

Specialist Accreditation Scheme

Building and Construction Law

This guide is for legal practitioners and inhouse counsel who are applying for specialist accreditation in Building and Construction Law.

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1.00	1 January 2022		GC
1.01	30 August 2022	Paragraphs 1.2 and 1.3 inserted: Definition of Inhouse counsel and Legal practitioner inserted. Paragraphs 4.1 and 4.2 inserted: Selection Panel interview dates inserted	GC
2.00	1 December 2023	Paragraph 2.3 inserted.	GC
		Paragraph 4.1 amended from “2022 examination preparatory course” to “2024 examination”. The Specialist Accreditation Scheme no longer runs examination preparatory courses.	GC
		Paragraph 4.4 deleted: 4.4. The examination is usually conducted on the first Saturday of September.	GC
		Paragraph 5.2 amended regarding panel selection interview dates.	GC

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1. Definition

- 1.1. *Building and construction legal practice.* This is the practice of law relating to all aspects of development, design and construction of public and private projects. It shall encompass, but is not limited to, all advisory and documentation work undertaken for related stakeholders including contractors, developers, consultants, insurers and financial institutions, prior to the commencement of and all dispute-related work arising from such projects.
- 1.2. *Inhouse counsel.* A lawyer who is employed by corporations, associations, non-profits and other public- and private-sector entities located in Singapore to work in-house on their legal matters.
- 1.3. *Legal practitioner.* Advocate and Solicitor of the Supreme Court of Singapore with a currently valid practising certificate.

2. What this Guide Covers

- 2.1 The Specialist Accreditation Scheme attempts to apply the same accreditation framework, as set out in the Information for Applicants, across all practice areas.
- 2.2 In cases where there are additions to and/or deviations from the said accreditation framework for a particular practice area, a separate Guide for that practice area will state those deviations.
- 2.3 **Applicants should read both the Information Guide for Specialists – General and this Guide.**
- 2.4 This Guide covers the additions to and/or deviations from the Eligibility Criteria and the Examination topics for Building and Construction (B&C) Law.

3. Eligibility Criteria

- 3.1 **Substantial Involvement.** As part of their substantial involvement in this practice area, applicants must have been involved in a trial, arbitration or binding adjudication or statutory adjudication at least as second chair, and/or performed front-end work which can include but is not limited to detailed review, drafting and preparation of contracts.
- 3.2 The following work may also be included when calculating the billable amount/hours:
 - a. Work done in relation to originating summons applications.
 - b. Pro bono work.
 - c. Work done in the applicant's capacity as an adjudicator.
- 3.3 **References.** Applicants shall be required to submit two favourable reference statements from legal practitioners, inhouse counsel, arbitrators or adjudicators in this practice area who can attest to the applicants' involvement and competence in the said practice area, and character.
- 3.4 Arbitrator or adjudicator referees must have arbitrated or adjudicated a matter before whom the applicants have appeared.

4. Examinations

- 4.1. The 2024 examination preparatory course covers the following topics:

Module 1. Introduction

- a. Problems with Construction Delivery
- b. Procurement Principles
- c. Procurement Models
- d. General Standard Forms
- e. Role of a Construction Contract
- f. Challenges and Trends

Module 2. Overview of Construction Disputes

- a. Contract Documents
- b. Contract Formation Issues
- c. The Employer
- d. The Certifier
- e. Fitness for Purpose
- f. Key Areas of Disputes
- g. Summary: The Construction Brief

Module 3. Payment Regime

- a. Overview – Payment
- b. Certification
Impartiality of the certifier
Employer is not liable for certifier
- c. Interim payments under the SIA Conditions
Temporary finality of certificates
Summary judgment
- d. Challenging Certificates
Fraud, improper pressure, non-compliance with terms of contract etc.

Module 4. Security of Payment Act

- a. Introduction and Objectives of the SOP Act and Amendments to the SOP Act
Background and scope of SOP Act
Applicability of the SOP Act
Right to progress payment (due date, amendments to SOP Act, time lines)
- b. Payment Claims and Payment Responses
Timelines for payment claims amended
Prohibited repeat claims
Terminated contracts
Contractual right to serve payment claim under SOP Act
Non-provision of payment response
Cross-contractual set offs in payment response
- c. Adjudication under the SOP Act
Adjudication applications
Adjudication of payment claim disputes
Appointment of adjudicator
Adjudication response
Loss and expense claims
Review of adjudication determination
Challenge to adjudication determination
Setting aside of adjudication determination
Award enforcement

Module 5. Completion

- a. Concept of Completion
Contractor's primary obligation
Time-related obligations
Practical/Substantial completion
Related statutory requirements
Phase/Stage completion
- b. Time for Completion

Express contractual provisions
Absence of contractual provision
Related/Implied terms
Act of prevention

c. Relevance of Completion
Contract compliance and impact
Financial implications

d. Certifier's Role in Completion
Certifier's powers

e. Liquidated Damages
Nature and role
Effect of act of prevention

f. Extension of Time
Nature and role
Scheme/Structure
Interaction between extension of time and liquidated damages clauses
Certifying extension of time
Concurrent delay

Module 6. Termination

a. Repudiation under General Law
Common law termination
Repudiatory conduct
Affirming/Discharging contract
Insolvency
Effect of SOP Act

b. Rights of the Employer and Contractor to terminate the Contractor's employment under REDAS Design & Build Conditions of Contract 4th Edition and PSSCOC 8th Edition
Common law termination
Termination of employment
Termination by employer
Termination by contractor
Termination of employment of contractor and termination of contract
Contractor's claims

d. Remedies for Wrongful Termination
Effect of wrongful termination
Effect of failure to comply with contract conditions termination provisions

Module 7. Post-Completion Matters

a. Requirements to Achieve Completion
Certifying completion

b. Consequential Obligations Imposed on Contractor Post-Completion
Liabilities of contractors during and after maintenance period
Limitation period vis-à-vis latent/patent damage
Standard warranties or indemnities
Final accounts

Module 8. Subcontracting

- a. The Sub-Contracting Relationship
Nominated/Designated subcontractor
Incorporation of main contract terms
- b. Payment Issues
Direct payment by employer?
Pay when paid
- c. Suspension and Termination
Suspension of works
Statutory right to suspend
- d. Termination of Contract
Breach
Repudiation of contract
Consequences
- e. Re-Taking Possession of Goods
- f. Liquidated Damages Claims
- g. Liability Between Employer and Subcontractor
Direct payment by employer to sub-contractor
- h. Drafting Issues and Solutions

Module 9. Defects Claims

- a. What is a defect?
What is a defect in law, contract and negligence?
Professional's standard of care
- b. Legally Responsible Parties
Who can claim?
MCST vs developer/consultant/contractor
- c. Proving the defect
Burden of proof and exception to the rule
- d. Time for Making the Claim
Limitation period under Limitation Act and contract
Defects liability period
- e. Amount that may be claimed
Rectification costs
Diminution in value
Loss of amenity
Duty to mitigate
Remoteness of loss

Module 10. Variations

- a. Nature of Variations
Additions/Omissions
Contract provisions
- b. Power to Order Variations
Valid variation order
Limits of power
- c. Establishing a Variation

Nature of change

d. Ground/Physical Condition Variations
Contract provisions
Contractor's duty to investigate site

e. Valuation of Variations
Valuation methods
Omissions

- 4.2. The examination comprises Parts A and B. Part A covers Modules 5 to 10 (3 hours), while Part B focuses on Modules 3 and 4 (2.5 hours).
- 4.3. The examination comprises scenario-based problems with questions for each problem.

5. Selection Panel Interviews

- 5.1 Similar to the examination, the interview will assess the candidate's grasp and understanding of locally and universally applicable B&C legal concepts and issues.
- 5.2 For 2024, the dates for the Selection Panel interviews will tentatively be held the last week of October and first week of November.