

## Malaysian Construction Law: Expeditious payment dispute resolution through CIPAA 2012

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### 1. What is CIPAA 2012

CIPAA 2012 is the acronym of the Act known as the “*Construction Industry Payment and Adjudication Act 2012*” enacted by the Malaysian Parliament and came into force on 15<sup>th</sup> April 2014. The Construction Industry Payment and Adjudication Regulations 2014 and the Construction Industry Payment and Adjudication (Exemption) Order 2014<sup>1</sup> were both also implemented on 15th April 2014 to complement CIPAA 2012.



CIPAA 2012 is enforced with the aim to provide speedy, timely and cost-effective dispute resolution mechanism in respect of payment disputes in the construction industry. CIPAA applies to all construction contracts in Malaysia except for construction contract of less than four storeys building intended for personal occupation.

### 2. The Application of CIPAA 2012

#### 2.1 The scope of application

Under Section 4 of CIPAA 2012, the term “construction contract” includes consultancy contract. “Consultancy contract” is defined as a contract to carry out the consultancy services in relation to construction work and includes planning and feasibility study,

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<sup>1</sup> The Construction Industry Payment and Adjudication (Exemption) Order 2014 specifies certain contracts which are not governed by the CIPAA 2012. An example of the exempted contract is the construction contract with the Malaysian Government contract for any construction works that involve emergency, unforeseen circumstances and that relate to national security or security related facilities.



architectural work, engineering, surveying, exterior and interior decoration, landscaping and project management services.

## **2.2 The adjudication procedure**

As opposed to the common venue for submission of various disputes resolution available in the Malaysia's legislative system, the adjudication under CIPAA 2012 is specific and unique for the disputes relating to the payment in the construction industry. The procedure is known as an adjudication process where the matter will be presided over by an independent and impartial adjudicator mutually appointed by the parties, who possesses a highly experienced background in the construction law and industry fields, relevant to the dispute's subject matter.

## **2.3 The prospective application**

During the inception of the CIPAA 2012, an issue whether the CIPAA 2012 will apply retrospectively or prospectively arose despite the enforcement was generally viewed favourably by the construction industry. This issue was decided differently by the courts in various cases and finally addressed by a decision of the Federal Court in *Ireka Engineering & Construction Sdn. Bhd. v PWC Corporation Sdn. Bhd. [2020] 1 CLJ 193* that the CIPAA 2012 shall apply prospectively. The Asian International Arbitration Centre ("AIAC"), which administers all adjudication claims under the CIPAA 2012 has since taken the steps to ensure that it will not administer claims arising from contracts executed prior to 15<sup>th</sup> April 2014.

## **3. The procedures - How should contractors claim payments under the CIPAA?**

### **3.1 Issue Notice of Claim**

- (a) When the principal party (end customer) or main contractor has defaulted on a payment due and ignored several demands made, the first step to be is to issue a Notice of Claim which specify that the claim is made by virtue of CIPAA 2012.



- (b) The Notice of Claim should state the nature of the claims, the amount and the supporting document to evidence the outstanding payment. For instance, job completion form, signed delivery order or certificate of acceptance.
- (c) Upon receipt of the Notice of Claim, the principal or main contractor must reply with a Notice of Response to either admit or dispute such claims.
- (d) In the event there is no response at all, the principal or the main contracts is deemed to have disputed the entire claim and the aggrieved party may initiate the adjudication proceeding.

### **3.2 Initiate adjudication proceeding**

- (a) The aggrieved party, as a Claimant in this situation, may serve the Notice of Adjudication against the principal or main contractor which specify that the notice is made by virtue of CIPAA 2012 supported with all the required details and documents.
- (b) Upon receipt of the Notice of Adjudication, the parties may mutually agree to appoint an independent adjudicator to decide on the matter. The matter will then be administered by the AIAC where the adjudication will take place.

### **3.3 Decision by the adjudicator**

- (a) During the adjudication proceeding, the adjudicator will assess the claims, request for further documents and decide on the required payment to be made to the Claimant.
- (b) Upon receipt of this decision, the decision will become enforceable against the principal or the main contractor.

## **4. The rights of the Claimant if the principal or main contractor continue to refuse payment upon decision by the adjudicator.**

- 4.1 Section 28 provides the right of the Claimant to apply for an order to the High Court to enforce the adjudication decision as if it is a judgment of the High Court, upon which the claim can be pursued in High Court if defaulted again;
- 4.2 Section 29 provides that the Claimant may suspend performance or reduce the rate of progress of performance of the construction project without facing any penalty; and
- 4.3 In the case where the Claimant is a subcontractor, the Claimant may request for direct payment from the principal under Section 30.

## 5. Benefits of CIPAA 2012

CIPAA 2012 provides quick resolution avenue with uncomplicated process in respect of payment dispute in constructions industry which takes about only 106 days for the final decision to be obtained. Further to this, the fees applicable to file the adjudication under CIPAA 2012 is relatively cheaper as opposed to fees for claims filed to arbitration or litigation.

Since its inception in 2014, CIPAA 2012 is known to be an effective avenue to resolve non-payment issues as decisions made by the adjudicator will be immediately binding and may be enforceable by the High Court if the Claimant registers such decision in the High Court. CIPAA 2012 is proven to have assisted alleviating cash flows faced by many contracting parties in the construction industry resulting from the non-payment.

If you wish to seek advise on how to proceed with the adjudication procedure in respect of the unpaid payment arising from construction contracts in Malaysia, please do not hesitate to contact us.

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