

REVISITING CIPAA 2012 IMPLEMENTATION: ADDRESSING CONDITIONAL PAYMENT AND PROMOTING SUSTAINABLE PAYMENT FLOW IN MALAYSIAN CONSTRUCTION

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Abstract: *The Malaysian construction industry continues to face persistent payment issues, particularly affecting subcontractors. One major contributor is the enforcement of "pay-when-paid" clauses, which delay payments and disrupt project cash flows. In response, the Construction Industry Payment and Adjudication Act (CIPAA) 2012 was introduced to eliminate unfair payment practices and provide a fast, cost-effective dispute resolution mechanism. Yet, payment issues have not been eliminated even though this Act has been implemented for more than 10 years. This study investigates the implementation and impact of CIPAA 2012, with a focus on awareness and experiences among G1–G3 contractors in Perak Tengah. A quantitative methodology was employed using structured questionnaires, yielding 106 valid responses. Findings reveal that "pay-when-paid" clauses remain the leading cause of payment disputes. Despite nearly 90% of respondents having subcontracting experience, only 65% were aware of CIPAA, and less than half understood their rights under the Act. The study highlights the need for increased awareness, better enforcement, and structural reforms to ensure sustainable payment practices within the Malaysian construction industry.*

Keywords: *CIPAA 2012, payment disputes, subcontractors, pay-when-paid, adjudication.*

Introduction

Construction is an important industry which provides structure or shelters used for the purposes of social and business of a nation. It plays an important role for a country's economic growth which provides great support for aggregating economy through backward and forward linkages with other economic sectors. Yet it remains plagued by many types of issues including high uncertainty, lack of standards, poor quality, fragmented and low productivity (Riazi, et al., 2020). Among the ongoing issue related to construction industry is the payment problem; specifically, the "pay-when-paid" clause. This clause delays the payment to subcontractors only after the main contractor is paid by the owner.

Recognizing the damage this causes to cash flow and project timelines; the Malaysian government introduced the Construction Industry Payment and Adjudication Act (CIPAA) in 2012. Despite its enforcement in 2014, issues persist. For example, documented cases such as *View Esteem Sdn Bhd v Bina Puri Holdings Bhd* [2018] 6 MLJ 692, *Jack-In Pile (M) Sdn Bhd v Bauer (Malaysia) Sdn Bhd* [2020] MLJU 1699 reflect the continuing use of such clauses. This paper investigates the implementation and impact of CIPAA 2012, focusing on subcontractors' experiences and proposing measures to ensure a sustainable payment system. According to Badroldin et al. (2018), late payments is still one of the most crucial issues in Malaysia construction industry which shows payment issue has not been reduced even though CIPAA has been

Literature Review

Payment mechanisms available in construction industry include direct payment, payment upon certification, and conditional payment (Supardi & Adnan, 2011). There are clauses stated in PWD203A and PAM2018 in regard to payment towards main contractor and nominated subcontractor/suppliers. However, there is no single clause regarding the payment regarding Payment towards Domestic Subcontractor. This is due to the PAM 2018 and PWD203A relates to the direct contractual relation between the Contractor and the Client.

Conditional payments, particularly "pay-when-paid," are criticized for placing undue risk on subcontractors. Studies show that such practices can lead to insolvency, business failure, and abandonment of projects (Ishak et al., 2019). CIPAA 2012 was enacted to rectify this by rendering such clauses unenforceable (Supardi & Adnan, 2011), yet loopholes remain. According to Christopher and Lee (2018), conditional payment clauses may still be enforceable through arbitration or litigation, limiting CIPAA's effectiveness.

Moreover, awareness and understanding of CIPAA among subcontractors, especially those in smaller firms, remains inadequate (Supardi et al., 2011). A study by Hadi et al. (2018) stated that majority of Small and Medium Enterprise subcontractors in Sarawak were not aware of the CIPAA 2012 and how the Act actually works. Kamal & Flanagan (2014) stated that contractors can be defined in 3 categories which are G1 to G3 were small contractors; G4-G6 were medium sized contractor while G6-G7 were categorised as large construction company. Rasidi (2022) stated that around 90% contractors still experienced payment delay which contrast the CIPAA 2012 purpose. The author also stated that lack of awareness and high adjudication cost are the major obstacles which hinders the Act effectiveness.

Payment issues in Malaysia Construction industry

Payment issues remain a significant challenge impacting the efficiency and sustainability of the construction industry. Some of the underlying factors contribute to the persistence of this issue within the industry is listed below.

Poor financial management by the paymaster

One major cause of payment issues in the Malaysian construction industry is poor financial management by the paymaster. Many clients lack effective cash flow planning and have limited capital to finance their projects. This results in delays or inability to make timely payments to contractors (Ye & Abdul Rahman, 2010). According to Faisal et al. (2019), the key root cause of payment delays is the paymasters' poor financial management.

Employers intentionally withhold payments

Another issue arises when employers intentionally withhold payments. This can be due to defects in the completed work, use of materials that do not meet contract specifications, or general disputes. Some clients deliberately delay releasing retention funds to gain financial advantage (Rourke & Gentry, 2002; Ye & Abdul Rahman, 2010).

“Pay-when-paid” clause

The “pay-when-paid” clause is also a common cause of late payments. It allows main contractors to delay payment to subcontractors until they themselves receive payment from the client. This clause often leads to serious cash flow issues for subcontractors (Amer Ali, 2005).

Cultural attitudes

Cultural attitudes also play a role. In Malaysia, some contractors view short delays—such as five working days—as acceptable. This acceptance has contributed to a culture where late payments are tolerated and normalized (Ye & Abdul Rahman, 2010).

Delays in certification

Delays in certification are another contributing factor. Before payments can be made, progress must be certified by various parties. If any part of this process is delayed, it slows down the entire payment cycle (Ye & Abdul Rahman, 2010).

Disagreements over the valuation of completed work

Disagreements over the valuation of completed work can also lead to payment delays. When parties cannot agree on the amount or quality of work done, it can hold up the certification and payment process (Ye & Abdul Rahman, 2010).

Disputes due to conflicts among project stakeholders

Finally, conflicts among project stakeholders often escalate into disputes. These disputes may involve valuation disagreements, lack of trust in the certification process, or misunderstandings about variation orders. Such conflicts commonly result in late or non-payment (Ye & Abdul Rahman, 2010).

CIPAA 2012 – Awareness and Understanding

The Construction Industry Payment and Adjudication Act 2012 (CIPAA) was introduced to address payment disputes in the Malaysian construction industry. It was part of a broader effort led by the Construction Industry Development Board (CIDB) under the Malaysian Construction

Industry Master Plan 2005–2015, after high-level meetings in 2003 and 2004 (Azizan Supardi et al., 2010).

CIPAA then passed in June 2012 and were enforced in April 2014 to improve cash flow and resolve payment issues efficiently (Mahmood, 2014). It aims to eliminate unfair payment practices, especially the "pay-when-paid" and "conditional payment" clauses that delay payments to subcontractors until the main contractor receives payment from the client (Din & Ismail, 2014; Azman et al., 2014). These clauses were declared void under CIPAA. KLRC stated that there are growing awareness of stakeholders as the adjudicated amount to date is RM278 million (iProperty, 2018)

Importance of CIPAA 2012 Implementation

CIPAA plays a vital role in resolving payment disputes quickly, affordably, and with legally binding decisions (Ali, 2006). It ensures decisions are made within 45 working days, helping maintain better cash flow and financial stability in projects (Rajoo, 2012). The Act also allows subcontractors to suspend work or demand direct payment from clients if adjudicated amounts are unpaid (Fong, 2005).

Additionally, CIPAA promotes confidentiality in dispute resolution, unlike public court proceedings, which encourages more parties to use this method (Mah, 2015). It helps reduce reliance on slower and costlier dispute resolution methods like arbitration and litigation, thus lowering overall project costs (Karib et al., 2008; Rajoo, 2012). Prompt payments improve work quality and allow contractors to focus on project delivery rather than chasing payments (Ali, 2006a).

Loopholes in CIPAA 2012

While CIPAA invalidates conditional payment clauses during adjudication, these clauses can still be enforced through court or arbitration decisions. This creates a loophole that weakens the Act's effectiveness in fully eliminating unfair payment practices (Christopher & Lee, 2018).

Solutions to Sustain Payment Flow

To improve payment practices, selecting reliable project owners or paymasters is essential. Choosing good clients and clear contracts can reduce disputes (Ishak et al., 2019). Bad paymasters should face penalties for delays, and a dedicated payment monitoring department could help track issues and enforce accountability (Ansah, 2011).

Projects should also establish clear payment timelines to maintain motivation and ensure smooth progress. Efficient and timely payments are crucial for project success (Ansah, 2011). Removing the "pay-when-paid" clause is another key step toward fairness in subcontracting (Ameer-Ali, 2005).

CIPAA is designed to help subcontractors receive regular payments throughout the project. However, awareness and understanding of adjudication, especially among small subcontractors, remain low (Supardi et al., 2011; Hasmori et al., 2012). Adjudication under CIPAA is faster and cheaper than arbitration or litigation. It offers a binding outcome, making it an increasingly attractive dispute resolution method in the construction industry.

Methodology

This study adopts a quantitative approach, using structured questionnaires distributed to G1–G3 building contractors categories located in Perak Tengah. These grades of contractors were chosen as lower grade contractors were seen to be involved in subcontracting works compared to being the main contractor. The sample size of targeted contractors was determined using Krejcie & Morgan's (1970) method, yielding 254 numbers of samples. 5-categories Likert scale system were used to determine respondents' level of agreement. The questionnaires were developed in accordance with the literature review and aimed to answer to all the objectives in this research.

Table 1: Questionnaire distribution and response

Distribution technique	Google Form (Online distribution)
Questionnaire Distribution	254
Questionnaire Response	106
Percentage (%)	42

By the end of the data collection, 106 responses were received resulting a response rate of 42%. According to Nulty (2008), an online survey yields lower response rates compared to paper-based surveys, thus response rates of above 30% are often deemed acceptable. All of the respondents consist of construction industry stakeholders including directors 33, project managers 10, quantity surveyors 57, site supervisors 3, and clerks 3. 89.6 percent of the respondents responded that they experienced working as subcontractor while others responded they did not. The data analysis was then performed using SPSS, focusing on frequency and mean index analysis. Respondents provided input on payment experiences, causes of issues, and their familiarity with CIPAA provisions.

Table 2: Likert Scale system adopted in the questionnaire

Scale	Level of Agreement
5	Strongly Agree
4	Agree
3	Neutral
2	Disagree
1	Strongly Disagree

Findings and Discussion

Main Causes of Payment Issues in Malaysia Construction Industry

There were 8 causes of payment issues identified throughout the research. The lists of all the identified causes were ranked in the table below.

Table 3: Main Causes of Payment Issues in Malaysia Construction Industry

Variable	Mean Score	Rank
Pay-when-paid method	4.08	1
Contractor delay in receiving payment certificate	4.05	2
Culture and attitude of Malaysia construction industry	3.92	3
Poor employer financial management	3.91	4
Valuation disagreement problem	3.55	5
Conflict among parties involve	3.55	6

Employer holding the project's payment	3.38	7
Contractor's work being set off	3.12	8

It is seen that the usage of "pay-when-paid" clauses continues to be a major issue and ranked top causing payment issue in the industry. This supports Ameer-Ali (2005) which states that the use of pay-when-paid clause in subcontracting is one of the main causes of payment issues; and injustice always happens in contract agreement whenever pay-when-paid or back-to-back payment method is used.

Awareness and Understanding of CIPAA 2012

In this section, there were 8 variables in regard to the awareness and understanding of CIPAA 2012 identified throughout the research. The lists of all the identified variables were ranked in the table below.

Table 4: Awareness of Subcontractors regarding CIPA 2012

Variable	Mean Score	Rank
1. Do you agree that your workmanship quality for the project to increase, if you do not need to concern regarding any payment issue?	4.13	1
2. Do you agree to use CIPAA 2012 if the payment dispute resolution process is much cheaper and faster than arbitration and litigation?	4.08	2
3. Have you ever heard of Construction Industry Payment and Adjudication Act (CIPAA) 2012?	3.68	3
4. Do you know that as a subcontractor, you can legally suspend or slow down your progress if you are not paid (in accordance with CIPAA 2012)?	3.49	4
5. Do you know that as a subcontractor, you can legally claim directly to the construction owner (in accordance with CIPAA 2012)?	3.08	5
6. Do you know that adjudicator through Construction Industry Payment and Adjudication Act (CIPAA) 2012 can give speedy decision (within 45 days)?	3.05	6
7. Do you understand the Construction Industry Payment and Adjudication Act (CIPAA) 2012?	2.92	7
8. Do you know that there is no more "pay-when-paid" terms able can be implemented in the construction industry?	2.62	8

Majority of respondents (around 90%) stated that they experienced performing subcontracting experience. However, results from all the respondents shows that only 65% had heard of CIPAA. Moreover alarmingly, just 40% understood that they had the right to suspend work or initiate adjudication proceedings under the Act in accordance with Supardi et al. (2011).

Conclusion and Recommendations

Despite the enactment of CIPAA 2012, payment issues persist due to limited awareness and legal loopholes. From this research, it shows that there were 8 causes of payment issues identified and the usage of "pay-when-paid" clauses were seen to be the major issue and ranked top causes of payment issue. Although nearly 90% of respondents stated that they experienced performing subcontracting works, only 65% of all respondents have heard about CIPAA. Moreover, only 40% understood that they had the right to suspend work or initiate adjudication

proceedings under the Act. This gap suggests an urgent need for educational outreach, especially for small subcontractors.

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