

## SHAWN CHONG SEOW NYEE



### **Qualifications:**

Degree in Building Economics & Quantity Surveying (BSc - Hons) - Heriot Watt University, Edinburgh

Post Graduate Diploma in Computer Science (PGDip) - University of North London, United Kingdom

Masters in Business Administration (MBA) - University of Westminster (PCL), United Kingdom

Masters in Construction / Project Management (MSc) - University of South Bank, United Kingdom

Masters in Construction Law & Dispute Resolution (MSc) - University of Central Lancashire, United Kingdom

Certificate in Adjudication – Asian International Arbitration Centre

### **DIRECTOR**

### **Memberships and Associations:**

Member of the Royal Institution of Chartered Surveyors (MRICS)

Member of The Chartered Institute of Building (MCIOB)

Member of The Royal Institution of Surveyor Malaysia (MRISM)

Registered International Cost Engineering Council (Reg. ICECA)

Registered QS with Board of Quantity Surveyor Malaysia (Reg. QS)

Accredited Chartered Construction Manager

### **Geographical Experience:**

Malaysia, Singapore And United Kingdom

**Home Office:** Malaysia

**Email:** shawn.chong@charltonmartin.com

## Summary

Shawn is a well-qualified multi-disciplinary professional with over 31 years of experience in construction, engineering, energy and infrastructure projects. His experience on large scale projects covers many sectors, executed under various contractual arrangements, inter alia, Traditional Contracts, Management Contracting, Construction Management, Design & Build, Turnkey, BOT, PFI and PPP. Shawn specialises in the provision of dispute related services, having previously been employed in two major contract consultancy groups and as senior commercial manager of a large multi-national company where he headed the commercial and risk division, managing and directing operation resources, oversees contract administration, arbitration, adjudication, and other legal matters. The combination of his technical, quantity surveying, project management, IT, law and business administration skills enables him to assist clients in a broad range of issues and maximising the prospects of success in a cost-effective manner. He counsels employers, contractors and subcontractors in commercial, retail, office, residential, civil engineering, industrial park, power plants and airport projects and was recognised for his ability to effectively resolve complex and difficult commercial and contractual matters.

## Sector Experience (Detailed Sector Sheets Available Upon Request)

- Oil & Gas
- Commercial and Residential
- Utilities
- Infrastructure
- Power
- Transportation

## Employment

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<b>2013 - Present</b>	<b>Charlton Martin Consultants Sdn Bhd</b> Director
<b>2011 - 2013</b>	<b>Hill International Malaysia Sdn Bhd</b> Technical Director
<b>2010 - 2011</b>	<b>Trett Consulting, Malaysia</b> Senior Consultant
<b>2008 - 2010</b>	<b>WT Partnership, Singapore</b> Senior Associate
<b>1999 - 2008</b>	<b>SP Setia Berhad</b> Senior Commercial and Risk Manager
<b>1993 - 1999</b>	<b>Juru Ukur Bahan Malaysia/Davis Langdon &amp; Seah Malaysia</b> Senior Associate
<b>1998</b>	<b>Putrajaya (Secondment)</b> Claim Consultant
<b>1993</b>	<b>Crow Vontrend Sdn Bhd (Secondment)</b> Information Manager
<b>1991 - 1993</b>	<b>Calford Seaden Partnership</b> Employer's Agent
<b>1989 - 1991</b>	<b>Gleeds, London</b> Project Quantity Surveyor
<b>1987 - 1989</b>	<b>Acer Butler &amp; Chappell, London</b> Quantity Surveyor
<b>1984 - 1985</b>	<b>Sukat Bahan Malaysia</b> Technical Assistant
<b>1984</b>	<b>Haw Swee Construction Sdn Bhd</b> Technical Assistant

## Arbitration Experience

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### As Expert Witness

\* (denotes testimony given in court/arbitration proceedings)

Year	2012
Project	Educational Facilities
Client	Respondent Contractor (Malaysia)
Other Party	Sub-Contractor (Malaysia)
Role	Quantum Expert*
Dispute Amount	RM1 Million
Dispute	Variations, Final Payment
Year	2012
Project	Bridge
Client	Respondent Contractor (Malaysia)
Other Party	Sub-Contractor (Malaysia)
Role	Quantum Expert*
Dispute Amount	RM7 Million
Dispute	EOT, Variations, Loss & Expense, Final Payment
Year	2012
Project	Bridge
Client	Respondent Contractor (Malaysia)
Other Party	Sub-Contractor (Malaysia)
Role	Quantum Expert*
Dispute Amount	RM29 Million
Dispute	EOT, Variations, Loss & Expense, Final Payment
Year	2012
Project	Bridge
Client	Respondent Contractor (Malaysia)
Other Party	Sub-Contractor (Malaysia)
Role	Quantum Expert*
Dispute Amount	RM26 Million
Dispute	EOT, Variations, Loss & Expense, Final Payment
Year	2013
Project	Office Tower
Client	Respondent Contractor (Singapore)
Other Party	Sub-Contractor (Singapore)
Role	Quantum Expert*
Dispute Amount	S\$600,000
Dispute	Variation, Loss & Expense
Year	2014
Project	Police quarters and facilities
Client	Claimant Contractor (Malaysia)
Other Party	Main Contractor
Role	Delay & Quantum Expert*
Dispute Amount	RM110 Million*
Dispute	EOT, Variations, Claims arising from termination

## Arbitration Experience

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### As Expert Witness

\* (denotes testimony given in court/arbitration proceedings)

Year	2015
Project	Road to Kawasan Akuakultur, Sungai Como, Tasik Kenyir Trengganu
Client	Claimant Contractor (Malaysia)
Other Party	Government Body
Role	Expert Witness*
Dispute Amount	RM25 million
Dispute	Quantum

Year	2016
Project	Sewerage System, Kota Kinabalu Sabah Malaysia
Client	Defendant Contractor (Malaysia)
Other Party	Sub-Contractor (Malaysia)
Role	Expert Witness*
Dispute Amount	RM3 million
Dispute	Quantum

Year	2016
Project	Army Camps
Client	Claimant Main Contractor (Malaysia)
Other Party	Respondent Employer (Malaysia)
Role	Expert Witness
Dispute Amount	RM500 Million
Dispute	EOT, Variation, Loss & Expense, Prolongation Costs

Year	2017
Project	Secondary Technical School Selangor Project
Client	Defendant Sub-Contractor (Malaysia)
Other Party	Claimant Main Contractor (Malaysia)
Role	Expert Witness*
Dispute Amount	RM11 million
Dispute	Unlawful Termination & Damages

### Expert Witness Support

Year	2010
Project	Expressway
Client	Respondent Main Contractor (Malaysia)
Other Party	Sub-Contractor (India)
Role	Advisory to Counsel
Dispute Amount	Rupees 892 Million
Dispute	EOT, Variations, Loss & Expense

Year	2010
Project	Railway
Client	Claimant Main Contractor (China)
Other Party	Employer (Philippines)
Role	Advisory to Counsel
Dispute Amount	USD14 Million
Dispute	EOT, Loss & Expense

## Arbitration Experience (Cont'd)

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### Expert Witness Support

Year	2011
Project	Tunnel
Client	Claimant Contractor (German)
Other Party	Respondent Main Contractor (Malaysia)
Role	Advisory to Counsel
Dispute Amount	RM275 Million
Dispute	Claims arising from termination
Year	2012
Project	Office Tower
Client	Claimant Main Contractor (Malaysia)
Other Party	Respondent Employer (Malaysia)
Role	Delay & Quantum Expert*
Dispute Amount	>RM1 million
Dispute	Loss & Expense Claims
Year	2014
Project	Port
Client	Respondent Main Contractor (Malaysia)
Other Party	Government Body (Malaysia)
Role	Advisory to Counsel
Dispute Amount	RM2 Billion
Dispute	Quantification
Year	2014
Project	Biodiesel Facility
Client	Claimant Employer (Malaysia)
Other Party	Respondent Main Contractor (Malaysia)
Role	Advisory to Counsel
Dispute Amount	RM140 Million
Dispute	EOT, Variation, Loss & Expense, Backcharges, delay damages

## Adjudication Experience

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### As Expert Witness in Adjudication

\* (denotes testimony given in court/arbitration proceedings)

Year	2010
Project	Mixed Commercial Development
Client	Respondent Contractor (Singapore)
Other Party	Sub-Contractor (Singapore)
Role	Quantum Expert*
Dispute Amount	S\$3.5 Million
Dispute	Formation of contract, scope change, Loss & Expense

## Adjudication Experience (Cont'd)

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### As Expert Witness in Adjudication

\* (denotes testimony given in court/arbitration proceedings)

Year	2015
Project	Singapore Chancery
Client	Contractor (Malaysian)
Other Party	Singapore Government
Role	Advice on contractual and commercial issues
Dispute Amount	>1 million
Dispute	Payment

### As Party Representative in Adjudication

Year	2015
Project	Sales Gallery
Client	Respondent Sub-Contractor (Malaysia)
Other Party	Claimant Nominated Sub-Contractor (Malaysia)
Dispute Amount	RM450K
Dispute	Final Account claim for work done & defects

Year	2015
Project	Office Tower
Client	Interior Decorator Contractor (Malaysia)
Other Party	Respondent Main Contractor (Malaysia)
Dispute Amount	RM480K
Dispute	Non-Payment

Year	2016
Project	Office Tower
Client	Interior Decorator Contractor (Malaysia)
Other Party	Respondent Main Contractor (Malaysia)
Dispute Amount	RM100K
Dispute	Non-Payment

Year	2016
Project	Office Tower
Client	Interior Decorator Contractor (Malaysia)
Other Party	Respondent Main Contractor (Malaysia)
Dispute Amount	RM140K
Dispute	Non-Payment

Year	2016
Project	Coal-Fired Power Plant
Client	Claimant Sub-Contractor (Malaysia)
Other Party	Respondent Main Contractor (Malaysia)
Dispute Amount	RM160 million
Dispute	EOT, Variation and Loss & Expense

## Dispute Resolution Experience

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### **Client Representative On Litigation Cases**

#### **Against Sub-Contractors**

Role: Appointed counsel; strategised, influenced & negotiated dispute; quantified claims; collated evidence.

Disputes:

- Contract formation; disputes on work done; value >RM600k; Summary judgement, section 21B
- Advance payment; defective works, delays; disputed re-measured quantities; payment on behalf of materials; termination; value >RM20 million. Tactical manoeuvre via discovery, alleged non-triability of the case based on privilege under the Official Secrets Act
- Payment assignment; privity of contract; implied terms; value >RM500k
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- Payment assignment, privity of contract; value >RM3 Million
- Payment assignment; privity of contract; value >RM1 million; succeeded in striking out application
- Payment assignment, privity of contract; value >RM1 million; complex issues surrounding defective works and unverifiable records & claims
  
- Malfunction and damaged building security works; outstanding & defective works; 3rd party rectification; value >RM3.5 million
- ELV contractor, set off, 3rd party contractors, defective & outstanding works, delays, failure to carry out T&C; value >RM500k
- Non-issuance of CPC; release of retention; set off arose from collapse of retaining wall & slope failure; value >RM300k
- Non-issuance of CPC; release of retention; set off arose from collapse of retaining wall & slope failure; value >RM300k

#### **Against Consultants**

Role: Appointed counsel; strategised, influenced & negotiated dispute; quantified claims; collated evidence

Disputes:

- Additional architectural fees; novation; value >RM3 million
- Outstanding additional C&S consultancy fees; design errors and omissions; scope change; professional negligence; Value <RM1 million

#### **Against Public Listed Corporation**

Role: Appointed counsel; strategised, influenced & negotiated dispute; quantified claims; collated evidence; attended and voted in creditor meetings. The corporation was placed under the care of Danaharta Bhd and subsequently went through a liquidation exercise; Commercial negotiation with appointed Special Administrator and Liquidator

Disputes:

- Recovery of loss and expense arising out of the non-performance of contract and pursuant to the issuance of Corporate Guarantee by the corporation; value >RM29 million

#### **Against Purchasers**

Disputes:

- Rectification works to residential unit; withholding of balance 5% under Sales & Purchase Agreement; obtained court judgement; letter of apologies.
- Alleged defective material, workmanship on residential unit; certiorari proceeding, judicial review, quashed Consumer Tribunal's decision

## Dispute Resolution Experience (Cont'd)

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### **Client Representative On Winding Up Cases**

#### **Against a Sub-Contractor**

Disputes:

- Defective workmanship; delays; installed works not in accordance with specification; scope change; calling of performance bond; winding up proceedings; value >RM16 million

### **Principal Witness On Arbitration Case**

#### **Against a Sub-Contractor**

Disputes:

- Outstanding payment; set off; defective works; delay; scope change; value RM3.5 million

### **Principal Witness On Adjudication Case**

#### **Against a Client**

Disputes:

- Interim EOT 348 days; L&E claim >RM350 million; scope change; L&E; liabilities under D&8; successfully obtaining EOT and adjudication judgment of RM20 million

### **Principal Negotiator On Commercial Settlement Cases**

#### **Against Sub-Contractors**

Disputes:

- Outstanding payment; set off; defective works; pay-when-pay; settled at 38% of RM200k
- Outstanding payment; set off; defective works; pay-when-pay; settled at 40% of RM180k
- Outstanding payment; set off; defective works; pay-when-pay; successfully persuaded contractor to abandon claim amounting to RM90k, Outstanding payment; set off; defective works; pay-when-pay; settled at 40% of RM75k

#### **Against Sub-Contractors**

Disputes:

- Outstanding payment; set off; defective works; pay-when-pay; successfully persuaded contractor to abandon claim amounting to RM150k
- Outstanding payment, pay-when-pay; settled at 27% of RM12k
- Outstanding payment; client's non-issuance of CMGD; defective works, set-off; settled at 35% of RM170k
- Outstanding payment; defective works; set off; scope change; delays; EOT; prolongation claims; value >RM4.5 million, settled at RM1 million



## Contractual / Commercial Experience

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### Principal Negotiator On Commercial Settlement Cases (Cont'd)

#### Against Sub-Contractors (Cont'd)

##### Disputes:

- Outstanding payment; pay-when-pay; successfully persuaded receiver to abandon claim value >RM10 million for a token RM5,000 payment
- Outstanding payment; set off; pay-when-pay; value less than RM100k; settled at 40%
- Outstanding payment; set off; defective works; pay-when-pay; settled at 38% of RM200k
- Outstanding payment; set off; defective works; pay-when-pay; settled at 40% of RM180k
- Outstanding payment, quantum merit; settled at 40% of RM200k
- Outstanding payment; scope change; settled at 40% of RM60k
- Defective works; delays; non-rectification of defective works; successfully persuaded contractor to abandon claim & pay RM280k
- Scope change; set-off; settled at 42% of RM450k
- Prolongation claim; EOT; scope change; set off; court proceeding; application for stay; arbitration; value >RM3 million; settled at 40%
- Final account, outstanding payment, release of retention, uncompleted works, set off, 3rd party rectification; value >RM 2 million

#### Against Consultants

##### Disputes:

- Outstanding consultancy fees, set off, unfulfilled obligations, unsatisfactory & outstanding works, termination of consultancy appointment, high court suit
- Scope change; set off; novated consultant; additional fee claim; value >RM1 million; claim for additional fees subsequently abandoned

#### Power

- Hydro-Electric Project, Malaysia – contract value RM350 Million: Evaluate contractor's claim for additional payment and prolongation costs
- Hydro-Electric Project, Malaysia – claim value RM400 Million: Evaluate contractor's loss and expense claims
- 1000MW Coal-Fired Plant, Malaysia – claim value RM200 Million: Post award contractual and commercial support
- 372MW Hydro-Electric Project, Malaysia – Project value RM1.5 Billion: Post award contractual and commercial support
- PMU 275/132/33KV Project, Malaysia – Project value RM100 Million: Post award contractual and commercial support
- 260MW run-of-the-river hydro-Electric Project, Lao PDR – BOT model: Contractual and commercial support
- 400MW Coal-Fired Plant, Indonesia: Advice on contractual and commercial issues
- 1000MW Coal-Fired Plant, Malaysia - Post award contractual and commercial support
- 15MW Dual Fuel (DG) Plant, Garraf, Iraq - Advice on contractual and commercial issues
- New Conveyor line, upgrading & modification to existing coal handling system, Malaysia – Contractual & commercial support
- New coal unloading Jetty, bulk material handling system, Malaysia – Contractual & commercial support

## Contractual / Commercial Experience (Cont'd)

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### Principal Negotiator On Commercial Settlement Cases (Cont'd)

#### Oil & Gas

- Offshore support facilities, Singapore – contract value S\$350 Million: Advice on contractual and commercial issues
- Oil tank farm facilities, Malaysia – Advice on contractual and commercial issues
- Gas pipeline project, Malaysia – Advice on contractual and commercial issues
- Offshore pipeline S-Kay Installation, transportation & installation, Malaysia – contractual & commercial support

#### Transportation

- Expressway, Malaysia – contract value exceeding RM350 Million: Post award contractual and commercial support
- Expressway, Malaysia – contract value exceeding RM250 Million: Post award contractual and commercial support
- Railway, Philippines – claim value exceeding US\$14 Million: Preparation of Loss & Expense claim
- Airport, Malaysia – contract value exceeding RM1.5 Billion: Post award contractual and commercial support
- Port facilities, Malaysia – contract value exceeding RM2.5 Billion: Advice on contractual and commercial issues

#### Education

- University, Malaysia – Contract value exceeding RM240 Million: Contractual and commercial support

#### Commercial

- Shopping complex, Malaysia – Contract value RM135 Million: Contractual and commercial support
- Shopping complex, Malaysia – Contract value RM250 Million: Contractual advice, negotiation on disputes
- Retail development, Malaysia – Contract value exceeding RM25 Million: Contractual advice, negotiation on disputes
- Theme Park, Malaysia – Daily 99K UoE, Contract value RM310 Million: Contractual advice, negotiation on disputes

#### Against Consultants

##### Office

- Government complex, Malaysia – Claim value exceeding RM120 Million: Preparation of Extension of Time, Loss & Expense claims
- Office tower, Malaysia – Contract value exceeding RM460 Million: Contractual and commercial support
- Office tower, Malaysia – Contract value exceeding RM420 Million: Evaluate contractor's claims for extension of time, prolongation costs, loss and expense, Employer's contra-charges
- Office tower, Malaysia – Claim value RM32 Million: Winding up and liquidation of Contractor's assets
- Government complex, Brunei – Advice on contractual and commercial issues

#### Mixed Development

- Township re-development, Malaysia – Contract value exceeding RM150 Million: Contractual and commercial support
- Township development, Malaysia – GDV RM3.5 Billion: Contractual and commercial support services for developer
- Agropolitan development, Malaysia – Claim value EM68 Million: Contractual and commercial support services
- Mixed commercial development, Malaysia – Contract value RM350 Million: Contractual and commercial support services for developer

## Contractual / Commercial Experience (Cont'd)

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### Principal Negotiator On Commercial Settlement Cases (Cont'd)

#### Residential

- Residential development, Malaysia – Contract value exceeding RM175 Million: Contractual and commercial support for developer
- Residential development, Malaysia – Contract value exceeding RM8 Million: Provide contractual advice on contractual disputes
- Condominium, Malaysia - Contract value RM68 Million: Preparation of extension of time, loss and expense claims
- Fit-out to condominium, Malaysia – Contract value RM9.8 Million: Contractual and commercial support
- Fit-out to condominium, Malaysia – Claim value RM0.5 Million: Contractual and commercial support
- Condominium, Malaysia – Contract value exceeding RM30 Million: Contractual and commercial support

#### Utilities

- Light Industrial, Malaysia – Contract value RM10 Million: Provide contractual advice on contractual disputes
- Chilled water reticulation network, energy transfer station, Malaysia – Contract value RM33 Million: Contractual and commercial support
- Water supply network, Vietnam – Claim value VND 35 Billion: Preparation of prolongation cost claims
- Centralised Sewerage Treatment Plant (Ultimate PE 920K) & Sewerage Conveyance System, Malaysia (480km) – Contract value RM1.5 Billion: Contractual and commercial support

#### Military

- Indoor Range Complex, Singapore – PPP project: Contractual and commercial support
- Light Industrial, Malaysia – Contract value RM10 Million: Provide contractual advice on contractual disputes

#### Sports

- Motor Sports Facilities, Singapore – PPP project: Contractual and commercial support

## Seminar Speaker / Trainer

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50 Common Contractual Problems

Project Risk Management [Public seminar] “Risk Management in Construction Contracts”

Compensation Clauses [In-house seminar]

Payment Provisions and Common Issues [Public seminar]

Project Risk Management [In-house seminar]

Technical use of programmes to control, manage and optimise the project [Public seminar]

Creating a culture for high productivity [Public seminar]

Valuation & Cost Claims [Public seminar] “Construction Claims for Employers, Consultants and Contractors”

“Modified FIDIC 1999 Yellow Book [Plant & Design Build]” [In-house seminar]

Embracing Timely Completion as PJH’s New Culture Conference, “The Foundation of EOT”

## Published Material

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Adjudication – A practitioner’s point of view, Malaysian Society of Adjudicators Journal  
Project Management, Myth & Fallacies, Building Review Journal  
Fundamental of Fast Track Projects, Building Review Journal  
The Relationship Between Procurement System & The Economic Use of Resources,  
Jurutera Journal, Institution of Engineers Malaysia  
The Pursuit of Professionalism, Jurutera Journal, Institution of Engineers Malaysia  
Mutation of Design & Build, The Malaysia Surveyors, Royal Institution of Surveyors  
Malaysia  
Contractor’s Schedule – Myth & Fallacies, Building & Investment Journal  
Contractual Due Diligence, Building & Investment Journal  
The Complete Amateur’s Guide To Property Development, Building & Investment Journal  
Change Order Management – The Key To Project Profitability, Master Builder Journal,  
Master Builders Association Malaysia  
Variant Of Design & Build, Master Builder Journal, Master Builders Association Malaysia  
The A to Z of Effective Design & Build Projects, Master Builder Journal, Master Builders  
Association Malaysia  
The Complete Amateur’s Guide To Construction, Master Builder Journal, Master Builders  
Association Malaysia  
Amateur’s Guide To Project Management, Master Builder Journal, Master Builders  
Association Malaysia  
Quality: Back To Basic, Master Builder Journal, Master Builders Association Malaysia  
Stress – Why We Have Them & How We Handle Them, Berita QS, Royal Institution of  
Surveyors Malaysia  
Procrastination – Why We Have Them & How To Beat Them, Berita QS, Royal Institution  
of Surveyors Malaysia  
Professional Service Marketing – Part 1, 2, 3 & 4, Berita QS, Royal Institution of Surveyors  
Malaysia  
Building Trust in Projects, Building Technology & Management Journal, TAR College  
Project Management: The Industry’s Panacea? Building Technology & Management  
Journal, TAR College  
Design Management – A Malaysian Context, Suara Perunding Journal, Association of  
Consulting Engineers Malaysia  
Buildability, Constructability & Buildable Design, Suara Perunding Journal, Association of  
Consulting Engineers Malaysia  
Buildability: How Relevant Is It To Your Design? Suara Perunding Journal, Association of  
Consulting Engineers Malaysia

## Published Material (Cont'd)

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Productivity Measurement, Suara Perunding Journal, Association of Consulting Engineers Malaysia

Managing Information – Part 1, 2 & 3, Suara Perunding Journal, Association of Consulting Engineers Malaysia

Value Engineering & Design Management, Suara Perunding Journal, Association of Consulting Engineers Malaysia

Value Engineering – A Fresh Approach, Suara Perunding Journal, Association of Consulting Engineers Malaysia

Quality Assurance & Design Management, Suara Perunding Journal, Association of Consulting Engineers Malaysia

Project Quality Plan, Suara Perunding Journal, Association of Consulting Engineers Malaysia

Managing Designers' Work Flow, Suara Perunding Journal, Association of Consulting Engineers Malaysia

Trust – The Foundation of Success, Suara Perunding Journal, Association of Consulting Engineers Malaysia

Idiot's Guide To Meeting, Suara Perunding Journal, Association of Consulting Engineers Malaysia

Performance Appraisal Demystified, Suara Perunding Journal, Association of Consulting Engineers Malaysia

Team Sabotage Tactics, Suara Perunding Journal, Association of Consulting Engineers Malaysia

Devil's Recipe to Personal Finance, Suara Perunding Journal, Association of Consulting Engineers Malaysia

The Secret To Happiness, The Inspirator International

Assertiveness, The Inspirator International

Keeping Life in Balance, The Inspirator International

Secret of Success – Strategies for Maximum Results In Education, Career & Wealth, ISBN 983-72-0555-5