**. Acted as **Expert Advisor** to Parties for **settlement of claims**. Principally responsible for drafting and updating the **IEM Arbitration Rules (2003 & 2012)**.

**TRAINER IN ARBITRATION** • **Course Director** and **Tutor** for **CIARB** Courses in Arbitration. • **Visiting Lecturer** for arbitration module for **LLM course at University of Malaya**. • Coach for Vis Moot Teams from University of Malaya and Diplomatic Academy of Vietnam.

### **POSITIONS IN PROFESSIONAL ORGANISATIONS**

- Past **Chairman** Chartered Institute of Arbitrators (**CIARB**), Malaysia Branch
- Past **President**, Malaysian Institute of Arbitrators (**MIARB**)
- Past **Vice-President** Institution of Engineers, Malaysia (**IEM**)
- Past **Vice-President** Malaysian Invention & Design Society (**MINDS**)
- **Trustee**, Invention Foundation of Malaysia

**Ir. Leon Weng Seng** graduated with Bachelor degree in Civil Engineering in 1980 and went on to obtain an honours degree in law with the University of London and a postgraduate Diploma in Arbitration with the University of Reading. He is a corporate member of The IEM and a registered professional engineer and is an advocate and solicitor of the High Court of Malaya (non-practising).

Ir. Leon is the principal of a civil and structural engineering consultancy firm. He has vast experiences in the administration of construction contracts including giving advice on contractual, mediation, adjudication and arbitration matters. His other areas of particular interest are forensic engineering and investigation of collapsed structures and slopes, and assessment of fire damaged structures. He acts as expert witness in courts and arbitration.

Ir. Leon is also a CIDB accredited mediator, Fellow and a Chartered Arbitrator of The Chartered Institute of Arbitrators in London and an Adjudicator of KLRCA. He is a committee member of the Subcommittee on Dispute Avoidance and Resolution Practice of the IEM and the past Chairman (2008–2010) of the Chartered Institute Arbitrators (CIARB) Malaysia Branch. He is sitting as arbitrator in various on-going arbitrations.

**Ir. N D Gong** (*FIEM, FCIARB, CEng, PEng*) earned his bachelor's & master's degrees in civil engineering from the Singapore University in the 1970's. He has practised as a consulting engineer and as specialist jacked-in piling contractor. After re-training in law, he was called to the Bar in 2006. He is on the arbitrators' panels of IEM, KLRCA and MIARB and on the adjudicators' panel of KLRCA. Currently, he focuses on construction law, arbitration and adjudication.

Participants who wish to submit case studies should do so **not later than 14 days before the actual date** of the scheduled Workshop. Information required in the description of the case study are:

- (1) The ISSUE
- (2) Background and the relevant contractual provisions :-
  - Conditions of Contract
  - Specification
  - Bill of Quantities (if relevant)
  - Any other provisions
- (3) How the ISSUE arose and developed.

Names of Parties are not required, but Parties may be identified as the "Employer", the "Developer", the "Engineer", the "Contractor" etc.

**(Please fax the Case Studies / Problems Encountered to 03-7957 7678 or email to [sec@iem.org.my](mailto:sec@iem.org.my))**

## **ANNOUNCEMENT TO NOTE**

1. Preferential admission to talk shall be accorded to IEM members only (**pre-registration and online registration are NOT required**) (**telephone and/or fax reservation will NOT be entertained**)
2. Non members may also attend the workshop and will be charged a registration fee of RM50 and an administrative fee of RM15. GST is inclusive.
3. For members of affiliate organisations, there will be no registration fee. However, there are requested to produce their membership card as proof of membership. For list of affiliates, please refer [www.myiem.org.my](http://www.myiem.org.my) under International/MoU.
4. Limited seats are available on a "first come first served" basis (maximum 100 participants).
5. IEM members are required to produce your **membership cards** for confirmation of attendance (CPD purpose).
6. Latecomers will not be allowed to enter if the lecture hall is full nor be entitled to CPD.
7. **IEM members who fail to produce their membership cards will be charged a fee of RM25.00. GST is inclusive.**

## **PERSONAL DATA PROTECTION ACT**

I have read and understood the IEM's Personal Data Protection Notice published on IEM's website at <http://www.myiem.org.my> and I agree to IEM's use and processing of my personal data as set out in the said notice.