

# Dr Cyril Chern



Dr Cyril Chern is a Barrister, Chartered Architect, and Chartered Arbitrator, and specialises in complex engineering and construction projects. With over 40 years' experience in construction at all levels including Barrister and adjudicator/arbitrator he has been involved in some of the world's largest construction and infrastructure projects which include nuclear power plants, port facilities, hydroelectric power plants, waste and water treatment facilities, road and rail projects, bridges, dams, hotel complexes, airports, and tunnels. In addition, he is the author of some of the construction industry's leading publications dealing with both the law, claims and delay, dispute resolution and major project construction, under both common and civil law.

## Recent Professional Recommendations

- **Chambers & Partners:** *"Leader at the Bar"* in Construction and Engineering, International Arbitration:

*"Highly regarded in adjudication/dispute boards".*

*"Exceptionally well versed in both domestic and international matters"; "has an astonishing ability to settle complex disputes, and to encapsulate the essence of a matter ..."; "has an unparalleled ability to grasp even the most complicated issues".*

*"(Dr Chern) has an impressive practice with a particular emphasis on large international matters. Clients appreciate his extensive knowledge of construction law and the world of heavy engineering". "He is concise and has a perfectionist's knowledge of the subject." "He has excellent legal skills and shows both tenacity and tact."*

*"He has a very high intellect coupled with an amazing grasp of the law." "He is in his element in complex international construction arbitrations."*

*"He also "brings a business-like approach to the construction process and really knows international arbitration and all its nuances inside-out."*

- **Legal 500:** *"Leader at the Bar"* in Construction and International Arbitration -

*"His superb depth of knowledge and cross-examination skills put him in the upper echelon of barristers."*

*"Absolutely superb in complex international high-value matters."*

*"...exceptionally experienced..."; "a strong arbitration barrister experienced in European infrastructure disputes"; "hugely knowledgeable"; "he has*

*exceptionally strong knowledge of the legal issues in infrastructure disputes."*

*"Dr Chern is 'a brilliant legal scholar' whose 'knowledge of the intricacies of international arbitration is unsurpassed".*

*"...great depth and breadth in procedural knowledge and tactical awareness," "takes instruction flawlessly; he is very good with witnesses", "a perfect gentleman."*

## **Author of Construction Related Books**

- ***Chern on Dispute Boards*** (Wiley, 1st Edition 2007, 2nd Edition 2011, 3rd and 4<sup>th</sup> Edition, Informa – Taylor & Francis, London 2019);
- ***The Law of Construction Disputes*** (1st Edition 2010 Informa Publishing London, 2nd and 3<sup>rd</sup> Edition Informa – Taylor & Francis, London 2019);
- ***International Commercial Mediation*** (Informa, London 2009);
- ***The Commercial Mediator's Handbook*** (Informa – Taylor & Francis, London 2014);
- ***Nuclear Infrastructure Development*** (Informa – Taylor & Francis, London Spring 2019).

## **Education and Professional Qualifications**

- BArch in Architecture and Engineering
- Juris Doctor - Law
- FIDIC President's List of Approved Dispute Adjudicators
- Assessor - FIDIC President's List Assessment Panel
- Fellow, The Chartered Institute of Arbitrators
- Fellow, The Dispute Board Federation (Geneva)
- Accredited Adjudicator and Mediator
- Association of Consultancy and Engineering
- Institution of Civil Engineers – Dispute Board Panel
- Society of Construction Arbitrators UK
- The Bar of England and Wales
- The Bar of the United States Supreme Court
- Ship's Master - Merchant Navy (ret).
- Freeman City of London
- Chartered Architect - Royal Institute of British Architects
- Dispute Board Trainer, International Chamber of Commerce, DBF and FIDIC rules and procedures
- Member, Civil Mediation Committee, United Kingdom
- Listed in and since the 166<sup>th</sup> Annual Edition of Who's Who

## **Legal and Engineering Expertise**

His expertise is in construction matters with complex infrastructure and construction issues. His principal field of work is in complex claims arising out of major nuclear and infrastructure projects such as in PPP development, dispute prevention, as well as related financing and in delay analysis. In addition, he is an arbitrator of construction, and engineering claims, chairs dispute boards, and acts as mediator and/or dispute resolver, specifically on complex construction/engineering projects. He currently chairs the Dispute Boards for the resolution of all disputes on the building of the Marmaray Rail Project in Istanbul Turkey which is currently the world's largest light rail project, serves on the Chernobyl Nuclear Power Plant Clean-up and Decommissioning Dispute Board and the Olkiluoto Nuclear Power Plant Dispute Board in Finland and is considered an expert on infrastructure development and PPP projects by the World Bank and its International Finance Corporation. In addition, he is frequently selected by the ICC as an Expert Reviewer of construction disputes involving complex delay and construction claims.

### **Construction Experience**

The basis for Dr Chern's specialisms comes from his actual construction and legal experience where he has been involved in the design, project management, and claims on various international projects including hospitals in Iran, China, the USA; the Guangzhou Wharf facility in China, and the Shanghai Convention Complex as well as several transportation facilities.

### **Dispute Boards and Adjudications**

Dr Chern's major focus is in the field of dispute boards which have covered the areas of heavy construction, infrastructure development, and civil engineering. He has also been instructed as counsel in ICC arbitrations and is frequently selected as a Panel Member on ICC Construction Arbitrations arising out of Dispute Board Decisions taken to the ICC. He has specialist knowledge of construction adjudication, acting either as a dispute board member, adjudicator or as counsel and is only one of 45 FIDIC President's List Adjudicators worldwide with this expertise and only one of three who head the Assessment Panel for the Dispute Board Federation (Geneva).

His experience in Dispute Boards (in particular, service on Dispute Adjudication Boards, DRB, CDB) on large infrastructure projects, hydroelectric facilities, facility

development, roads, bridges, and tunnels – in Central Europe, Africa, the Middle East, South America and China. He has served as member (18) and chairman (85) on dispute boards for contracts covering traditional, design and construct, and turnkey contracts and is familiar with all relevant Dispute Board Rules and procedures including the World Bank Harmonised, FIDIC, ICE, DBF and ICC Dispute Board Rules. These disputes include main contract, subcontract and claims disputes involving amounts up to EUR 15.5 billion arising under traditional, design/build and concession contracts. No decisions overturned on appeal.

Additionally, he is an instructor in the subject, author of ***Chern on Dispute Boards*** (1st Edition 2007, 2nd Edition 2011 Wiley-Blackwell Publishing, 3rd & 4<sup>th</sup> Editions Informa Publishing 2015) and is an accreditor of Dispute Board Members for both FIDIC and the DBF.

In addition to his Dispute Board work he has acted as an adjudicator in over 235 decisions given (including 125 decisions given under UK statutory adjudication schemes as well as Hong Kong, China, India, Pakistan, Japan, South America, and elsewhere) he is familiar with ICE, TeCSA, JCT, ACE (CIC), Scheme for Construction Contracts and other Adjudication Rules. No decision overturned at arbitration. He is experienced as to World Bank/FIDIC conditions, Construction Act 1996, statutory schemes and associated amendments to most major standard form contracts. Additionally, he has experience in drafting and interpretation of contractual provisions and procedures for arbitration, adjudication and dispute boards.

### **Arbitrations**

Acting as arbitrator, he has in excess of 595 references (UK, USA, Canada, Hong Kong, South America, Middle East, China, Japan) under institutional and *ad hoc* procedures. These disputes include main contract, subcontract and professional services disputes involving amounts up to EUR 14.5 billion arising under traditional, design/build and concession contracts. No decisions overturned on appeal. Served as sole arbitrator and on tribunals (as party-appointed member and chairman) under ICE, DIAC, ICC, AAA, UNCITRAL, LCIA and ad hoc arbitration procedures and is familiar with the arbitration rules and procedures of the ICE, DIAC, ICC, LCIA, UNCITRAL, CI Arb, CIMAR, HKIAC, RICS, and SIAC.

### **Construction Mediations**

Dr Chern is a recognised expert in construction and engineering mediation, its

implementation both generally on an *ad hoc* basis as well as those mediations arising under a wide variety of standard forms (FIDIC, ICE (traditional and NEC), JTC, IMechE/IEE Model Form "A", BPF/ACA, FCEC, GCWorks, ACE, HKGov, World Bank) and bespoke contracts as well. He is experienced in mediation claims dealing with structural engineering, bridges, tunnels, road works, aircraft hangers, life-safety systems, dams, hydro-electric facilities including differing site conditions, payment provisions, measurement, valuation, construction quality, design obligations, delay and disruption, time extensions, prolongation, prevention, breach of contract, contract interpretation, conflicting documentation, back-to-back agreements, scope of services, final account, price escalation, conflict of laws, concession agreements, and related matters.

Specifically as to mediations he has acted both on behalf of parties to mediations and also as mediator on over 312 complex construction and engineering disputes of which all were settled as a direct result of the mediation process, as well as many domestic and international disputes relating to construction and trade matters and he teaches and develops mediation systems, methods and techniques on behalf of the Bar Council of England & Wales, the World Bank, the IFC, and the Dispute Board Federation both in the UK, the EU, the Middle East and South America.

His book ***International Commercial Mediation*** (Informa Publishing 2009, London) is the leading text on the subject of commercial construction mediation and is joined by his second text on this subject ***The Commercial Mediator's Handbook*** (Informa 2014, London).

### **Public-Private Partnerships**

Dr Chern was one of the first dual-qualified individuals to become involved in the use of Public Private Partnerships (PPP) as a way forward in the development of major infrastructure projects worldwide. He frequently performs forensic analysis of either proposed projects or determines the cause of failure in existing projects. He is a frequent lecturer on this subject for both the World Bank and the International Finance Corporation.

## **Selected Matters**

### **Recent Dispute Boards**

- EUR 780 Million roads project in Eastern Europe including Bridges, Overpasses, Slab top culverts, Road construction works, Drainage, Electrical works, Horticultural, Lighting system for interchange, Local roads, Traffic signalisation, Traffic signalisation-redirection, Structures, Telecommunication and Water stream regulations.
- EUR 1.6 Billion roads project in South America for the construction of a hydroelectric facility and transformer housing facility including the upgrading of the existing Bridges, Overpasses and Lighting systems.
- EUR 1.3 Billion roads project in Serbia including the construction of highway of 68.7 km and including construction of roads, bridges, tunnels and interchanges.
- EUR 560 Million Research and Development facility construction in Germany involving new processes for the computer industry.
- EUR 12 Billion light-rail project Turkey including an undersea rail tunnel as well as the modernization of suburban rail lines connecting the European side to the Asian side.
- EUR 4.5 Billion Port and wharf development project in Asia.
- EUR 1.2 Billion Hospital Development Project in China.
- EUR 25 Billion river diversion and hydro project China with total generating capacity of 25,150 MW and encompassing dams on 3 rivers.
- EUR 10.5 Billion de-commissioning and re-building of nuclear facility and related works in Central Europe.
- EUR 15 Billion Light rail and Harbour Project in the Middle East.

### **Recent Mediations**

- Contractor and employer disagreement over the completion of a roads project - £28 Million at stake. The parties voluntarily agreed to try Mediation before resorting to arbitration. The matter was settled to everyone's satisfaction after two days of Mediation and at a cost savings, estimated by the parties, at £1.5 Million.
- Construction of a Nuclear Power Plant – EUR 1.2 Billion at stake. Contractor claims for delay and unforeseen conditions. Counterclaims by the Employer over

delay. The parties agreed to mediation after 2 years of litigation. Matter and all issues successfully resolved to the satisfaction of all parties.

- The construction of a light rail and roads network in Spain, which was stopped due to disagreement of the employer and the contractor over design details and costs - \$120 Million at stake. Here a language barrier impeded the progress of the matter until the parties agreed to voluntary Mediation in Spain. The UK contractor agreed to use a translator and after 2 days of intensive mediation the matter was resolved, and work resumed. Neither Counsel nor Solicitors were used as both sides used party representatives who were knowledgeable in construction and the particular project.

- The construction of a tunnel and road project in India, disagreement as to the terms of instruction - £560 Million at stake. Litigation had begun in the Indian Courts and after one year and an impending trial the matter was sent to Mediation. The Mediation took 5 days and resulted in a complete settlement and the successful completion of the project. Both sides had Counsel.

- EUR 710 Million dispute over the fitness for use and structural engineering issues related to an international airport, aircraft repair facility and aircraft construction facility, which involved 5 parties and the concerned governmental authorities. After 3 days of intensive mediation the matter settled to the satisfaction of all parties and work resumed on the project resulting in a successful completion.

- EUR 950 Million dispute over the construction of a Port Facility and related infrastructure. 10 Day mediation resulted in full resolution of all issues.

### **Recent Arbitrations**

- £180 Million construction arbitration over engineering issues on the construction of a 40 hectares free-span inter-connected truss design for a production facility in China. This matter involved UK engineers, a Japanese Contractor and German and South African suppliers.

- £35 Million commercial arbitration involving road construction project in China with issues relating to performance and extensions of time.

- £148 Million construction arbitration dealing with the construction of a naval docking facility and issues over delay in construction, and quality of workmanship issues involved claims.

- £179+ Million arbitration regarding extensions of time, quality of work, delay claims involving a tunnel project in Asia.
- EUR 545 Million construction arbitration of delay and defects in the construction of a Nuclear Power Plant.

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