



*A 2-day intensive course on*

# CONTRACT LAW

*For The Construction Industry*

**26-27 November 2008** · JW Marriott Hotel, Kuala Lumpur

## ***COURSE HIGHLIGHTS***

### **CONTRACT FORMATION**

- Addressing Pre-Contractual Issues
- Essential Elements of Construction Contracts
- Contractor's Obligations
- Employer's Obligations
- Responsibility for Design
- Time
- Sub-contracts
- Contract Completion and Termination: Discharging/Concluding Construction Contracts
- Seven Ways to Discharge/Conclude a Construction Contract

### **CONTRACTUAL RIGHTS & REMEDIES**

- Exploring Options available to Innocent Parties when Construction Contracts are breached
- Remedies for Breach of Contract
- Agreement & Conditions of the 2006 PAM Contracts
- Dispute Resolution

### ***METHODOLOGY:***

- *Lectures*
- *Group Discussion*

## *Day 1* - Wednesday, 26 November 2008

### **CONTRACT FORMATION**

#### 9:00 ADDRESSING PRE-CONTRACTUAL ISSUES

- Cost Overruns & Under Pricing in construction contracts
- Risk Assessment & Risk Management in Construction Contracts

#### ESSENTIAL ELEMENTS OF CONSTRUCTION CONTRACTS

- Understanding 'invitation to treats' and Offers
- Status of Letters of Intent
- Offer & Acceptance
- Contracts made by Tender
- Express Terms
- Implied Terms
- Exemption Clauses

#### CONTRACTOR'S OBLIGATIONS

- Duties Under Contract
- Standard Of Work
- Co-Ordination Of Works
- Site Management

#### EMPLOYER'S OBLIGATIONS

- Duties Under Contract
- Responsibility For The Contract Administrator
- Responsibility For Site Condition
- Health & Safety

10:30 Morning Coffee

#### 10:45 RESPONSIBILITY FOR DESIGN

- Duties Under Contract
- Legal Responsibility For Design

#### TIME

- Employer's Obligation To Pay
- The Contract Sum

#### SUB-CONTRACTS

- Legal Basis For Sub-Contracting
- The Contractual Chain

1:00 Lunch & Zohor

#### 2:00 CONTRACT COMPLETION AND TERMINATION

- Discharging/Concluding Construction Contracts
- Seven Ways To Discharge/Conclude A Construction Contract

- 1) By Performance
  - The 'strict' or 'exact' performance rule
  - Entire & Divisible contracts
  - Substantial Performance
  - Accepting Part Performance
  - When Complete Performance is prevented by the other party
  - Effects of Delays (s.56 Contracts Act)

3:30 Afternoon Tea

- 2) Discharging Contracts By Agreement
  - Novation (recession & substitution)
  - Recission (termination minus replacement)
  - Variation (modifications)
    - i. Additional works outside the scope of works
    - ii. Variation vs. Substitution

3) By Dispensation (s.64 Contracts Act)

4) By Virtue Of A Contractual Term

- 'Option to Terminate' clause

5) By Operation Of Law

5:00 End Of Day 1

## *Day 2* - Thursday, 27 November 2008

### **CONTRACTUAL RIGHTS & REMEDIES**

#### 9:00 SEVEN WAYS TO DISCHARGE/ CONCLUDE A CONTRACT (cont)

- Impact Of Frustration On Construction Contracts
- 6) By The Doctrine Of Frustration (s.57 Contracts Act)
    - Where an obligation becomes more expensive/onerous to perform
    - Effect of Frustration
      - i) Apportioning losses flowing from frustrated contracts
      - ii) Valuable benefits' (s.15 Civil Law Act 1950)

- iii) Obligations to restore advantages post void agreements (s.66 Contracts Act)

7) By Breach Of Contract.

- Express & Implied Repudiation
- Repudiation before Performance is due
- Repudiation during performance
- Repudiation by impossibility created by one party during contractual performance

10:30 Morning Coffee

10:45 **EXPLORING OPTIONS AVAILABLE TO INNOCENT PARTIES WHEN CONSTRUCTION CONTRACTS ARE BREACHED (s.40 Contracts Act )**

- Treating contract as subsisting & suing for specific performance and/or damages;
- Electing to rescind/retaining right to sue for damages

**REMEDIES FOR BREACH OF CONTRACT**

- Understanding Damages

A) QUANTUM MERUIT

- assessing its availability
- where there's an express/implied agreement to provide a service but no agreement as to price
- where the parties have not performed the terms of their contract but a new contract can be inferred from their conduct to have replaced the original, a QM award may be available for the work done under the new implied contract
- where a contract is terminated by breach after one party has performed his obligations, the party not in default may elect to accept the breach and sue on QM for the value of work done
- where a party is prevented from completing his obligations by the other party

B) LIQUIDATED DAMAGES

- defining liquidated/unliquidated damages

C) PENALTIES

- s.75 Contracts Act – any fixed sum expressed to be payable in case of breach
- Reasonable compensation & proof of actual damage suffered.

D) SPECIFIC RELIEF

- s.4 Specific Relief Act 1950
- s.4(b) Specific Performance
- s.4(c) Injunctions

E) ENFORCEABILITY OF LAD PROVISIONS

1:00 Lunch & Zohor

2:00 **AGREEMENT & CONDITIONS OF THE 2006 PAM CONTRACTS PT.I**

3:30 Afternoon Tea

3:45 **DISPUTE RESOLUTION**

- Litigation vs Arbitration

5:00 End of Course

***AFTER ATTENDING THIS COURSE, YOU WILL RETURN TO YOUR JOB...***

- 1) ***Understanding the essential elements of construction contracts.***
- 2) ***Knowing all the risk assessment and risk management involved.***
- 3) ***Finding out the obligations of contractors.***
- 4) ***Familiarising yourself with all the legal basis of sub contracting.***
- 5) ***Learning all the ways to discharge or conclude a construction contract.***
- 6) ***Familiarising yourself with all the contractual right and remedies.***
- 7) ***Knowing the options available to innocent parties when construction contracts are breached.***
- 8) ***Finding out all the remedies for breach of contract.***

# REGISTRATION

Contract Law  
For The Construction Industry

Name	_____
Position	_____
Email	_____
Name	_____
Position	_____
Email	_____
Tel	_____
Fax	_____

Company	_____
Address	_____
City/Postcode	Country
Approving Manager's Name	_____
Position	_____
E-mail	_____

**Fees:** The full Registration Fee includes cost of all sessions, luncheon, coffee/tea & documentation.

	1 Person	Group fee for 3 or more* (from the same company)
<b>Regular Fee</b>	<b>RM1,995</b>	<b>RM1,695</b> <b>(MIN SAVINGS OF RM900)</b>

\* Terms and conditions apply.

**Cancellations, Refunds & Transfers:** A full refund will be promptly made for all written cancellations 3 weeks before the meeting. Thereafter, cancellations are not refundable. A substitute may be made at any time.

**Cheques :** Crossed & payable to  
**“Centre for Management Technology Sdn Bhd”**

Photocopy Registration Form to Preserve Brochure Copy. November 2008

## TELEGRAPHIC TRANSFER

Account Name: **Centre for Management Technology Sdn Bhd**  
 A/C No: **3 - 0903390 - 12**  
 Bank: Public Bank Berhad  
 Branch: Grd Floor, Menara Public Bank Jalan Ampang  
 Swift Code: PBBEMYKL  
*TT must include additional RM10 for Beneficiary's Bank charges. Delegates must bear all bank charges and local taxes (if applicable). Fees must be NETT of ALL charges.*

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## TO REGISTER

Online: **www.cmtevents.com**  
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 Tel: **(603) 2162 7322**  
 Post to: Lot 7.03, 7th Floor, North Block, The Ampwalk,  
 218 Jalan Ampang, 50450 Kuala Lumpur

### CERTIFICATE OF COMPLETION

A Certificate of Completion will be awarded upon successful completion of each course. This serves as evidence of your personal and professional commitment to you career.

### COURSE TIMING

Registration: 8.30 am, Course Begins: 9.00 am,  
Morning Coffee: 10.30 am, Lunch: 1.00 pm to 2.00 pm,  
Tea Break: 3:30 pm, Course Ends: 5.00 pm

Register online ~ [www.cmtevents.com](http://www.cmtevents.com)

## LEARN FROM THE BEST

**Mr. Kitson Foong** (LL.B(Hons.) ; MCJ) has been in active legal practice for over 18 years and has provided legal representation and strategic corporate advice to both private and corporate clients in most fields of the law.

Mr. Foong, has vast experience in area of takeovers and mergers involving local and international companies. He has also actively advised financial institutions on the applicability of Federal and State laws and regulations in areas relating to contracts, fraud and land/conveyancing regulations.

Mr. Foong's continuing desire to share knowledge and experience sees him being regularly asked to lecture, train and conduct workshops in the field of advocacy, trial and professional practices. His knowledge and experience has won him much praises from participants attended his courses.

### WHO SHOULD ATTEND

This course would be of great benefit to:

- Property Managers
- Project Managers
- Valuers
- Surveyors
- Builders
- Property Consultants
- Property Developers
- Land Owners
- Land Administration Managers
- Lawyers
- Investment Advisers
- Planning Managers
- Contractors