

Dato' Nitin Nadkarni

A lawyer with a reputation for energy, construction, and tax disputes.

Nitin is a Consultant and Head of the Firm's International Arbitration and Tax, Customs & Trade Practices. His main area of practice is in international arbitration, with a focus on oil & gas, energy, construction, engineering, and infrastructure projects. Nitin also handles income tax and customs litigation and disputes.

With over 38 years of experience, Nitin has represented major governmental organisations, multinational corporations, national and international contractors, sub-contractors, financial institutions, and high-profile individuals in arbitration, litigation, income tax, and customs disputes.

Nitin has acted as counsel, or sat as an arbitrator, in disputes arising from projects in, or arbitrations seated in, Malaysia, Singapore, South Korea, London, Switzerland, Vietnam, the United Arab Emirates, Sudan, Paris, and Algeria under ad hoc and institutional rules.

In the first case of its kind in Malaysia, he currently represents the Republic of Zimbabwe before the Malaysian courts, to resist applications by Swiss and German investors to enforce ICSID arbitration awards.

Nitin has also acted as counsel in benchmark income tax disputes on major points of tax law. Remarkably that the Tax team has "demonstrated that they are up to date with developments in the law", **Chambers Asia-Pacific 2022 – 2024** notably ranked Nitin as a "Band 2" practitioner in Tax Practice, as well as a "Band 1" practitioner in Construction practice. They have also noted that he is "vastly experienced on construction cases and incredibly intelligent", and "has extraordinary breadth of experience".

He has been consistently ranked by **Chambers & Partners** as a leading lawyer (Band 1 from 2013-2023) who is very polished and sought-after, and by Asia-Pacific Legal 500 as a leading dispute resolution, and real estate, and construction lawyer, who is highly regarded for construction disputes. **The Legal 500 Asia-Pacific 2024** ranked Nitin as a "Leading Individual" in three categories (Dispute Resolution, Real Estate and Construction, and Tax). He has also been recognised as an "Elite Practitioner" by **Asialaw 2023/2024** and as a "Litigation Star" for Construction by **Benchmark Litigation Asia-Pacific 2023**. At the 8th **Asian Legal Business Malaysia Law Awards** held virtually in July 2021, Nitin was named "Dispute Resolution Lawyer of the Year", and at the **Benchmark Litigation Asia-Pacific Awards 2023**, Nitin was recognised as "Malaysia Lawyer of the Year".

In its January-February 2022 issue, **Asian Legal Business**, a leading provider of legal news and information for legal professionals in the region, recognised Nitin as one of Asia's Top 15 Litigators 2022. The second edition of the annual ranking highlights 15 of the region's outstanding lawyers who have demonstrated their ability to solve complex problems and adapt quickly to changing circumstances, especially since the outbreak of Covid-19. Nitin is the only Malaysian lawyer in the list.



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Qualifications

- LLB Hons, London School of Economics and Political Science
- Called to the Bar of England and Wales (Middle Temple)
- Advocate & Solicitor, High Court of Malaya

Practice Areas

- International Arbitration
- Construction & Engineering
- Infrastructure Projects
- Energy & Natural Resources
- Media
- Income Tax & Customs Disputes

Professional Affiliations

- Chairman, Arbitration Sub-Committee of the Malaysian Bar Council (2015-2017, 2019-2024)
- Co-Chairman, Arbitration and Construction Law Sub-Committee of the Malaysian Bar Council (2017-2019)
- Fellow, Malaysian Institute of Arbitrators
- Panel Arbitrator, Asian International Arbitration Centre
- Panel Arbitrator, International Chamber of Commerce Malaysia
- Panel Arbitrator, Singapore International Arbitration Centre
- Panel Arbitrator, China International Economic and Trade Arbitration Commission
- Panel Arbitrator, Bangalore International Mediation, Arbitration & Conciliation Centre
- Panel Arbitrator, Hainan International Arbitration Court
- Panel Arbitrator, China Chongqing Arbitration Commission
- Accredited Mediator, Malaysian Mediation Centre

Selected Experience

Commercial

- Counsel for the Republic of Zimbabwe to resist applications by Swiss and German investors to enforce ICSID arbitration awards before the Malaysian courts.
- Counsel in an arbitration arising from the contamination of base oils.
- Counsel for the owner in commercial disputes in relation to a seawater desalination plant.
- Co-counsel in a Swiss arbitration in respect of claims exceeding Euro 60 million arising out of the breach of a logistics contract.
- Counsel for the owner in an arbitration arising out of a defective wastewater treatment plant.
- Counsel for hotel owners in a commercial arbitration in Singapore.
- Counsel in series of telecommunications arbitrations in respect of the supply of a WiMax system.
- Counsel in an arbitration claiming RM30 million on a fire insurance policy.
- Counsel in a lawsuit for RM100 million against former directors of a listed company for fraud and breach of fiduciary duties.
- Counsel in a lawsuit for newspaper claiming RM300 million against media survey company.
- Counsel in an arbitration arising out of concession agreements related to KLIA.

Energy, Natural Resources & Utilities

- Counsel in an arbitration involving disputes relating to the defective fabrication and workmanship of one of the largest integrated petrochemical facilities in Malaysia.
- Counsel for various independent power producers in commercial arbitrations which have involved issues relating to, among others, the operation and maintenance of power stations, generation capacity payments under power purchase agreements (PPAs), and the operation, and maintenance of the Malaysian Grid System.
- Advising on payment-related disputes in relation to commercial rates for Capacity Payments and Energy Payments, including adjustments to the Fixed Operating Rate and Variable Operating Rate, under various long-term power purchase agreements.
- Advising the owner of one of the largest integrated petrochemical facilities and largest single construction project in Malaysia on all aspects of day-to-day legal risk management and dispute avoidance.
- Counsel for the owner in disputes concerning construction and design defects in the boiler and auxiliary systems of a coal-fired power plant.
- Counsel in a French-seated ICC arbitration involving disputes arising out of a suite of civil law-governed agreements in relation to a seawater desalination plant in North Africa.

- Advising on construction and transmission-related issues concerning power transmission lines.
- Counsel in an arbitration arising out of the construction of the Bakun dam.
- Counsel for the EPC contractor in relation to the construction of a Gas Compression System in Sarawak.
- Counsel for the owner against insurers in a lawsuit for RM30 million in respect of a "naphtha cracker" petrochemical facility which exploded on start-up.
- Counsel for the owner in a series of arbitrations (against insurer, engineer, and end user) arising out of a post-completion explosion at petroleum shore tank facilities.
- Counsel for the owner in an arbitration in relation to a methanol petrochemical plant construction contract.
- Counsel for the contractor in disputes arising out of the construction of petrochemical facilities in Sudan.

Construction

- Counsel for the contractor in a billion-ringgit dispute arising out of a design-and-build contract in the Middle East.
- Counsel in an arbitration for the contractor in a RM2 billion dispute involving the construction of mixed development project.
- Counsel in an arbitration claim and counterclaim exceeding RM200 million arising out of the failure of reclamation works.
- Counsel in an arbitration claim and counterclaim exceeding RM350 million arising out of the construction of a museum and resource centre.
- Counsel in an arbitration involving claims and counterclaims exceeding RM200 million arising out of the construction of a cable stay bridge and approach roads.
- Counsel for sub-contractor in an arbitration involving construction of an elevated highway.
- Counsel for a Malaysian statutory authority in relation to an arbitration for RM110 million arising from the construction of a road on the east coast of Malaysia.
- Counsel and advisory works to a contractor in a dispute with the Federal Government arising out of the construction of a new road.
- Counsel for a contractor in a mediation for a claim exceeding RM100 million arising from the construction of a hospital.
- Counsel in a lawsuit arising out from the construction of a marine jetty in Fujairah, UAE.
- Counsel for an Australian main contractor in a RM100 million arbitration arising from the construction of the KLIA catering facility.
- Counsel for a Japanese contractor in disputes with the owner concerning the construction of a luxury apartment block and an office tower in KL.
- Counsel in an arbitration arising out of the construction of KLIA 2.
- Counsel for developers and contractors in litigation arising from various housing projects, hospitals, and buildings.
- Counsel for a main contractor in disputes arising from the expansion of the KL Monorail Fleet.
- Counsel in an arbitration arising out of the construction of military facilities.
- Counsel for owner in an arbitration arising out of the construction of a luxury hotel in Kuala Lumpur.
- Counsel for a Japanese contractor in an arbitration arising out of the construction of a high-rise office tower in Johor Bahru.
- Counsel for a Malaysian owner in a lawsuit arising from the construction of an office complex by Japanese contractor.
- Counsel for a developer in a RM100 million lawsuit by a contractor arising out of the construction of a hotel, shopping complex, and office tower.
- Counsel in an arbitration arising out of a co-ordination and cost-sharing agreement for the construction of expressways.
- Advised on numerous work packages arising out of the construction of Malaysia's Light Rail Transit 3.

As Arbitrator:

- Sole arbitrator in an international arbitration arising out of a failed commercial venture in Vietnam.
- Sole arbitrator in an arbitration arising out of a commercial contract for the provision of educational services.

- Sole arbitrator in a construction dispute in relation to the construction of a multipurpose hall.
- Sole arbitrator in a construction dispute in relation to the construction of educational facilities.
- Sole arbitrator in a construction dispute arising out of the construction of an oil & gas facility.
- Sole arbitrator in a dispute arising out of a government construction contract in relation to healthcare facilities.
- Sole arbitrator in a dispute in relation to insurance policy for the construction, completion, and commissioning of a shopping complex.
- Sole arbitrator in a commercial arbitration arising out of a contract for the maintenance of mechanical pipelines in Sabah and Sarawak.
- Sole arbitrator in a dispute arising out of a government construction contract for infrastructural facilities in Sarawak.
- Co-arbitrator in a dispute arising out of a sale and purchase agreement for acquisition of capital of a company.

Tax

- Counsel for Cash Band Berhad, a subsidiary of a State Government in a landmark dispute at the Special Commissioners of Income Tax (SCIT) and the High Court on whether proceeds received from a joint venture development are chargeable to income tax.
- Counsel for Sandakan Edible Oils, the Malaysian subsidiary of a Fortune Global 500 company in a landmark transfer pricing appeal at the SCIT and High Court on the interpretation of Section 140A of the Income Tax Act 1967 and the Income Tax (Transfer Pricing) Rules 2012.
- Counsel for Hicom Automotive Manufacturers (Malaysia) Sdn Bhd in a landmark judicial review application on the interpretation of excise valuation laws quashing excise duties imposed on vehicles.
- Counsel for Dyson Manufacturing Sdn Bhd in a judicial review application quashing Goods and Services Tax imposed on research design and development services rendered to an associated company in Singapore.
- Counsel for a Malaysian plastic components manufacturer, Seiwa-Podoyo (M) Sdn Bhd, in a tax appeal at the High Court on the company's eligibility to claim reinvestment allowance and the Director General of Inland Revenue's (DGIR) powers to issue time-barred assessments.
- Counsel for Club Twenty-One Retail (Malaysia) Sdn Bhd, a leading importer and retailer of luxury goods in a dispute with the Director General of Customs (Customs) on the company's eligibility to obtain a special refund of sales tax paid under the Goods and Services Tax Act 2014.
- Counsel for a subsidiary of SAP, a German multinational software company in a tax appeal at the SCIT and the High Court on the imposition of time-barred assessments and penalties under Section 112(3) of the Income Tax Act 1967 (ITA) against the company.
- Counsel for a subsidiary of a leading Malaysian conglomerate in property development in a tax appeal at the SCIT. The appeal concerns issue of the taxability of the company's gains from a disposal of property and its application for relief under Section 131 of the ITA.
- Counsel for a global banking group in a tax dispute involving income tax incentives granted to the company.
- Counsel for the Malaysian subsidiary of a leading Japanese supplier of cut flowers in a tax appeal at the High Court and Court of Appeal concerning industrial building allowance and increased exports allowance.
- Counsel for Tower Real Estate Investment Trust, a listed real estate investment trust ("REIT") in its appeal at the SCIT and High Court against real property gains tax assessments raised by the DGIR.
- Counsel for Transocean Drilling Sdn Bhd, the Malaysian entity of a global drilling company in a landmark dispute at the High Court on the DGIR's powers to impose penalty under Section 112(3) of the ITA.
- Represented the Swiss and Malaysian entities of a global software company in 2 separate judicial review proceedings at the High Court. The dispute concerns the definition of royalty in the Malaysian ITA and the Swiss-Malaysian DTA.
- Counsel for a Big 4 consultancy, who were acting as the professional liquidators of a company. in a RM 113+ million dispute with the DGIR concerning the taxability of gains from disposal of property during liquidation.
- Counsel for Transocean Drilling Sdn Bhd on the penalties imposed by DGIR. The issue turned on whether the DGIR could treat as null and void tax returns filed late.
- Counsel for Mass Rapid Transit Corporation Sdn Bhd on challenging assessments which disallowed the deduction of the operating expenditure incurred for the Klang Valley Mass Rapid Project.

Notable Publications

- Contributor — Malaysia Secures Arbitration Win In Rebuke To Alleged Sulu Heirs, ALB September Asia (2023)
- General Editor — Spotlight on Current Malaysian Tax issues, LHAG (2020)
- Contributor — Hishamudin Yunus: Celebrating Judicial Independence, LHAG (2018)
- Contributor — The Legal 500 (Legalease): Construction, Country Comparative Guide (Malaysia)
- Contributor — The Malaysian Civil Procedure 2013, 2015, 2018 and 2021 by Sweet & Maxwell Asia
- Contributor — Arbitration in Malaysia, A Practical Guide (2016, Sweet & Maxwell)
- Contributor — Arbitration World, International Series (2016, Thomson Reuters)
- Trans-Pacific Partnership Agreement: The Continued March of Private Justice? [2016] Law Review 574

Accolades

The Legal 500

Leading Individual 2016 to 2024 for Dispute Resolution

Leading Individual 2022 to 2024 for Tax

Leading Individual 2023 to 2024 for Real Estate and Construction

"Nitin Nadkarni was clear in his advice. He is concise and summarises his points in ordinary terms for the layman to understand. Jason Tan Jia Xin was very supportive and kept his clients in the know on what was happening in the courts."

"Nitin Nadkarni and Ivy Ling Yieng Ping have consistently demonstrated a client-centric approach. The promptness of their responses, clear and concise communication, and willingness to answer our questions have been commendable."

"Nitin Nadkarni offers strategic legal solutions with sound commercial reasoning."

"Nitin Nadkarni, the head of construction disputes, is a prolific arbitrator as well as being the authority on defamation."

Chambers and Partners

Leading Lawyer 2013 to 2024 (Band 1) for Construction and Dispute Resolution

Leading Lawyer 2022 to 2024 (Band 2) for Tax

"Nitin Nadkarni is a leading figure in the field of construction arbitration and litigation. Described as a very competent advocate, his practice focuses on oil and gas and energy matters. He also acts regularly in commercial disputes, including media disputes."

"Partner Nitin Nadkarni is one of the most sought-after construction disputes experts. He's very polished, so when it comes to court advocacy it helps a lot and he is very thorough in his work, say clients."

"Nitin Nadkarni is highly specialised in the construction sector, particularly in arbitration proceedings. He is highly active with arbitration disputes, representing an impressive portfolio of clients."

"Sharp advocate who presents his cases decisively and convincingly."

"With over 35 years of experience, Nitin Nadkarni is frequently cited as a leading figure for construction disputes. Especially active in international arbitration, he specialises in engineering, infrastructure, and energy mandates, alongside a range of general commercial cases."

Asialaw Profiles

Elite Practitioner 2023/2024 for Construction, Dispute Resolution, and Tax

"Dato' Nitin, who led the team from LHAG, was instrumental in helping us apply their review from a practical perspective. This gave us a clearer idea of the strengths or weaknesses of an argument that could be presented."

"Dato' Nitin is always available even for quick free calls, providing direct and clear responses."

Elite Practitioner 2020- 2023 for Construction and Dispute Resolution

Leading Lawyer 2017-2019 for Construction and Real Estate, Dispute Resolution, Energy and Natural Resources

"Construction is another area in which the firm excels. Led by partner Nitin Nadkarni, the firm is frequently involved in construction arbitration and litigation involving developers and multinational corporation."

Benchmark Litigation, Asia Pacific

Dispute Resolution Star 2019-2022 for Commercial and Transactions, Construction, and International Arbitration

Litigation Star 2023 for Construction

Malaysia Lawyer of the Year 2023

Asian Business Law Journal's A-List

Malaysia's Top 100 Lawyers – International Arbitration

Asian Legal Business Malaysia Law Awards

Asia's Top 15 Litigators 2022

Dispute Resolution Lawyer of the Year 2021