



OVERVIEW OF ADJUDICATION PROCESS IN MALAYSIA UNDER THE CONSTRUCTION INDUSTRY PAYMENT AND ADJUDICATION ACT 2012 (CIPAA) – RESOLVING A CONSTRUCTION CLAIM WITHIN 100 DAYS (PART 1)

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A. Introduction to Adjudication under the Construction Industry Payment and Adjudication Act 2012

The Construction Industry Payment and Adjudication Act 2012 (“**CIPAA**”) is a legal framework in Malaysia designed to provide a mechanism for speedy dispute resolution through adjudication,¹ alleviate payment problems that presently prevails pervasively which stifles cash flow in the construction industry², and ensure that contractors and sub-contractors are not deprived of cash flow³. It applies to both interim payments and final payment disputes as long as such payment claims are related to a construction contract.⁴

The CIPAA applies to all construction contracts made in writing carried out in Malaysia including construction contracts entered with the Government.⁵ However, the CIPAA does not apply to construction contracts entered by individuals for construction works less than four storeys high intended for personal occupation.⁶

This article provides an overview of the adjudication process under the CIPAA.

B. Key Steps in Adjudication

Step 1: Serving the Payment Claim

The process begins when an unpaid party (“**Claimant**”) who is owed payment under a construction contract serves a Payment Claim in writing on the other party (“**Respondent**”). The Payment Claim must include⁷:

¹ CIPAA, Preamble

² Explanatory Statement of the CIPAA Bill 2011

³ Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd and another appeal [2020] 6 MLJ 224 at [51]

⁴ Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd and another appeal [2020] 6 MLJ 224 at [55] and [56].

⁵ Section 2, CIPAA.

⁶ Section 3, CIPAA.

⁷ Section 5(2), CIPAA; Form 1

- (a) The amount claimed and due date for payment of the amount claimed;
- (b) Details to identify the cause of action including the provision in the construction contract to which the payment relates
- (c) Description of the work or services to which the payment relates; and
- (d) A statement that it is made under CIPAA.

The Claimant must identify the cause of action and all the relevant clauses and/or provisions it intends to rely under the construction contract, to which the payment relates as the Adjudicator's jurisdiction is limited to the matters referred to in the Payment Claim⁸.

Step 2: Serving the Payment Response

The non-paying party being the Respondent who admits to the Payment Claim served on him shall serve a Payment Response within **ten working days** of the receipt of the Payment Claim⁹. The Payment Response may dispute the claim either wholly or partly, stating the amount disputed and the reason for the dispute¹⁰.

Failure to serve a Payment Response within the stipulated time is deemed that the Respondent disputes the entire Payment Claim¹¹.

Nevertheless, it may be worthwhile to submit a Payment Response as it does give an impression on the Adjudicator that the Respondent does not have a good case.

Step 3: Initiating Adjudication

If the dispute remains unresolved after the expiry of the period to serve a Payment Response under Section 6(3) of the CIPAA, the Claimant has a right to refer the dispute to adjudication¹². The Claimant may initiate adjudication proceedings by serving a written Notice of Adjudication to the Respondent and the appointing authority, Asian International Arbitration Centre ("**AIAC**"). The Notice of Adjudication must include¹³:

- (a) Nature and description of the dispute;
- (b) The relief or remedy sought; and
- (c) Supporting documents (if any).

The Claimant shall also within seven days from the date of service of the Notice of Adjudication, register the adjudication at the AIAC by serving a notice on the Director of AIAC together with a non-refundable registration fee payable to AIAC.¹⁴

⁸ Anas Construction Sdn Bhd v JKP Sdn Bhd and another appeal [2024] 2 MLJ 543 at [173] – [174]

⁹ Section 6(3) of CIPAA; Form 2

¹⁰ Section 6(2) of CIPAA

¹¹ Section 6(4) of CIPAA; View Esteem Sdn Bhd v Bina Puri Holdings Bhd [2018] 2 MLJ 22 at [60] to [61]

¹² Section 7 CIPAA

¹³ Section 8(1) of CIPAA; Form 3

¹⁴ Rule 2 of the AIAC Adjudication Rules & Procedure; Guide to CIPAA 2012: Step 2 of Process Flow; Form 3A

Step 4: Appointment of the Adjudicator

An Adjudicator may be appointed in the following manner¹⁵:

- (a) By agreement of the parties in dispute within **ten working days** from the service of the notice of adjudication by the Claimant.

The Claimant shall notify the Adjudicator to be appointed under paragraph (a) in writing and provide him a copy of the Notice of Adjudication¹⁶.

Or

- (b) By the Director of AIAC:
 - (i) Upon the request of either party in dispute if there is no agreement of the parties under paragraph (a); or
 - (ii) Upon the request of the parties in dispute.

The Director of AIAC shall appoint an Adjudicator under paragraph (b) within **five working days** upon receipt of a request¹⁷ and shall notify the parties and Adjudicator in writing¹⁸.

Step 5: Adjudication Proceedings

Upon the confirmation of the appointment of Adjudicator, the Adjudicator would direct parties on the timeline of the adjudication proceedings and other procedural aspects of adjudication proceedings.

- (a) **Adjudication Claim:** The Claimant shall, within **ten working days** from receipt of the acceptance of the appointment of the Adjudicator¹⁹ serve a written Adjudication Claim containing the following to the Respondent and Adjudicator²⁰:

- (i) Nature and description of the dispute;
- (ii) Remedy sought; and
- (iii) Supporting documents (if any).

- (b) **Adjudication Response**

- (i) Upon receipt of the Adjudication Claim, the Respondent shall, **within ten working days** serve a written Adjudication Response to the Claimant and Adjudicator, which shall answer the adjudication claim with any supporting documents.²¹

¹⁵ Section 21 of CIPAA

¹⁶ Section 22(1) of CIPAA

¹⁷ Form 5

¹⁸ Section 23(1) of CIPAA

¹⁹ Section 22(2) or Section 23(2) of CIPAA

²⁰ Section 9 of CIPAA

²¹ Section 10(1) and (2) of CIPAA

- (ii) In the event the Respondent fails to serve the Adjudication Response, the Claimant may proceed with the adjudication after expiry of the time specified²².
- (iii) Further, the Respondent is not precluded from raising its defences in its Adjudication Response which had not been previously raised in its Payment Response²³.

(c) Adjudication Reply

- (i) Upon receipt of the Adjudication Response, the Claimant may, **within five working days** serve a written Adjudication Reply to the Respondent and Adjudicator with any supporting documents.²⁴

Step 6: Delivery of the Adjudication Decision

The adjudicator must deliver a written decision within²⁵:

- (a) **45 working days** from the service of the Adjudication Response or Adjudication Reply to the adjudication response, whichever is later;
- (b) **45 working days** from the expiry of the period prescribed for the service of the adjudication response if no adjudication response is received; or
- (c) Such further time as agreed to by the parties.

The Adjudicator must comply with the strict timelines under section 12(2) of CIPAA²⁶.

C. Practical Considerations for Adjudication

1. To ascertain where the site location of the dispute is. The computation of “Working Days” under section 4 of the CIPAA is based on where the site located: *Encorp Iskandar Development Sdn Bhd v Konsortium Ipmnies Merz Sdn Bhd* [2024] 6 MLJ 821 at [49] to [50].
2. Pay When Paid Clause (Conditional Payment) is null and void in adjudication proceedings under section 35 of the CIPAA: *JDI Builtech (M) Sdn Bhd v Danga Jed Development Malaysia Sdn Bhd (dulu dikenali sebagai Greenland Danga Bay Sdn Bhd)* [2024] MLJU 414
3. The CIPAA applies to all construction contracts made in writing, relating to construction work²⁷ carried out wholly or partly within the territory of Malaysia including a construction contract entered into by the government²⁸ or construction consultancy contract²⁹
4. A non-paying party’s set-off shall only operate to reduce or zeroise an unpaid party’s claim and not as a form of counterclaim: *Tenaga Poly Sdn Bhd v Crest Builder Sdn Bhd* (Originating Summons No. WA-24C-44-06/2016) and *Tera Va Sdn Bhd v Ayam Bintang Istimewa Sdn Bhd*

²² Section 10(3) of CIPAA

²³ *View Esteem Sdn Bhd v Bina Puri Holdings Bhd* [2018] 2 MLJ 22 at [46], [51], [59] – [61], [64] – [66] & [74]

²⁴ Section 11 of CIPAA

²⁵ Section 12(2) of CIPAA

²⁶ *Encorp Iskandar Development Sdn Bhd v Konsortium Ipmnies Merz Sdn Bhd* [2024] 6 MLJ 821 at [54]

²⁷ Section 4, CIPAA

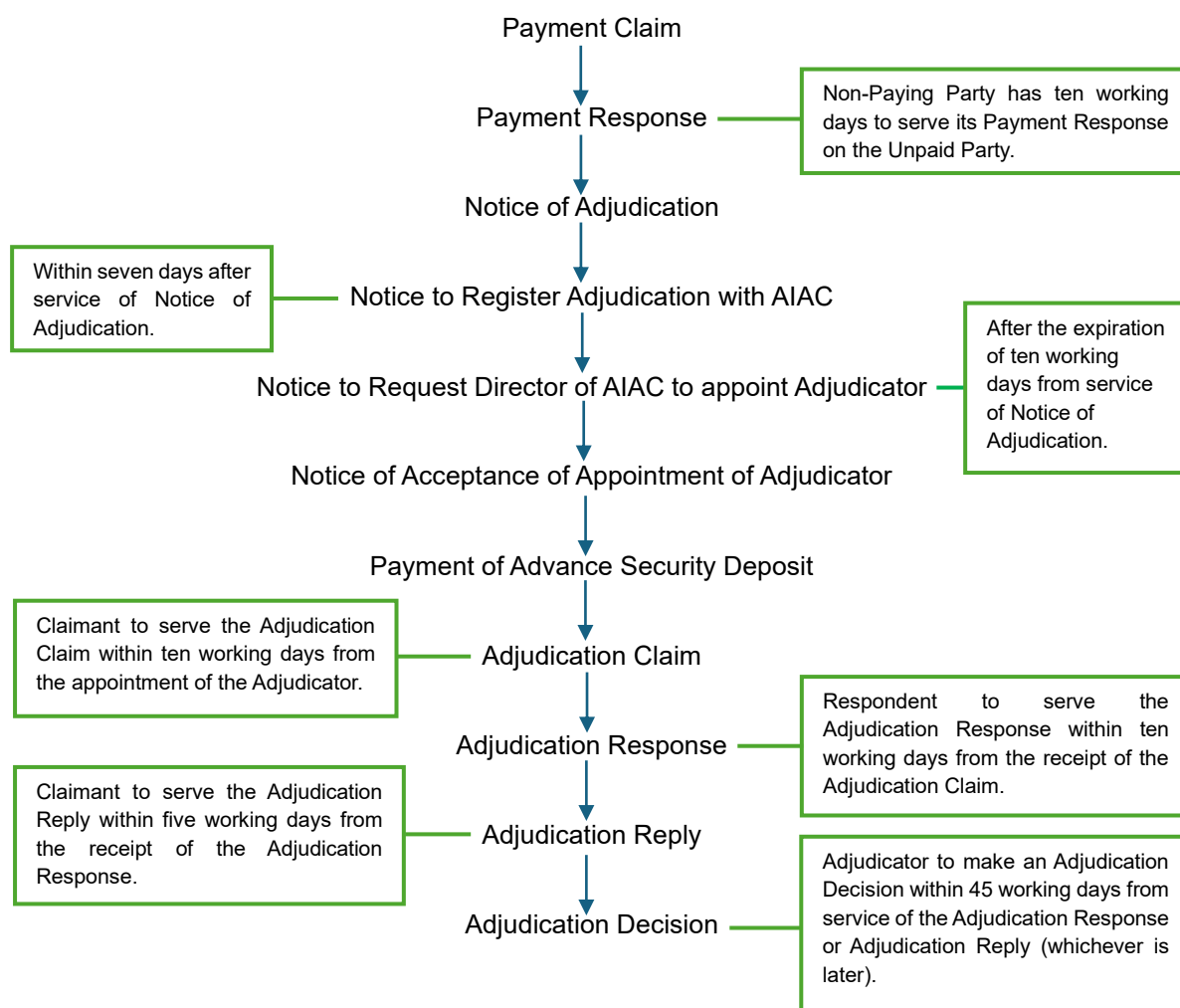
²⁸ Section 2, CIPAA; Para 2 of the Construction Industry Payment & Adjudication (Exemption) Order 2014, *Mudajaya Corp Bhd v Leighton Contractors (M) Sdn Bhd* [2015] 10 MLJ 745;

²⁹ Section 4, CIPAA; *Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd* and another appeal [2020] 6 MLJ 224

[2024] 6 MLJ 849 at [69]

5. The CIPAA does not apply to a construction contract entered into by a natural person for any construction work in respect of any building which is less than four storeys high and which is wholly intended for his occupation.³⁰
6. The right of the unpaid party to refer the dispute to adjudication must be brought in within the limitation period under the Limitation Act (1953) [for Peninsular Malaysia], Sabah Limitation Ordinance or Sarawak Limitation Ordinance.³¹

Whilst the CIPAA provides a comprehensive and speedy mechanism for resolution of construction disputes, it is only intended to provide “temporary finality” to alleviate cash flow issues in the construction industry through the rubric of “pay now, argue later” mechanism.³² The adjudication decision is binding and enforceable, but it is subject always to the dispute between the parties being finally determined by arbitration or the court³³.



³⁰ Section 3, CIPAA

³¹ Section 7(3), CIPAA; *Tenaga Nasional Bhd v Malaysian Resources Corporation Bhd & Ors* [2024] 8 CLJ 134 at [53]

³² *UDA Holdings Bhd v Bistraya Construction Sdn Bhd & Anor* and another case [2015] 11 MLJ 499 at [133]

³³ Section 13, CIPAA.

Further information

Should you have any questions on the implications of this Act or how this development may affect you or your business, please get in touch with the following person:

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