

Austen Emmanuel Pereira

Partner



Austen was called to the English Bar and Malaysian Bar, where his primary practice areas include general and corporate and commercial litigation. He is actively engaged in various modes of construction dispute resolution, such as statutory adjudication under the Construction Industry Payment and Adjudication Act 2012 (CIPAA 2012), domestic and international arbitration, and Malaysian court proceedings. Austen has represented clients at all levels of the Malaysian courts, showcasing his extensive litigation experience.

He has appeared in numerous construction and commercial arbitrations conducted under the Asian International Arbitration Centre (AIAC) Rules, Institute of Engineers Malaysia (IEM) Rules, Pertubuhan Arkitek Malaysia (PAM) Rules, the London Court of International Arbitration (LCIA) Rules, and the UNCITRAL Rules.

Additionally, Austen has handled multiple construction and oil & gas statutory adjudications under CIPAA 2012 and has significant experience in construction, commercial and corporate arbitration litigation cases across various judicial levels.

Austen has advised and acted as counsel (and continues to do so) on several projects. Major projects he is, or has been, involved in, include the Oxley Towers, which is a freehold mega tall skyscraper/mix development in the heart of KLCC; the 2,242 MW combined cycle gas turbine (CCGT) Edra power plant located at Alor Gajah, Melaka; the Klang Valley Mass Rapid Transit Project; the Penang Mutiara Line Light Rail Transit Project; and the East Coast Rail Link.

He has a particular interest in power plants and railway projects.

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Education and Qualifications

- LL.B, Aberystwyth University
- Cardiff University, UK Bar Professional Training Course (BPTC)
- Advocate & Solicitor, High Court of Malaya

Practice Areas

- General Litigation
- Appellate Counsel Work
- Commercial and Corporate Fraud
- Civil, Corporate & Commercial Litigation
- Land Disputes & Land Acquisitions
- Shareholders Disputes
- Defamation
- Arbitration
- Construction & Engineering Disputes
- Statutory Adjudication Under CIPAA 2012

Publications

- Co-authored a Current Law Journal article titled "Incorporation of an Arbitration agreement" [2017] 1 LNS(a) lix
- Co-authored a case commentary on the High Court decision in *Dato Hew Hoi Lam @ Kew Hoi Lam (practicing as Arkitek Supra) v Michigan Properties (M) Sdn Bhd* [2016] 1 LNS 1537; [2016] MLJU 1259; [2017] AMEJ 0005 for the CIDB Construction Law Report

Notable Cases

- Representing Malaysia Rail Link Sdn Bhd, the project and asset owner of the East Coast Rail Link Project (ECRL), as counsel, in several High Court and Court of Appeal cases involving judicial review, land reference proceedings, land acquisitions and defending allegations of trespass.
- In *Accolade Land Sdn Bhd v Mass Rapid Transit Corporation Sdn Bhd* [2024] MLJU 1526, represented MRT as co-counsel in the 2nd tranche of the trial for assessment of damages and successfully reduced an initial claim sum of RM 303 million to RM 5.5 million.
- Acting as co-counsel for a Claimant in an AIAC Arbitration in respect of a claim over RM 800 million, the subject matter of which is a telecoms dispute or rather a dispute over spectrum.
- Acting for an employer in a major power plant dispute in Malaysia concerning an EPC Contract against an EPC Contractor, including opposing an injunction to restrain calls on performance bonds (valued in excess of RM200 million) and representing the employer in arbitration over defects and delay claims (valued in excess of RM1 billion).
- Acting for an employer in an arbitration against its consultant involving negligence claims arising from a slope failure and collapsed drainage works.
- Acting for an employer in an arbitration involving purported claims for work not done, including allegations of fraud, bribery and falsified documentation.
- Acting for an employer in an arbitration involving disputes primarily concerning the non-finalisation of the final account and other contractual issues.
- Acting for a major developer in opposing an injunction to restrain calls on performance bonds and representing the developer in an arbitration over, among others, defects and Liquidated Ascertained Damages claims.

- Acting for an employer in various CIPAA proceedings concerning various construction disputes vis-à-vis a PAM Contract.
- Acting as counsel at the High Court on behalf of a Malaysian Government Agency in respect of a claim for fraud, knowing receipt, dishonest assistance and conspiracy and to trace the monies and assets moved into different jurisdictions. Successfully obtained a Mareva freezing order and a Proprietary Injunction order, and multiple Bankers Trust discovery orders against banks to aid in the tracing the movement of monies thus far involving sums of over RM 30 million against 27 Defendants.
- Acted successfully as co-counsel in an AIAC Arbitration for a Claimant against a regulator concerning several contractual disputes. The subject matter of which concerned claims in excess of USD 100 million. The matter involved the design, management and operation of a cellular software service and system, the first of its kind in the relevant jurisdiction.
- Acted as counsel for a Claimant in an AIAC Arbitration in respect of total claims in excess of RM 400 million, the subject of which was a construction dispute under the PAM Contract.
- Acted successfully as co-counsel in an AIAC Arbitration for a Claimant against a developer concerning several disputes over a long-term lease agreement. The claims were in excess of RM 100 million.
- Acted successfully as co-counsel in the landmark Federal Court defamation case of *Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong* [2024] 4 MLJ 260 and established that "half-truths" are capable of being defamatory in Malaysia.
- Acted successfully as counsel in a landmark Court of Appeal case of *Azinal Sdn Bhd v Jannath Gani & Ors and other appeals* [2024] 2 MLJ 526 which concerns the latest amendments to section 68(1) of the Courts of Judicature Act 1964. The landmark Federal Court decision is reported in [2025] MLJU 2835.
- Acted as co-counsel at the High Court and successfully set aside an adjudication decision (pursuant to CIPAA 2012) of approximately RM 94 million for the developer in *Ssangyong*

Engineering & Construction Co Ltd v Oxley Rising Sdn Bhd and another case [2023] MLJU 404.

- Acted as counsel at the Court of Appeal and successfully set aside an injunction restraining a call on a Bank Guarantee in excess of RM 60 million, for the developer.
- Acted as co-counsel in several landmark intellectual property cases involving patents, trademarks and copyright, such as *Pan Asiatic Technologies Sdn Bhd & Anor v Nucotech Company Ltd & Anor and another appeal [2023] 6 MLJ 28* and *Appraisal Property Management Sdn Bhd & Ors v Singham Sulaiman Sdn Bhd [2023] 2 CLJ 206*.
- Acted as co-counsel for several subsidiaries of a foreign multinational oil & gas company in a claim for more than RM300 million against 14 defendants for fraud, knowing receipt, dishonest assistance and conspiracy and to trace the monies and assets moved into different jurisdictions. Successfully obtained a Worldwide Mareva freezing order for millions worth of assets over different jurisdictions, and multiple Bankers Trust discovery orders against banks to aid in the tracing the movement of monies thus far. Assisting in a team made up of foreign lawyers in various jurisdiction.
- Acted as co-counsel in a land dispute involving the law relating to caveats, constructive trust and alienation of state land.
- Acted as co-counsel in a Federal Court Appeal Proper in relation to questions of law on sections 9 and 10 of the Arbitration Act 2005 and whether or not a non-party can be bound or be a party to an arbitration agreement.
- Acted as co-counsel in a Federal Court Appeal Proper in relation to a question of law arising from whether or not withdrawing a suit in order to avoid a disadvantage not of a party's own making tantamount to an abuse of the Court's process.
- Acted as co-counsel in a High Court case involving section 42 of the Arbitration Act 2005, in which arguments on the prospective and/or retrospective effect of the Arbitration (Amendment) (No. 2) Act 2018 were canvassed.

- Acted as co-counsel in the Federal Court Review of *View Esteem Sdn Bhd v Bina Puri Holdings Bhd* (i.e. a landmark CIPAA 2012 decision by the Federal Court).
- Successfully acted as co-counsel in the Federal Court Appeal Proper in the case of *PCP Construction v Leap Modulation* concerning several questions of law involving CIPAA 2012.
- Acted as co-counsel in the Court of Appeal in respect of the scope of Section 181 and whether or not it extends to complaints of oppression in respect of a company other than the one brought by the latter's registered member.
- Acted as co-counsel in the High Court in respect of several claims made against Corporate and Personal Guarantors for sums of up to RM126 million by a bank. Assisted with various related interlocutory applications including Summary Judgment Applications, Striking Out Applications, Third Party Applications, Fresh Suits and Leave to Proceed.
- Acted as co-counsel in the High Court in respect of several confidentiality applications and security for award sum and costs applications in respect of a section 42 of the Arbitration Act 2005 case.
- Acted as co-counsel in a Federal Court Leave Application in relation to a question of law on whether for the purposes of an recognition and enforcement application made under section 38 of the Arbitration Act 2005, is the recognition and enforcement of an arbitration award by way of entry as a judgment of the High Court to only relate to the disposition of the said award and not the entire award containing the reasoning, evidentiary and factual findings of the arbitral tribunal.
- Acted as co-counsel at the High Court and Court of Appeal in respect of numerous landmark stay pending arbitration applications (i.e. section 10 of the Arbitration Act 2005) and anti-arbitration injunctions.
- Acted as co-counsel for MYCC (i.e., the Malaysian Competition Commission) in several landmark Federal Court cases and before the Competition Appeals Tribunal.

- Other notable cases include:
 - *Kemacahaya Development Sdn Bhd v Pywatec (M) Sdn Bhd & Anor and another appeal* [2022] 9 CLJ 161
 - *Perbadanan Pengurusan Trellises & Ors v Datuk Bandar Kuala Lumpur & Ors* [2021] 3 MLJ 1
 - *Federal Land Development Authority & Anor v Tan Sri Haji Mohd Isa bin Dato' Haji Abdul Samad & Ors* [2021] 8 MLJ 214
 - *Synergy Promenade Sdn Bhd v Felda Investment Corporation Sdn Bhd & Anor* [2021] 9 MLJ 770
 - *Yeo Ping Tieng & Ors v Elitprop Sdn Bhd* [2020] 3 MLJ 269
 - *AWH Equity Holdings Sdn Bhd & Ors v GMV-Borcoss Sdn Bhd* [2020] 11 MLJ 212
 - *Emas Kiara Sdn Bhd v Michael Joseph Monteiro (Receiver and Manager of Lembah Beringin Sdn Bhd) & Ors (Farcoll Estate Sdn Bhd & Ors, Interveners)* [2018] 5 MLJ 54
 - *Detik Ria Sdn Bhd & Anor v Prudential Corporation Holding Ltd & Anor* [2022] 10 CLJ 171
 - *NBC Land Sdn Bhd v Majlis Perbandaran Klang* [2021] 1 LNS 799
 - *Nik Sarina Lugman Hashim v Mohamed Moiz Jabir Md Ali Moiz & Ors* [2021] 1 LNS 2226
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