

Brief CV of Derek Fung

[updated on 21 July 2017]

Barrister and Engineer

LLB, MA (Arbitration), MSc, FCIArb, CEng, MIET, MHKIE.

Contact

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Profile

- Qualified as a **Barrister** in Hong Kong. Practising in Civil / Criminal work. Focus in Arbitration, Construction, Contracts and Commercial
- Also qualified as a professional **Engineer** and over 25 years' post-qualification experience in project management and delivery of Railway, Infrastructure and Building projects
- Profound knowledge in **engineering, law, contract conditions** and **dispute resolution**.
- Languages: English and Chinese (Cantonese and Putonghua)

Education & Professional qualifications

2016 HKIE Adjudicator course

2016 China Shipping Law course, organized jointly by HKU & Dalian Maritime University

2013 Dispute Resolution Advisor course, organized jointly by HKIAC & HKIE

2002 MSc in Information Engineering, Chinese University of HK

1997 MA in Arbitration & Dispute Resolution, City University of HK

1996 PCLL (Postgraduate Cert in Laws), University of HK

1993 LLB (Bachelor in Laws), University of London

1985 Engineering Council Part 2 Examination (equivalent to UK engineering degree)

2015 Arbitrator, HKIE List of Arbitrators.

2015 Barrister-at-law, HK Bar Association [1999 Admitted in HK]

1998 FCIArb (Fellow of the Chartered Institute of Arbitrators, UK)

1991 MHKIE (Member of the Hong Kong Institution of Engineers)

1988 CEng, MIET (Chartered Engineer & Member of Institution of Engineering & Technology, UK, formerly the Institution of Electrical Engineers)

Areas of current practice as Barrister [2014-Present]

Arbitration / Construction disputes, Civil / Commercial litigations, Planning / Environmental, Regulatory / Criminal offences, Matrimonial, Probate and Mediation.

For Civil proceedings – Acted as Counsel representing parties; handled interlocutory applications (pleading amendments, summary judgement) and trial; provided legal advice, compiled court documents including pleadings, skeleton submissions and grounds for appeal.

For Criminal proceedings – Acted as defence Counsel for defendants in general crime, traffic offences and magistracy appeal. Also involved as duty lawyer in the Duty Lawyer Service at Magistrates’ Courts, and participated in its Free Legal Advice scheme at District Office.

Counsel experience in handling Construction related disputes

- Counsel representing the Main Contractor to pursue its claim and resist the Architect’s counterclaim for disputes in the final contract sum for renovation works completed for a prestigious Club. Key issues include whether the Contractor is entitled to extra costs for changes executed, and the proper approach in quantifying **the remeasurement items, provisional items and variations items of the final account.**
- Counsel representing the Sub-contractor to pursue its counterclaim and resist the Supplier’s claim for disputes in contract performance arising from a no. of similar purchase orders which provide for the supply of fabricated steelwork to 6 projects. Key issues include whether there is any breach of contract, if so, by whom; and whether each contract includes any **express terms, oral terms and implied terms** relevant for the provision of mill certificates and payment terms for steelwork delivered to project sites.
- Counsel representing the 2nd tier Sub-contractor to pursue its claim and resist the 1st tier Sub-contractor’s counter-claim for disputes arising from a sub-contract for the disposal of excavated materials from a railway project site. Key issues include whether there is **any breach resulting in repudiation, if so, by whom and the damages payable** for such repudiation.
- Provided legal opinion to the curtain wall Manufacturer as to the **merits of its claim to enforce in HK the judgement sum of a PRC judgement** obtained in its favour against the Sub-contractor for disputes over curtain wall work designed and supplied for a Singapore project; and the approach to deal with the **repudiatory breaches and damages** alleged in the counterclaim by the Sub-contractor, and the approach to pursue its own counterclaim to counterclaim for 2 similar HK projects.
- Provided legal opinion to a property Owner regarding any **merits for legal action and the approach for seeking civil remedies arising from serious water leakage and construction defects** of a newly acquired premises.
- Providing legal opinion to the Main Contractor on **interpretation of contract terms relevant to additional work executed** under a renovation work contract for premier office floors, and the extent of any entitlement to additional costs for such work executed.

Projects experience and expertise [1988-2014]

Over 25 years’ extensive experience as professional engineer in Construction Management, Procurement, Contracts Management, Claims Assessment (Extension of Time and Costs Claims), Final Account and Settlement. Undertook various project management posts in major railway / infrastructure projects as listed below.

Reference projects – Civil projects

- **HyD Central-Wanchai Bypass Project**, Contract HY/2009/19 (2013 – 2014, as Commercial Manager of Chun Wo)
- **CEDD Liantang / Heung Yuen Wai Project**, Contract 3 (same as above)

- **HyD Shenzhen Western Corridor and Deep Bay Link Project**
(2004 – 2005, as Senior Resident Engineer of Ove Arup & Partners)

Railway projects

- **Operating Railway projects - Station Improvement Works, Systems Replacement Works and Maintenance contracts**
(2007 – 2012, as Contracts Administration Manager of MTR).
- **Railway Extension projects of KCR – Ma On Shan Line, Lok Ma Chau Spur Line and Southern Kowloon Link**
(2005 – 2007, as Senior Manager - Railway Systems Contracts of KCR).
- **Two IFC at Hong Kong Station**
(2003 – 2004, as Project Manager (Property) of MTR Property Div).
- **New Railway projects of MTR - Tseung Kwan O Line, Quarry Bay Relief Works and Airport Railway**
(1993-2003, as Senior Construction Engineer of MTR Projects Div).

Other Infrastructure projects

- **DSD North West Kowloon Sewage Disposal Project**
(1990-1992, as Resident Engineer of Watson Hawsley (HK) Ltd).
- **Aurayai Gas Based Combined Cycle Thermal Power Plant** in India
(1988-1990, as Project Engineer of HEC seconded to the turnkey contractor).

Publications

Articles published in the *Journal of Hong Kong Institution of Engineers*:

- “AG v Shimizu: Compound or Simple Interest”, May 1998;
- “When an Arbitrator errs”, April 1998;
- “Update on Alternative Dispute Resolution in Government Projects”, January 1997.