The Perception on the Importance of Construction Industry Payment and Adjudication Act (CIPAA) 2012 Towards Remediing Payment Disputes: A Research on Subcontractors in Kuching, Sarawak

N A Hadi1,a), M K F Othman1,b), A M Dadi1,c)
1Faculty of Architecture, Planning and Surveying, Universiti Teknologi MARA Cawangan Sarawak, 94300 Kota Samarahan, Sarawak, Malaysia.

a)Corresponding author: nurulhudaya@sarawak.uitm.edu.my
b)mohd_khairul135@sarawak.uitm.edu.my
c)annishadadi@gmail.com

Abstract. The Construction Industry Payment and Adjudication Act (CIPAA) 2012 seek to provide the construction industry players with an alternative avenue to resolve the disputes quickly and at affordable costs. This Act can be used for any written construction contract that relates to any construction work in which includes local and international contracts. The current modes of construction dispute resolution by way of arbitration or court litigation take months and quite typically years to complete. Nevertheless, the implementation of CIPAA is relatively new to the construction industry, thus the possibility of construction players to be lack of knowledge and awareness about CIPAA is greater. Furthermore, payment problem normally occurs between main contractor and subcontractor. Therefore, this paper aims to measure the perception of subcontractors towards CIPAA in solving payment dispute. The pertinent features of CIPAA as well as its importance have been explained through an extensive literature review. In addition, a questionnaire survey was adopted to elicit the perception of subcontractors towards CIPAA. It is found that lack of awareness among respondents towards the implementation of CIPAA in construction industry is relatively high. Most of the respondents perceived CIPAA positively and expecting its can help to ease the cash flow. This research is expected to increase the subcontractor’s understanding on payment right and their legal position if payment is in default. It is also expected to grab the attention of the employers in making their payment promptly and timeliness. In conclusion, it is aimed that the construction industry can be benefited from the enactment of CIPAA.

1. Introduction
In Malaysia, construction industry contributes a significant amount to the Gross Domestic Product at 6% [1]. It has grown day by day since the new development process and technology in construction has been introduced to the industry. Since Malaysia is getting well developed nowadays, there are a lot of disputes or issues occurring in the projects [2]. Disputes and issues in construction escalate due to many reasons as reported in the cases. A survey by Abidin [3], highlighted eight areas or nature of construction disputes, which are payment (51%), delay (19%), termination (18%), variation (13%), damages (11%), performance bond (8%), default (8%), and defect (1%). From the analysis, payment problems are the highest percentage in contributing to construction disputes. The construction industry
has been facing payment dispute for years and is well aware in precedent cases as reported in court proceedings, various law journals and law reports [4].

Payment has been believed to be the lifeblood of the construction industry; there are fundamental to the process of construction, they are the root of many of its problems [5]. Construction projects involve long durations and multiple phases of works, not like many other industries. Late payment may affect the cash flow severely, as well as the timely schedule and quality of the project [6]. Since construction projects involve many parties, any payment problem encountered at the higher end of the hierarchy may give a huge impact on the cash flow through the chain of contracts.

In order to accomplish a construction project objective, the relationship between the main contractor and sub-contractor is significance. Hence, both parties need to acquire good relationship to achieve a smooth construction process [7]. However, the payment issues are always arising between these two parties such as non-payment, delayed payment as well as underpayment [6]. May & Siddiqi [8] also stated that the usually the main contractors will find some ways to transfer the risk to the subcontractor in case of non-payment from the client. Basically, this is done by inserting the clause of pay-when-paid or pay-if-paid in the contracts [7,9].

When such case arises, limited remedies and security are available pending dispute resolution. The standard forms of contract in the main contract are not clear regarding payment provisions on domestic subcontractors and suppliers. No protection for them against this unnecessary financial risks burden [5]. The Government has been in the know of the problems faced by the construction parties in rightfully receiving a regular and timely payment, which impacts the cash flow during project implementation. To ensure a smooth construction operation, this problem must be tackled [1]. Hence, the government has gazetted one payment act that could help to fix the issues, namely Construction Industry Payment & Adjudication Act (CIPAA) 2012.

2. Construction Industry Payment and Adjudication Act (CIPAA) 2012

Construction Industry Payment & Adjudication Act 2012 (CIPAA) was first published in Malaysia to overcome disputes regarding payment and cash flow in construction projects. It was first introduced and gazetted by the Parliament on 22 June 2012 and has been legislated and operated on April 15, 2014 [10]. This Act can be used for any written construction contract that relates to any construction work in which includes local and international contracts. This Act is made under strategic planning to enhance the construction industry image [9]. As for the authorisation, The Kuala Lumpur Regional Centre for Arbitration (KLRCA), currently known as Asia International Arbitration Centre (AIAC) has been chosen to be as the adjudication authority to appoint adjudicator, manage adjudicator’s appointment procedure and giving practical training courses for statutory adjudication. In addition, CIPAA helps to achieve smooth disputes resolution to the construction projects [2].

Among the pertinent features of the act are outlawing the practices of “Pay-When-Paid” and “Conditional Payment” from the construction contract [11]. With a 'pay-when-paid' provision in a construction contract, the sub-contractor would only receive his claim after the main contractor has his payment from the client. The used of the terms or culture in the industry has affected the duration of the projects as it slows down the payment process in which the cash flow will be in a bad term [12]. Now is the right time for the construction industry to cut this unfavourable and unfair practice. Every work and service must be paid at the time it is being completed. If any default at any part of the contract chain, the parties at the chain shall find the solution themselves and not and shall not pass the task to any third parties [1].

Next, CIPAA also offer streamlining payment procedures by hiding payment uncertainties among all parties in construction contracts. CIPAA recommends providing statutorily implied terms of progress payment if there are no express terms regarding the matter [6,13,14]. It means the parties may hold a wide range of payment terms, but if there is no such provision in the contract, then only default mechanism will take place. The default mechanism by CIPAA establishes a payment process and timeframes for contracts without suitable payment terms. In addition, CIPAA also provides procedures
on responses according to payment claims when payment is in default with or without express contractual terms on payment.

Another pertinent feature of CIPAA is establishing a cheaper and speedier dispute resolution mechanism. CIPAA have introduced a new mechanism for settling construction disputes through an interim but binding dispute resolution process called adjudication [2]. The emphasis of adjudication is on speed but not finality. Under Clause 12 (2), Part II of CIPAA, the adjudicator must make decision on the disputes within 45 days; therefore, ensures the speedy resolution [14]. Adjudication procedure can be started at any time during construction once dispute relating payment arises. The affected parties shall not carry the burden themselves up until completion, and after that, file the dispute in arbitration or litigation. Dispute can be resolved efficiently and effectively through adjudication while a project still running.

Finally, provides security and remedies for payment recovery according to the decision made by the adjudicator. The successful aggrieved party will be able to recover its past debts and damages and at the same time prevent from further exposure [6]. Under the security provisions, a payment bond mechanism is recommended at the apex level within the hierarchy of the construction project implemented. The employers will have to issue the payment bond to the main contractors as the payment guarantee [1]. As for remedial provisions under the Act, remedies available include interest on late payment, suspension of works, direct payment from principal, judgment debt recovery, and other rights or remedies available in Construction Contract or any other written law such as deregistration of business licenses. From all the pertinent features of CIPAA that has been highlighted, it is definitely can give benefit to the subcontractors particularly in the situation where payment problem occurs.

3. The Importance of CIPAA Implementation

The whole construction industry and the nation will benefit by successful and efficient delivery of projects in terms of financial or cash flow, time and schedule, and dispute resolution mechanism. Establishing CIPAA is important to enable a speedy, time-bound, contemporaneous, cheap and binding dispute resolution mechanism by an independent and accredited adjudicator [6]. This is parallel with Clause 12 (2), Part II of CIPAA, the adjudicator must make a decision within forty five (45) working days ensuring a speedy adjudication process [14]. Besides that, CIPAA can provide a legal remedy to non-payment as by way of suspending or reduce the progress of performance or direct payment from the principal [2]. CIPAA permits the contractors to slow down or suspend the work progress if the adjudicated amount is not being paid, either in part or in whole. In addition, CIPAA permits the successful claimant to directly request for payment from the principal (client) if the adjudicated amount is not paid.

The next importance of CIPAA implementation is the improvement of the delivery system by providing quicker dispute resolution. This will reduce the unnecessary wastage through inefficient dispute resolution methods, which are only superficial to the core business of construction [1]. With the use of adjudication as a dispute resolution method, CIPAA is expected to have lower cost due to short time frame involved compared to arbitration or litigation. It offers a relatively cheaper process by express provisions prescribed by the proposed Act itself [14].

The objective of CIPAA is to ease the cash flow of the contractors. Due to that, CIPAA is important to help the industry in sustaining the competitiveness of all parties to implement construction projects [2]. Timely payment leads to ease of cash flow, and has a positive impact on the quality of construction works because the parties can concentrate on their works and services effectively and efficiently [5,6]. Other than that, the importance of CIPAA is to have a dispute remains confidential as adjudication is not conducted in an open manner like litigation. The adjudication process from beginning to the end is held privately to ensure its confidentiality. The confidentiality as stipulated in section 20 may add attractiveness to this dispute resolution process, though, parties must be aware that given the possibility of litigation regarding the adjudication process and decision, confidentiality in adjudication may not be guaranteed [15].
Last but not least, CIPAA can improve the image of the construction industry image by promoting professionalism and integrity practices among the contractors, construction professionals, and clients. From there, the value of human capital in the construction industry may as well be enhanced [1,10].

4. Research Methodology
The focus of this paper is to investigate the perception of subcontractors toward Construction Industry Payment and Adjudication Act (CIPAA) 2012 in Kuching, Sarawak. First, related theories and studies were reviewed to derive the possible variables related to the importance of CIPAA to the construction industry. The quantitative research method was adopted to confirm the respondents' perception based on seven (7) variables obtained in the literature review.

The overall population of subcontractors in Sarawak has been identified by using the statistics of List of Contractors from the Centralised Information Management System (CIMS) from the Construction Industry Development Board (CIDB) website. All companies have been classified into CIDB grade, type of works and location of the company. The research focus in Kuching, Sarawak is due to majority of the contractor in Sarawak located in Kuching division. It is also found in CIMS that the majority of construction company undertaking subcontractor’s works are Small and Medium Enterprise (SME). As for the requirement for SME, Contractor with CIDB Grade G6, G5 and G4 seem to have fulfilled the criteria state in the SME Corporation Malaysia policies. The construction sector is under the services and other sectors groups of companies in SME policy. Therefore, the potential respondents are narrowed down to company located in Sarawak with registered for subcontracting work.

From CIMS, it identified 176 potential respondents for the questionnaire survey. Therefore, 176 sets of questionnaires have been distributed to respondents of subcontractors through e-mail and by hand. Subsequently, a total of 54 returned questionnaires from the subcontractors, giving the approximate response rate of 31%.

These data obtained were analysed by using SPSS 23.0 Analytical Software through descriptive analysis and correlation test.

5. Result and Discussion
As shown in Figure 1, the result shows that the majority of the respondents are lacking in awareness of CIPAA with 37% from total 54 respondents. The result is supported by the previous study conducted in Malaysia among G7 contractors which found that only 43% out of 30 respondents aware on the implementation of CIPAA [16]. In comparing with the previous study, the lower number of awareness in this research shows lack of interest of SME subcontractors in obtaining recent information related to construction issues, hence, is shown in the result. Further research needs to be done to investigate the reasons behind this.

![FIGURE 1: The Awareness of CIPA implementation (N = 54)](image)

Table 1 shows a ranking of the perceived importance of the implementation of CIPAA. The result indicates that CIPAA can help to ease the cash flow of the contractors was considered the most important towards CIPAA implementation among subcontractors. In contrast, CIPAA will improve delivery system provides quicker and cheaper disputes resolution perceived the lowest among all the
perceived significance of CIPAA. The result is expected because CIPAA is intended to inject much needed cash flow into the contractual arrangements between parties that saw progressive claims as the recognised and accepted way of doing business in construction contracts [17]. A prohibition ‘pay-when-paid’ clause in construction contracts leads for better cash flow for all parties in construction project including the subcontractor. Furthermore, it is also suggested that CIPAA could be the solution to most of the subcontractors payment problems [9].

Parties in dispute are able to remain confidential compared to litigation ranked second in the analysis which considered an importance CIPAA implementation. CIPAA offers important feature of resolving dispute which are confidentiality. Parties wanting a quiet settlement will find adjudication attractive. The confidentiality requirement applies to the adjudicator and all parties in dispute [15]. The high preference for confidentiality indicates that good business reputation is important to the subcontractor. The litigation process held in the open court resulted in sour business relationship and bad for future trades, thus, depriving business opportunity [18].

CIPAA encourages professionalism and promotes integrity amongst construction parties ranked third in the analysis which considered an importance CIPAA implementation. Previous research found that the most significant factors of late and non-payment in the Malaysian construction industry are the attitude and culture of the main contractors and delay in certification on the consultants’ part [12]. Moreover, it is also being identified that among the top factors for late payments are that the clients deliberately delay the payment for their own financial benefit, purposely delay in releasing the retention monies to the contractors and are likely to hold the payment for personal reasons [19]. By implementation of CIPAA, it provides a mechanism for the recovery of payment upon the conclusion of the adjudication process in addition to a host of other remedies such as a right to reduce the rate of work progress or to suspend work (Clause 29, Part IV) or even to secure direct payment from the principal (Clause 30, Part IV) [20]. Therefore, the mechanism introduced in CIPAA encourages construction parties to perform their responsibilities accordingly to protect their rights of payment in order to reduce disputes.

Interestingly, CIPAA offers lower fees by having adjudication as a method of dispute resolution and CIPAA improves delivery system provides quicker disputes resolution were found to be least important in CIPAA implementation. This result contradicted pertinent features of CIPAA which is cheaper and speedier dispute resolution mechanism called adjudication [12]. The contradictory result indicates that the possibility of the subcontractors’ lack of experience in adjudication process introduced in CIPAA. The subcontractors may not aware on the lower cost and short time frame comparing with litigation process as dispute resolution method.

| The importance of CIPAA implementation | Mean   | Std. Deviation | Rank |
|---------------------------------------|--------|----------------|------|
| CIPAA helps to ease the cash flow of the contractors. | 3.7778 | .60397         | 1    |
| Parties in dispute are able to remain confidential | 3.6111 | .56357         | 2    |
| CIPAA encourages professionalism and promotes integrity amongst construction parties | 3.5741 | .49913         | 3    |
| CIPAA provides Legal Remedy to Non-Payment | 3.5370 | .53950         | 4    |
| CIPAA enhances the value of human capital in the construction industry | 3.5185 | .54047         | 5    |
| CIPAA offers lower fees by having adjudication as a method of dispute resolution | 3.4630 | .57340         | 6    |
| CIPAA will improve delivery system provides quicker disputes resolution. | 3.4259 | .49913         | 7    |

| The importance of CIPAA implementation | Correlation |
|---------------------------------------|-------------|
| CIPAA helps to ease the cash flow of the contractors. | 0.413**     |
| Parties in dispute are able to remain confidential | 0.122       |

TABLE 1: The importance of CIPAA implementation

TABLE 2: The Correlation Matrix between the awareness of CIPAA and the importance of CIPAA implementation
CIPAA encourages professionalism and promotes integrity amongst construction parties  
CIPAA provides Legal Remedy to Non-Payment  
CIPAA enhances the value of human capital in the construction industry  
CIPAA offers lower fees by having adjudication as a method of dispute resolution  
CIPAA will improve delivery system provides quicker disputes resolution.

| Correlation at 5% significance level | Correlation at 1% significance level |
|--------------------------------------|--------------------------------------|
| CIPAA encourages professionalism and promotes integrity amongst construction parties | -0.115 |
| CIPAA provides Legal Remedy to Non-Payment | 0.019 |
| CIPAA enhances the value of human capital in the construction industry | -0.027 |
| CIPAA offers lower fees by having adjudication as a method of dispute resolution | 0.050 |
| CIPAA will improve delivery system provides quicker disputes resolution. | 0.037 |

* Correlation at 5% significance level  
** Correlation at 1% significance level

![Graph](image)

**FIGURE 2:** Scatter plot of awareness of CIPAA vs CIPAA helps to ease the cash flow of the contractors

Table 2 shows the relationship between the awareness of CIPAA and the importance of CIPAA implementation. Only one correlation was found using the point-biserial correlation test which is CIPAA helps to ease the cash flow of the contractors. The results proved that the lack of awareness of the subcontractors of CIPAA, thus, it shows that subcontractor matter of greatest importance is the security of payment rather than any other importance of CIPAA. Graph in Figure 2 was plotted to analyse further, the relationship between the awareness of CIPAA and CIPAA helps to ease the cash flow of the contractors. The graph indicates that the respondents are aware about CIPAA implementation agree on the importance of CIPAA, that helps to ease the cash flow of the contractors.

6. Conclusion

This paper manages to achieve the main objective which is regarding the perception of subcontractors towards the implementation of CIPAA in Kuching, Sarawak. It is found that lack of awareness of subcontractors towards the implementation of CIPAA in the construction industry. The relevant bodies in the construction industry should identify effective methods in promoting CIPAA in order to ensure smooth application and enforcements in future. It is also found that among seven (7) variables of importance of CIPAA implementation, CIPAA helps to ease the cash flow of the contractors; parties in dispute are able to remain confidential; and CIPAA encourages professionalism and promotes integrity amongst construction parties are the most important features of CIPAA perceived by the subcontractors.

Although this paper managed to provide a quantitative study, further research is recommended to be conducted in terms of increasing number of respondents and expanding the area of the research. It is also recommended research to be done to identify the factors contributing to lack of awareness of the subcontractor on CIPAA implementation. The research will contribute to promote of CIPAA in increasing the awareness of contracting parties in the future.
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