

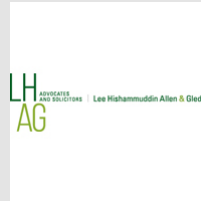


The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Malaysia: Construction

This country-specific Q&A provides an overview to construction law in Malaysia.

It will cover termination requirements and obligations, permits and licence, procurement, financing and security, and disputes as well as insight and opinion on challenges and opportunities.

This Q&A is part of the global guide to Construction. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/construction/>



Country Author: Lee Hishammuddin Allen & Gledhill

The Legal 500



**Dato' Nitin Nadkarni,
Partner**

nn@lh-ag.com

The Legal 500



Abang Iwawan, Associate

ami@lh-ag.com



Lim Chee Yong, Associate

lhy@lh-ag.com

1. **Is your jurisdiction a common law or civil law jurisdiction?**

Malaysia is a common law jurisdiction, with the Federal Constitution being the Supreme Law of the land. As a federation, Malaysia has both federal and state legislation.

2. **What are the key statutory/legislative obligations relevant to construction and engineering projects?**

Developments and buildings in West Malaysia are primarily governed by the Town and Country Planning Act 1976 and the Street, Drainage and Building Act 1974 respectively, along with other subsidiary legislation issued thereunder i.e. the Uniform Building By Laws 1984 (“UBBL”). This legislation provides the minimum standards for the control and construction of street, drainage and building. It also sets out the procedures regulating application for, amongst others, building plan approvals as well as the requirements for fire-fighting services.

Depending on the complexity, size, and nature of the project, there may be other applicable legislation:

- (a) The Federal Roads Act 1959;
- (b) The Quantity Surveyors Act 1967;
- (c) The Registration of Engineers Act 1967;
- (d) The Architects Act 1967;
- (e) The Malaysian Highway Authority Act 1980;
- (f) The Construction Industry Development Board Act 1994;
- (g) The Federal Roads (Private Management) Act 1984;
- (h) The Road Transport Act 1987; and
- (i) The Town Planners Act 1995.

Specific legislation exists in relation to payment within the construction industry. See Question 14 below for the Construction Industry Payment and Adjudication Act 2012 (“CIPAA”). One should also note that there are separate legislative requirements for projects in East Malaysia (Sabah and Sarawak) and the Federal Territories.

3. **Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and bribery.**

A. Health and safety

The Department of Occupational Safety and Health (“**DOSH**”) is responsible for enforcing three pieces of legislation:

- (a) Occupational Safety and Health Act 1994 focuses on provisions for securing the safety, health and

welfare of persons at work, for protecting others against risks to safety or health in connection with the activities of persons at work. There are also provisions to promote occupational environment for person at work to adapt to their physiological and psychological needs.

(b) Factories and Machinery Act (Amendment) 2006 seeks to ensure the fitness of machineries deployed during the course of construction works and similarly imposes a positive obligation on employers/owners to ensure the safety, health and welfare of persons employed.

(c) Petroleum (Safety Measure) Act 1984 consolidates laws relating to safety in the transportation, storage, and utilization of petroleum and to provide for matter relating thereto.

B. Environmental

The Department of Environment is entrusted with ensuring a clean, healthy and safe environment. It is empowered by the Environmental Quality Act 1974 which regulates air, noise, sea and land pollution. If the proposed project falls within the list of “prescribed activities” under the Act, an environmental impact assessment must be carried out as part of the approval process.

C. Planning

Planning is a state matter, and does not fall within the federal jurisdiction, except in the Federal Territories. The approval process is fairly standardized and does not differ greatly between the different municipal authorities in each state/city. The approval process briefly involves the following stages:

(i) Land use conversion

There are three categories of land use in Malaysia: building, industry and agriculture. Dependent on the nature of the project, it may be necessary to apply for a conversion of the land use prior to project implementation.

(ii) Planning permission or development order approval stage

Any project categorized as a “development” within the meaning of the Town and Country Planning Act 1976 (Act 172) requires prior planning permission from the local planning authority. This includes any material change in use of the land. The Development Order may be granted with certain conditions imposed.

(iii) Building plan approval stage

Building plans must be submitted by a qualified person as defined under the Street, Drainage and Building

Act 1974.

D. Employment

Employees earning less than RM2,000 per month or employed for manual work are protected under the Employment Act 1955. The Children and Young Person (Employment) Act 1966 prevents exploitation of child labour by limiting the working hours and nature of work a child is allowed to undertake.

Foreign labour working in Malaysia is required to hold a valid work permit under the Employment (Restriction) Act 1968. The Workman's Compensation Act 1952 contains provisions safeguarding the rights of foreign workers who encounter accidents at work, or contract employment-related diseases.

E. Anti-corruption and bribery

Under the Malaysian Anti-Corruption Commission Act 2009, both receiving and giving any gratification as an inducement for anything is illegal. Corruption is also proscribed under the Penal Code, the Customs Act, and the Anti-Money Laundering and Anti-Terrorism Financing Act 2001, amongst others.

4. What permits/licences and other documents do parties need before starting work, during work and after completion? Are there any penalties for non-compliance?

The pre-requisite permits and licenses are briefly identified in question 3 above.

During the works, it may become necessary to apply for other form of permits and licenses. To give an example, the Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 (or otherwise known as the Construction Industry Development Board ("CIDB") Act) contains a list of construction materials that must first be certified by CIDB prior to them being used for any construction works. The consequence of failing to obtain such certification may lead to a fine of up to RM500,000. Another example would be the need to apply to the local authorities if construction works are to be carried out beyond the allowable construction working hours.

Upon completion of the works, a Principal Submitting Person (must be a professional architect or engineer with a valid practicing certificate, dependent on the nature of the project) must sign a certificate called Certificate of Completion and Compliance ("CCC") to confirm project completion and that all statutory requirements with regards to health and safety aspects have been met and the project is ready to be occupied with all essential utilities services connected. False certification may lead to a fine not exceeding RM250,000 or to imprisonment for a term not exceeding 10 years or to both.

5. Is tort law or a law of extra contractual obligations recognised in your jurisdiction?

Yes, as a common law jurisdiction, the Malaysian courts recognize tort law. Typically, the Malaysian courts would first have regard to the contractual terms and matrix in determining the parties' obligations. Having said that, in some circumstances, the courts may permit recourse to tort law to supplement (but not supplant) the contractual provisions.

6. Who are the typical parties to a construction and engineering project?

The number and types of parties involved would be dependent on the nature and complexity of the project. Traditionally, the design phase would be separate from the construction phase. During the design phase, the owner (also known as the employer) would hire a design team consisting of architects, quantity surveyors and civil engineers to determine a workable design for the project. Once that is completed, the construction phase is then engaged when the owner hires a main-contractor to construct the project. It is common for the project works to be divided into sub-contract packages, which are then sub-contracted to various specialist sub-contractors.

Alternatively, the Owner may prefer a single point of responsibility by appointing a main contractor who would be responsible for both the design and the construction of the project. This would be similar to a design and build model.

Technical and design consultants may also be directly engaged by the owner as and when required to provide their expertise in the project.

7. What are the most popular methods of procurement?

The two main types of procurement methods commonly used in Malaysia are the traditional method (construct only) and package deal.

We have covered the traditional method in Question 6 above. The main contractor is engaged only for the construction phase and the owner is fully liable for the design of the project. This, for a long time, was the preferred option for the bulk of government contracts and private sector projects.

Large-scale complex projects are often tendered on a package deal basis under which the main contractor assumes liability for both the design and the construction of the project. This includes design and build, turnkey contracts, and EPC Contracts. The main attraction of this procurement procedure is a single point of responsibility.

In addition, Malaysia has experienced significant success in employing the Project Delivery Partner (PDP) structure (similar for example to Crossrail in London) in the construction of the Klang Valley Mass Rapid Transit. The PDP plays a similar role to a project manager but with the added responsibility of having to deliver the project within an agreed time period and cost. This allows for the shift in risks from the project owner, to the PDP.

8. **What are the most popular standard forms of contract? Do parties commonly amend these standard forms?**

There are a number of standard forms of contract specifically catered for the construction industry in Malaysia. Amongst others, the following institutions/government body have developed contracts that are widely adopted:

(a) the Public Works Department (“PWD”) (also commonly known as the Jabatan Kerja Raya (“JKR”). These are commonly used for projects where the employer is the Federal Government, a State Government or a Government-Linked Company;

(b) the Malaysian Institute of Architects (otherwise known as the Pertubuhan Akitek Malaysia (“PAM”). These are commonly used for private building works; and

(c) Institute of Engineers, Malaysia (“IEM”). These are usually used for engineering projects.

The FIDIC Yellow Book (Plant and Design Build) is popular for private projects involving large-scale infrastructure or international parties, often with parties amending various provisions to cater for the individual needs of the project.

Certain multi-national corporations, for instances Petroliaam Nasional Berhad (“**PETRONAS**”) and Tenaga Nasional Berhad (“**TNB**”) have their respective in-house suites of bespoke contracts.

9. **Are there any restrictions or legislative regimes affecting**

procurement?

Generally, there are no restrictions on procurement within the private sector, other than a legal requirement for contractors to register with the applicable board, for instance the Construction Industry Development Board of Malaysia (“CIDB”).

For public procurement, the legislative framework consists of the following:

- (a) Financial Procedure Act 1957;
- (b) Government Contract Act 1949;
- (c) Treasury Directives and Circular Letters; and
- (d) Federal Central Contract Circulars.

These rules and regulations are equally applicable to the federal government, the state governments, the local authorities and other statutory bodies. Parties who are interested in doing business with the government would have to first undergo a registration process intended to ensure that parties are capable of providing the services or to carry out the works. There are three types of public procurement modes: direct purchase, quotation and tenders. The applicable mode will be dependent on the value and whether it is for the procurement of supplies, services or works.

In line with Malaysia’s efforts to curb and deter bribery and acts of corruption, the Malaysian Government has within the public procurement regime, implemented the Integrity Pact introduced by Transparency International. Civil servants, members of procurement boards/committees, bidders and consultants are required to declare that there has been no act of corruption in the procurement process.

Further, it is not uncommon to see imposition of certain requirements for ‘Bumiputera’ (a Malaysian of indigenous Malay origin) participation requirement, especially in large projects. This is part of the Government’s initiative to encourage and increase share of the national wealth amongst the Bumiputera.

10. Do parties typically engage consultants? What forms are used?

The decision to engage a consultant, although common, is still very much dependent on the nature and complexity of the project.

Typically, an architect will be assisted by engineers from various fields (i.e. mechanical, electrical, chemical, geotechnical). Interior designers are often involved as part of the consultant team for housing development. Projects likely to have a significant impact on the environment may require the involvement of environmental consultants.

The forms of contract used to appoint consultants differ according to the type of services offered and the scope of work. Architects are required to adopt the standard conditions of engagement (including the minimum scale of fees) as prescribed under the Architects Act 1967 and its subsidiary legislation. The Board of Engineers Malaysia similarly provides a standard form for the appointment of consultants.

11. **Is subcontracting permitted?**

Sub-contracting is a common phenomenon in Malaysian projects. There is no legislation prohibiting the sub-contracting of a contract. However, most standard forms of contract would require prior consent from the owner (or main contractor).

12. **How are projects typically financed?**

Project financing in Malaysia is similar to that of international practice. Private projects of any size would typically be funded through a combination of equity and debt financing from external lenders.

Government projects are mostly funded by the Government through the Ministry of Finance. Although Private Finance Initiative (PFI) is understood in some jurisdictions to be a distinct subset of Public Private Partnerships (PPP), in Malaysia, the two terms are used interchangeably. The Government has in recent years sought to limit its risk exposure through the introduction of the Public Private Partnership Unit (UKAS) which is under the purview of the Prime Minister's Department. UKAS is tasked with planning, evaluating, coordinating, negotiating and monitoring PPP projects. This model has been successfully implemented in recent projects (e.g. the Second Penang Bridge).

13. **What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?**

Owners/Employers often stipulate in the contract that the contractor must provide on-demand performance bonds to guarantee the due performance of the contract. On-demand bonds entitle the owners to call on the bond without the need to first establish a default on the underlying contract. These bonds may be used to compensate the owners/employers when the contractor defaults, or if there is a delay in the performance of the contract.

Parent company guarantee is another form of security commonly seen in situations where a special

purpose vehicle (“SPV”) has been formed solely for a specific project. This form of security provides owners with the comfort that the parent company is willing to undertake any default of the SPV.

Advance payment bonds are not unknown but are not commonly used. This would be applicable in circumstances where a contractor applies for an advance payment from the owners to help with mobilization and procuring materials. Typically, the advance payment will be repaid through the deduction of a pre-determined amount from each progress payment of the project. The advance payment bond will then be cancelled upon full repayment.

The norm is for such securities to be tied to cover the entire project phase. What ‘entire’ means will be dependent on the provisions within the contract. Some contracts may stipulate that a bond shall be valid and enforceable until the practical completion of the project whilst others may extend that period till the end of the applicable defects liability period. It is also common for contracts to impose an obligation of procuring separate bonds covering different stages of the contract (i.e. construction bond and warranty bond).

Unaccounted delays may result in the lapse and expiry of these securities. Therefore, it will be prudent for contracting parties to insert provisions imposing an active renewal obligation to ensure the validity of these securities.

14. Is there any specific legislation relating to payment in the industry?

The Construction Industry Payment And Adjudication Act 2012 (“CIPAA”) introduced statutory adjudication to ease cash flow and to swiftly resolve payment disputes within the construction industry. This was targeted to address the commonly encountered issue of non-payment for work done within the industry. An aggrieved party (normally the contractor or sub-contractor) may submit a payment claim to the responding party. Within 10 days of the payment claim, the responding party may elect to either admit or dispute the claim in whole or in part. Following that, any dispute that arises may be referred for statutory adjudication under CIPAA.

The rights under CIPAA are additional to any contractual dispute resolution procedures and cannot be contractually varied or excluded.

The appellate courts in Malaysia have taken the view that the general application of CIPAA is retrospective in nature. CIPAA’s applicability is however restricted solely to work done and services rendered. This seems to suggest that CIPAA by its nature is one-sided for the benefit of the payee, and not the paymaster.

15. Are pay-when-paid clauses (i.e clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?

The common law position in Malaysia draws a distinction between pay-when-paid clauses and pay-if-paid clauses. The former merely fixes the time for payment but does not absolve any liability to pay. The Malaysian Courts have however been reluctant to enforce such conditional payment clauses.

Section 35 of CIPAA renders void any conditional payment provision under a construction contract entered into after 15.4.2014.

16. Do your contracts contain retention provisions and, if so, how do they operate?

Retention sums are monies deducted from progress claims to protect the owner/employer in the event that a Contractor fails or defaults in its performance of the contract. This is in certain ways similar to other forms of security discussed in Question 13 above. Apart from the PWD Form 203A, most standard forms of contract in Malaysia provide for retention sums. The courts have held that, in the absence of a contract to the contrary, an owner/employer should maintain retention sums in a separate account on trust for the contractor.

17. Do contracts commonly contain delay liquidated damages provisions and are these upheld by the courts?

Most standard forms of contract used in Malaysia contain provisions for Liquidated and Ascertained Damages, better known as "LAD". For example, Clause 40 of PWD Form 203A (Rev. 2007), Clause 22 of PAM Contract 2006, and Sub-Clause 8.7 of Conditions of Contract FIDIC Yellow Book.

LAD clauses will not be automatically upheld by the Courts - by virtue of Section 75 of the Contracts Act, where a specific sum is named in the contract in cases of a breach, such sum constitutes as a penalty. (Selva Kumar a/l Murugiah v Thiagaraja a/l Retnasamy [1995])

Accordingly, parties seeking to rely on the LAD provision will have to prove the actual loss suffered as a result of the breach. In cases where it is difficult or impossible to accurately quantify the actual losses, the injured party may only be entitled to a "reasonable compensation" capped at the value stipulated in the LAD provision.

18. **Are the parties able to exclude or limit liability?**

It is not uncommon to find exclusion and/or limitation of liability clauses in construction contracts (e.g. Sub-Clause 17.6 of the Conditions of Contract, FIDIC Yellow Book).

Generally, Malaysian Courts will uphold these clauses, especially in contracts entered between sophisticated commercial parties dealing at arm's length. These clauses however are strictly construed by the Courts and due effect will only be given to the clear intention of parties.

Nonetheless, if these clauses are so wide as to raise the prospect of an absurdity that would defeat the purpose or main object of the contract (e.g. excluding liability for a fundamental breach of contract), then such a clause may not be upheld by the Courts.

19. **Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?**

As a general rule, the right to terminate a contract arises where there is a fundamental breach. (See: Section 40 of Contracts Act 1950)

In addition, parties may incorporate specific provisions in respect of termination of the contract. The standard forms of construction contract adopted in Malaysia often has a termination clause, e.g. Clauses 51 to 55 of PWD Form 203A (Rev. 2007), and Clauses 60 to 64 PWD Form DB (Rev 1/2010). These clauses are also termed as "Determination Clause" in certain standard forms of contract - e.g. Clauses 25 and 26 PAM Contract 2006 and Clause 44 JKR Sarawak Form of Contract (2006).

These provisions are strictly construed and the procedures laid out must be strictly followed. Failure to strictly comply with the termination procedures set out in the contract could render the termination invalid and/or wrongful. In turn, this could in itself result in an unintended repudiatory breach of the contract. (See: Fajar Menyensing v Angsana [1998]; DC Contractor v University Pertahanan Malaysia [2014])

There is no common law doctrine of force majeure in Malaysia. However, it is not uncommon to find force majeure clauses in standard forms of construction contracts adopted in Malaysia. For example, under Clause 57 of PWD Form 203A (Rev. 2007), if either party considers a force majeure event to be of such severity or to be continuing for such period of time that it effectively frustrates the original intention of the Contract, then Parties may agree to a mutual termination. (See also: Clause 19 of Conditions of Contract, FIDIC Yellow Book)

20. **What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?**

The doctrine of privity of contract extends contractual rights only to parties to the contract. Unlike some other jurisdictions such as the UK, third party rights are not governed by any statutory legislation in Malaysia. Nonetheless, third parties can obtain rights if there are collateral warranties, which circumvents the privity rule by creating separate independent contracts collateral to the consultancy or construction contract.

21. **Do contracts typically contain strict provisions governing notices of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?**

Construction contracts in Malaysia typically contain strict provisions governing the procedures for an extension of time and/or additional payment claims, e.g. Clause 44 of the PWD FORM 203A (Rev. 2007); Clause 50 of the PWD Form DB (Rev. 1/2010); Sub-Clause 20.1 of the Conditions of Contract, FIDIC Yellow Book.

Malaysian courts have upheld the requirement for strict compliance with these procedures. In *Ipoh Tower Sdn Bhd v Taki Engineering Sdn Bhd* [2016] MLJU 1509, the High Court discharged the Employer from any liability for claims made which did not comply with the notice requirements set out in the contract.

22. **What insurances are the parties required to hold? And how long for?**

This would depend on the agreement between parties and the standard form of contract adopted. For example, under the PAM Contract 2006 (Clauses 19 and 20) -

(a) The contractor is obliged to take out and maintain, amongst others -

i. Insurance against injury to person and loss/damage of property arising out of or in the course of the execution of the works; and

ii. Insurance for local workmen who are not subject to registration under SOCSO (i.e. Employee's Social Security Scheme).

(b) Parties could also agree to either impose an obligation on the contractor or the employer to take out and maintain (in the joint names of the contractor, employer, sub-contractor, and all interested parties) a CAR Insurance policy for a value not less than the contract sum, to cover against loss and/or damage by fire/lighting, explosion, earthquake, volcanism, tsunami, storm, cyclone, flood, inundation, landslide, theft, ground subsidence, existing underground cables, pipes, riot etc.

These insurances are typically required to cover the entire duration until the completion of the works, and up to an extended period of 3 months after the defects liability period under the contract.

23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?

In Malaysia, both technical and legal disputes arising out of a construction contract are resolved through arbitration, or litigation at the specialist construction court.

Nonetheless, construction contracts often impose a bar for the referral of time and payment disputes to court or arbitration, until after the contracts are terminated or after the works have been completed. As a consequence, in the event of a payment dispute, contractors may be compelled to either partly finance their works until completion, or abandon their works. With the introduction of CIPAA (See Question 14 above) parties now have an alternative dispute resolution mechanism which could potentially curb such problem. Accordingly, adjudication has become increasingly popular and is often the preferred route for contractors for claims for payment for work done. This may be attributed to the attainment of quick interim decisions which are binding unless set aside by arbitration, court proceedings or settled by a written agreement between parties.

24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?

Generally, the Malaysian Courts are friendly and supportive of arbitration. Statistics shows that between 2013 and 2018, the Malaysian Courts granted 90%-100% of the applications for recognition and enforcement of arbitration awards. Enforcement of an arbitral award typically requires up to three months. However, where a respondent applies to set aside either the award or registration of the award under

Section 38 of the Arbitration Act 2005, the enforcement proceedings could be delayed for up to a year before they are disposed of by the High Court.

Recently, the Malaysian Arbitration Act 2005 has been amended to further encourage arbitration as a dispute resolution method and to promote Malaysia's profile as a safe-seat and arbitration friendly jurisdiction. The amendments were made to reflect the 2006 amendments to the UNCITRAL Model Law. Of particular significance, Section 42 of the Arbitration Act 2005 (reference of a question of law arising out of a domestic arbitral award) has been removed to uphold the finality of an arbitration award. Accordingly, unlike litigation in the traditional courts where parties could be subjected to multiple levels of appeal (i.e. appeal from the High Court to the Court of Appeal and subsequently Federal Court), parties in an arbitration proceedings have 'one bite of the cherry'.

25. **Are there any limitation periods for commencing disputes in your jurisdiction?**

The general rule within which one is entitled to bring an action in relation to/founded on a breach of contract or tort is six years from the date of which the cause of action accrued (See: **Section 6(1) of the Limitation Act 1953**). When exactly "the cause of action is accrued" is often the subject of dispute between parties, and there are conflicting judicial decisions in this regard. In **AmBank (M) Bhd v Abdul Aziz bin Hassan & Ors** [2010] 3 MLJ 784, it was held that a cause of action accrues regardless of whether one discovers the damage, whereas in **AmBank (M) Bhd v. Kamariyah bt Hamdan** [2013] 5 MLJ 448, it was held that a cause of action only accrues upon knowledge of the damage.

Earlier this year, the Limitation Act 1953 was amended to introduce a provision with regard to latent defects. Under this new provision, if a defect is discovered outside of the limitation period (i.e. 6 years from the date of occurrence of such defect), parties have **three years** from the date of the knowledge of such defect to commence a claim. However, any claim under this provision is subject to a maximum time bar of **15 years** from the date of the occurrence of such defect. (**Section 6A of the Limitation (Amendment) Act 2018**)

In respect of claims against a government agency or a public servant however, the imposed limitation period is three years starting from the accrued date of the cause of action. (See: Public Authorities Protection Act 1948)

26. **How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your**

jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a “fair and reasonable” proportion of the innocent party’s losses), and are these commonly used?

Given the complexity of the contractual relationship between parties in a construction contract, multi-party disputes are common. Liability can be apportioned between multiple defendants, jointly and/or severally depending on circumstances, as decided by the tribunal/courts.

Net contribution clauses are not commonly used in Malaysia.

27. What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?

One of the biggest challenges facing the construction industry at present is the mismatch in supply and demand in the property market. In recent years, there has been an influx of real estate and property projects in Malaysia, particularly in Kuala Lumpur and in the state of Johor. The supply of retail, commercial and luxury residential space now significantly exceeds demand and the disparity is increasing – a problem often attributed to the discrepancy between property prices and purchasing power of Malaysians.

In the few months since the change in the government, the construction sector in Malaysia has seen some visible changes. In particular, the new government has made clear that it intends to introduce aggressive policies to curb the property overhang in Malaysia. Amongst others, there have been discussions to implement a policy against “land hoarders” and making efforts to contain the escalating land/property costs.

The Prime Minister has recently announced that foreigners are no longer allowed to buy properties at Johor’s Forest City – whether or not this policy will be implemented is still unclear but there is a possibility of the new government implementing policies limiting foreigners from investing in properties in Malaysia.

With these new policies, investors are becoming more cautious about purchasing properties in Malaysia and are adopting a “wait and see” approach. Whilst the supply in properties will continue to rise at an increasing rate, demand and purchasing power in Malaysia remains stagnant. Additionally, if policies to limit foreign investors are in fact implemented, the property sector in Malaysia could be adversely affected in the long term.

Other common problems in the general construction sector in Malaysia are project delays, the lack of expertise, and shortage of manpower. Site team/project managers who implement construction projects,

often do not adhere strictly to the contractual terms. This may result in disputes between the contracting parties, especially over variation, defects and delays.

Notwithstanding the above, the current political climate has also generated new opportunities within the construction sector. Given that many government infrastructure projects are being reviewed and suspended (with a view to termination), some of these projects are likely to be retendered. For example, with the recent termination of the MRT 2 contract (for the underground works), the government has announced that there will be a retendering for the unfinished work through an international open tender process.

In addition, as Malaysia is slow to adopt modern technology, there is an ongoing gap in the construction sector for advanced technology. Accordingly, there are opportunities for international project management companies to provide solutions to domestic developers and contractors.

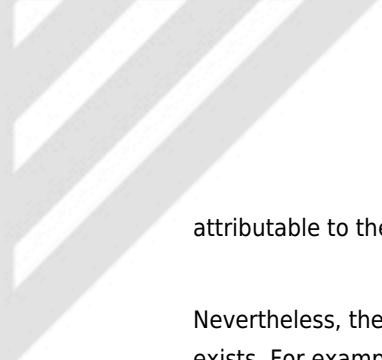
28. What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?

In recent years, there has been a huge increase in infrastructure investment consequent upon the Chinese Belt and Road Initiative (previously known as the One Belt One Road Initiative). This includes the launch of several mega-projects such as the East Coast Railway, MRT, and the Singapore-Malaysia High Speed Rail. However, many of these projects are currently being reviewed by the new government, with a view to downscaling, suspending, or even termination, and re-tendering.

There has also been an unprecedented increase in large-scale property projects being undertaken in Malaysia. For example, the development of Iskandar Malaysia has attracted billions of dollars in foreign investments - including the adjacent US\$100 billion development of Johor's Forest City. Other examples of large-scale property projects in Malaysia include the Tun Razak Exchange in Kuala Lumpur and Harbour City in Melaka. However, there has been a recent reduction in foreign investment in the property sector in Malaysia, primarily attributable to the mismatch in supply and demand (see paragraph 27 above).

29. How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?

Generally, Malaysia is slow to adopt modern technology, and the construction and engineering industry is no exception. This disinclination to innovate in the construction and engineering technology may be



attributable to the ready availability of cheap and skilled migrant workers from the neighbouring countries.

Nevertheless, the market remains open to adopt modern technology where a compelling business case exists. For example, there is a recent acceptance of the use of 'Building Information Modeling' ("BIM") in projects - a comprehensive model based process that gives architecture, engineering and construction professionals the insights and tools to more efficiently plan, design, construct and manage buildings and infrastructure.