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Application of direct payment clause 30A.0 of the Asian International Arbitration Centre (AIAC) Standard Form of Contract (With Quantities)

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ABSTRACT

Conditional payment such as “pay when paid” or “pay if paid” can create negative chain effect on the parties in construction projects, resulting in delay on the completion of a project, adversarialism and may affect a contractor’s reputation. Asian International Arbitration Centre (AIAC) has launched a standard form of contract which is Construction Industry Payment Adjudication Act (CIPAA) compliance with the aim to reduce payment issues. The aim of the research is to identify whether the clause for “direct payment under CIPAA 2012” of the new AIAC standard form of contract can facilitate problems in direct payment. In achieving the aim of the research, five legal cases were analysed and thirty questionnaires forms were distributed. Legal cases analysis findings highlighted that the major reasons of the direct payment issue being referred to court is due to the validity of the direct payment agreement between the disputant’s parties. Based on the cases heard before CIPAA enactment, the findings show that out of the three cases, the disputants went to litigation because of the legality of direct payment agreements. Most of the agreements were made orally. For cases analysed after CIPAA was enacted, the findings show that the disputant parties do not opt for adjudication and that the main contractors try to mitigate their responsibilities to the employer. The results from the questionnaires distributed established that, the direct payment clause could be successfully adopted for future use of the industry. Eventhough the AIAC standard form of contract has been formally introduced to the industry, but it is not widely used. From the findings of the questionnaire, it shows that with encouragement and support from the industry, direct payment clause of AIAC standard form of contract have the potential in reducing payment issues in the future. With the remodeling of standard form of contracts that are available in construction industry to be CIPAA compliance, it is hoped that this move may scale down the prevalent payment issues in Malaysian construction industry.

1. Introduction

1.1 Background of study

For decades, the construction industry has been plagued by various constraints encompassing issues such as cost and time overrun, poor quality and lack of sustainability (Bruno et al, 2017). Many factors contribute to the success and failure of a construction project and it has become an interesting arena for research (Yong and Mustaffa, 2017). One of the common area for research is on payment, as it has been the root of every dispute in the construction industry. Sometimes, main contractor feel they have an upper hand and power over the subcontractors. The reason behind this is possibly caused by the tendency of the contractors to ignore their obligations to pay the subcontractors in consideration of their poor financial cash flow condition. Subcontractors are entitled to be informed about their payment especially in recovering them. There are many dispute resolutions in solving this particular problem such as litigation, arbitration and adjudication. On the same wavelength, many institutions such as PAM, PWD and CIDB standard forms of contract have taken

great initiatives in avoiding these problems. The introduction of Asian Institute of Arbitration Centre (AIAC) standard form of contract which is CIPAA compliance may help in reducing payment issues.

1.2 Statement of problem

Before CIPAA was enacted, the construction industry has been using PAM and PWD standard form of contract. In PAM standard form of contract, Clause 27.6 provides that the employer may deduct the amount paid to the subcontractor from the amount payable to the contractor. The same provision can also be found in PWD standard form of contract, under Clause 61.2(a). The two clauses in PAM and PWD standard forms of contract require parties in dispute to go through mediation and arbitration proceedings if any dispute pertaining to them cannot be solved. There is a provision in PAM form which gives the option for it to be solved by adjudication. However, there are no specific provisions in PAM and PWD that directly relate the matter to CIPAA. Since the existing standard forms of contract were issued prior to this Act, the Asian International Arbitration Centre (AIAC) or formally known as Kuala Lumpur Regional Arbitration Centre (KLRCA) has taken the initiative to introduce a new standard form of

contract. This form which has been formally launched is to address the prevalent issue of payment in a more explicit manner. These new standard forms of contract are claimed to be more user friendly and CIPAA compliance. This could feasibly be the ultimate solution for direct payment problem. Since the form is relatively new in the industry, the players may be reluctant to use the new form.

1.3 Research objectives

The aim of this research is to identify whether the clause for “direct payment under CIPAA 2012” of the new AIAC standard form of contract can eradicate the problems arising in direct payment. In order to accomplish the aim, these objectives need to be pursued; firstly is to determine the common reason(s) that leads to problems in direct payment from legal perspective and secondly to investigate the awareness of construction industry players of the new direct payment Clause 30A.0 in AIAC standard form of contract (with quantities).

1.4 Significant of study

This research is important in order to help the clients, contractor and subcontractor to know of their rights and obligations arising in the context of direct payment under the new standard form of contract AIAC. In addition, it would shed some light guiding the construction players in solving and protecting their rights to attain healthy cash flow. It is hoped that the findings of the research would encourage the authorities to review their standard form of contracts and include the new provisions that might effectively help in remedying the problems concerning direct payment.

1.5 Scope of study

The main drive of this research is on discovering the perception of the construction industry players on the direct payment provisions with regards to the new standard form of contract released by the AIAC. Court cases have been referred to in identifying the direct payment problems occurred and the solutions to it. This research have been limited to construction cases in Lexis Malaysia under PAM 2006, PWD 2010 and CIPAA 2012, problems on direct payment that occurs among the construction players and perception on the new AIAC standard form of contract towards the direct payment clause.

2. Payment in Construction Project and Related Issues

2.1 Definition of payment

Payment is the amount of money that is going to be paid to the contractor as in the regular interim payments which are progressively paid throughout the duration of the contract (Jane, 2018). Certain procedures enable the parties to calculate the amount, the due date and the final date for payment of any payments falling due under the contract.

2.1.1 Payment clauses in contract documents

In PWD 203A Version 2010, payment clause which is stated in the provision of this contract falls under Clause 28, “payment to contractor and interim certificate”. Likewise, in PAM 2006 standard form of contract, the clause falls under Clause 30, “certificates and payment”. In both of these standard forms of contract, each of the clauses explain when the employer’s representative needs to do valuation and the clauses lay out the procedures of payment that binds the parties to the contract respectively.

2.2 Obligation of paymasters

Payment does not require submission of claim because it is an obligation

for the employer to pay the contractor accordingly for the completed works. According to Tony (2018), in the event of valuation of work completed, the regular basis of timely valuation commonly has been stated in advance. The main purpose of the contract is for the contractor to deliver the output (buildings) and for the employer to pay upon completion of work done. It is essential for the paymasters to the subcontractors to know that every rights of their nominated and domestic subcontractor should be paid accordingly for the works that they have done. Generally, all parties’ cash flow interest must be protected.

2.3 Payment issues

Payment problems are not new in construction industry. Not only nationally but globally, payment is considered as one of the main issues that have significant influences no matter what industry a person is in. According to European Payment Report (2013), payment is an issue of concern in any industry.

2.3.1 Factors contributing to payment issues

According to Azhari (2014), there are ten factors that contribute to payment issues. The factors are as below

- a. Paymaster’s Poor Financial Management
- b. Paymaster’s withholding of payment
- c. Conflict among the parties involve
- d. The use of pay when paid clause in subcontractor contract
- e. Contractual Provisions
- f. Disagreement on the valuation of work done
- g. Late in certification
- h. Duration of project
- i. Local Culture or Attitude
- j. Technical Problems

2.3.2 Impact of payment issues

There are a lot of impacts that can be caused by payment issues. According to a report by CIDB (2006), the most common effects of non-payment and late payments are the stress created on the contractors, financial hardship and cash flow problems. According to Mohd Khairul (2016), contractors’ cash flows are going to be affected due to retention fund, payment term to supplier and subcontractor, advance payment, delay payment and frequency of payment. Sambasivan and Soon (2007) stated that any disruption within the flow of cash will cause monetary hardship and even causing failure lower down the contracting chain. Title of the goods will usually be transferred upon payment and late or non-payment would lead to shortage in material (Sambasivan and Soon, 2007). According to Azhari (2014) the impacts are as below:

- a. Creates negative chain effect on other parties
- b. Results in delay on completion of project
- c. Leads to bankruptcy
- d. Project Delay
- e. Affect the contractor’s reputation
- f. Profitability of the project

It can be highlighted that the payment issues that comprise of retention of title, delay in payment, failure of payment, late and non-payment have persisted in the Malaysia construction industry for quite some time now, but have yet to be fully resolved.

2.4 Clauses in standard form of contract for remedies of payment issues

In Clause 27.6 PAM 2006, the Architect may ask the contractor to supply him with reasonable proof of the contractor's claim that he had discharged the previous certificate to the Nominated Subcontractor's payment. If the Contractor fails to do so, the Architect may certify and the Employer may pay such amounts directly to the Nominated Subcontractor and deduct the same amount from the Contractor

Similarly in PWD 2010 form, the normal procedure of payment from client to the contractor falls under Clause 28.3. Regarding the direct payment to the subcontractor, the provision falls under Clause 61.1, which cover the amount that being paid by the Government directly to the Nominated Subcontractor shall be deemed as payment to the Contractor by the Government under the virtue of the contract.

2.5 Direct payment

Emmanuel (2015) stated that problem in late and unfair payment could be influenced by the main contractor and subcontractor's relationships. Based on Supardi (2015), there are three principle methods in paying subcontractors comprising of:

2.5.1 Payment upon certification

Under the payment system, the main contractor receives payment through interim payment certificates and it is a conditional precedent for the main contractor to pay the subcontractors. It is not appropriate for the main contractor to default the payment to the subcontractor after the honoring period of certificate has lapsed.

2.5.2 Direct payment from the employer

Other than the payment upon presentation of the certificate, direct payment is another form of payment in which the payment is being paid directly to the subcontractor by the employer. As far as the employer is concerned, the subcontractor's payment may be apportioned from the Interim or Final Certificate received by the main contractor.

2.5.3 Contingent payment or conditional payment

The last principal method of payment is the contingent payment or also known as under various terms such as "pay if paid" or "pay when pay" and "back to back" provisions in paying the subcontractors. According to May and Siddiqi (2006), the main contractor may transfer the risk of non-payment by the employer to the subcontractor in order to protect their interests. There are a few cases of direct payment that have highlighted contingent payment:

- a. *Asiapools (M) Sdn Bhd v IJM Construction Sdn Bhd* [2010] 3 MLJ 7
- b. *Seloga Sdn Bhd v UEM Gynisys Sdn Bhd*[2007] 7 MLJ 385
- c. *Antah Schindler SdnBhd v SsangyongEngrng& Const. Co Ltd* [2008] 3 MLJ 204

2.6 Direct payment under PAM and PWD

Under PAM 2006, Clause 27.6, where in case that the Contractor does not pay the Subcontractor; the contractor must provide proof within 14 days upon Architect's request. In the event of the Contractor failed to provide such proof, the Architect may certify for the employer (obliged or not to obliged) to pay such amount directly to the Nominated Subcontractor and deduct the amount directly from the Contractor. Similarly under PWD 2010, under Clause 61, after the issuance of Interim Certificate under Clause 28 or Final Certificate under Clause 31, if the contract states the amount to be paid directly to the Nominated Subcontractors or Supplier, the amount shall be deducted from the payment due to the Contractor. It gives security to Government's interest where the contractor will not render the Government in any way liable to Nominated Subcontractor or Supplier (PWD 2010, Clause 62).

2.7 Worldwide perspectives on direct payment

In another part of the globe, the United Kingdom's Housing Grants, Construction and Regeneration Act 1996 finds that the provision of conditional payment is considered unsuccessful with the exception when there is bankruptcy in the contractual chain. According to Sushani (2005), even though these initiatives have been taken, payment problems may still exist. The same occurrence and reports can be seen in the literature in UK (Reilly, 2008), Australia (Barry, 2010) and New Zealand (The Dominion Post, 2008) that pointed to the fact of liquidation could have effect the delayed payment.

2.8 Construction Industry Payment Adjudication Act 2012 (CIPAA 2012)

According to Loshini (2017), Construction Industry Payment and Adjudication Act ("CIPAA 2012") were enacted by the Malaysian Parliament and came into action on 15 April 2014. The introduction of a statutory adjudication process was made with a declared intention to improve payment problems in the construction industry. Small contractors and subcontractors may be facing with cash flow problems and they would be financially weak if they are not paid by employers or in some cases the payment could be unfair or untruthful. In another example, the main contractor could possibly have the upper hand and refuse to pay their subcontractors. The Act identifies this issue and made provisions to address this disputes.

2.9 Adjudication

Adjudication is a form of dispute resolution that was developed back in mid 2000 as an alternative to arbitration in the construction industry. Most of the standard form of contract adapts adjudication as its primary alternative dispute resolution (Dancaster, 2008; Seifert, 2005; Teo, 2008).

Under CIPAA 2012, the clause for direct payment is provided under Section 30A. Even though in PAM 2006 and PWD 2010 have provisions for adjudications and direct payment, but it does not have specific provisions for direct payment clause that refers to CIPAA. For example, in PAM (Rev. 2006), Adjudication and Arbitration are put under the same Clause 34. There is no mention on adjudication in any of the clauses in PWD 2010, only arbitration was mentioned in the standard form of contract. The same can be seen in CIDB 2000 form. The exclusion of adjudication could be because these two forms have been in used before CIPAA 2012 takes its operative effect. However, in KLRCA newly launched form, specific provisions in CIPAA 2012 were mentioned. The provisions for extension of time (clause 23A), loss and expense (clause 24A) and direct payment (clause 30A) of CIPAA 2012 were included in this form.

All of the procedures under CIPAA may help in solving all the payment disputes between the construction players. Maybe this is the reason why AIAC has made their initiative to do a new standard form of contract as one of the solutions.

2.10 Introduction to AIAC

Kuala Lumpur Regional Centre for Arbitration has been established in 1978. Growing strong to 40 years later in 2018, the ideas of Alternative Dispute Resolutions are no longer alien. KLRCA has strived through 40 years with great effort in introducing ADR and educated users with the help of Bar Council and Construction Industry Development Board (CIDB). The initiatives include the amendments to the Arbitration Act 2005 as well as upgrading the role of the KLRCA (Lim, 2009). At present, the Malaysian government has undertaken several reform measures to improve the alternative dispute resolution.

In celebrating the 40th anniversary of KLRCA recently, Datuk Sundra Rajoo has launched a new KLRCA new standard form in accordance with CIPAA compliance and also changed the name of KLRCA to Asian International Arbitration Centre (AIAC) to attract more international parties to arbitrate with them. This move is with clear hope that Malaysia would be acknowledged as the number one arbitration centre worldwide.

2.11 Background of the AIAC standard form of contract

The AIAC standard form of contract is perceived to offers a better way to address the problems and close the gaps by giving solutions that complies with CIPAA. Pursuant to that, AIAC would be expected to ensure that the standard form of contract is up to date and align the updates with the latest laws and construction court judgment in the Malaysian's construction industry. In such cases, it would enable the disputants' parties to easily resolve dispute while the works are still in progress. AIAC is also anticipated to ensure that the new standard form of contract will give benefit to both the employer and contractor and similarly perceived to be a user friendly form. It claims that there are over 60 expressions and words that provide clarity to the contract such as "Clause 33.0 Fossils, Clause 8.30 Weather Conditions and Clause 23.8(c) (viii) Antiquities". There are some key features that are claimed by AIAC (2017) including clarity, integrity, accountability, transparency, continuity and certainty.

To summarise the discussion, the academic community has extensively explored the payment issues and usage adjudication statutory in their research. However, little research has been conducted to show the significance to include the clause of direct payment under the CIPAA 2012 in standard form of construction contract. To address this gap, this research has been designed to investigate the level of perception of the industrial player on the inclusion of the clause of direct payment under CIPAA in the new AIAC standard form of contract and the other standard forms.

3. Methodology

3.1 Introduction

This part of the discussion will primarily be based on research process, tools, data collection and analysis of data. It is based on two modes of research strategies centering around legal research based on analysis of the legal cases and survey conducted on the industry's players to gather information on their views regarding the new AIAC standard form.

3.2 Data collection

This research adopts the descriptive study approach to describe the variables and investigative enquiries of various sorts. The descriptive statistics would furnish the frequencies, the mean and the standard deviation of the set of data. Facts or information that are already available would be analysed further to create a crucial analysis of the content. In this research, legal and quantitative approaches have been used to achieve the objectives.

3.2.1 Legal research

The facts were then filtered through by limiting the selection to cases that are more recent which have been reported from the year of 2010 to 2017. The cases were derived from search conducted through Lexis Malaysia using keywords "direct payment and building contract". The cases were then further filtered into the cases that adopts building contract set out under professional bodies such as Jabatan Kerja Raya (JKR), Pertubuhan Arkitek Malaysia (PAM) and Construction Industry Payment Adjudication Act (CIPAA).

3.2.2 Quantitative research

A set of questionnaire was distributed to achieve the second objective of the current research. The questionnaire responses are then used to investigate the perception of inclusion of the direct payment clause under CIPAA 2012 of AIAC standard form of contract. Questionnaires were sent to all participants throughout Malaysia using the online custom form and were distributed to the industry players. The target sampling is and not limited to thirty targeted respondents.

3.3 Data analysis

The first objective has been concluded through the legal cases analysis. The selected cases have been organized in chronological order, according to the years, from the previous years to most recent. The cases have been studied from the point of view of the facts of cases, judgments passed by the courts and the findings of the cases. The cases have been further scrutinized to investigate their relevancy in the introduction of AIAC standard form of contract. Data that addressed the second objective was analysed using the descriptive analysis. After the data has been obtained through questionnaires, they are then coded, edited and entered into a database.

3.4 Research limitation

There are several limitations of the research. First, the industry chosen is only the construction industry and the respondents are from the related companies in the industry in Malaysia (as this research focuses on the CIPAA 2012 that came into force to govern Malaysia). Thus, the results from this research may not be generalized to other countries which have different political, cultural and economic factors. Second, this research only examines the documents involved in the contract documentation and the focuses directly on documents and records that are related to payment issues or within the application of direct payment clause in CIPAA 2012.

In order to carry out this research, the theoretical and technical assumptions underlying the research methodology in the direct payment concept field were review. In addition, a discussion of the research design for this study was made. On the research strategy, legal case studies have been adopted. This is then further combined with research techniques where the respondents responds were observe through questionnaires and documentation analysis.

4. Data analysis, results and discussion of findings

4.1 Introduction

This part of the paper will be discussing the emerging role of the new AIAC standard form of contract in the context of direct payment as the method in solving payment issues. The legal case analysis will be discussing on the common reasons for direct payment under PAM 2006, PWD 2010 and CIPAA. This is in order to achieve the first objective of the research. The data for the research have been obtained from cases extracted from Lexis Malaysia database. The cases selected were from the year 2010 to 2017. The cases described and analysed have been selected based on the common reasons of direct payment occurrence. The descriptive statistical analysis will discuss on the data collected from the questionnaire distributed to 30 respondents. The interpretations of the said data will be thoroughly discussed accordingly.

4.2 Legal case analysis

It can be observed from the legal cases presented in Table 1 that they

Table 1 List of Cases

No	Cases	Reference Number
1	Westform Far East Sdn Bhd v Connaught Heights Sdn Bhd & Ors	(2010) 3 MLJ 459
2	Rira Bina Sdn Bhd v GBC Construction Sdn Bhd	(2011) 2 MLJ 378
3	Desa Samudra Sdn Bhd v Bandar Teknik Sdn Bhd & Ors	(2012) 1 MLJ 729
4	Pembinaan Juta Mekar Sdn Bhd v Sap Holdings Bhd & Ors	(2014) 11 MLJ 821
5	Sigma Elevator (M) Sdn Bhd v Isyoda (M) Sdn Bhd & Anor	(2016) 10 MLJ 635

have several similarities pertaining to direct payment issues. The findings also reveal that there are few limitations to direct payment clause in AIAC standard form of contract. In general, it can be highlighted that the cases were arguing on the existence of contractual agreement of the direct payment. From the cases, direct payment agreement was in existence regardless if it is expressly written or orally agreed. In *Pembinaan Juta Mekar Sdn Bhd v Sap Holdings Bhd & Ors* (2014) 11 MLJ 821, with consistent action of the employer in paying the subcontractor directly for 2 years, court held that there were contractual relationship exists. In addition, even though the agreement was made orally, with enough evidence, subcontractor may exercise their rights to get the payment.

There were some limitations that can be observed from the cases above. Contractor tends to mitigate their responsibility to third party regardless towards the employer or subcontractors. The possible explanation for this is the contractor may not understand the full concept of direct payment. There were possibilities that the contractors are aware of the concept however they try to manipulate and take advantage on the provisions.

4.3 Descriptive statistical analysis

A set of questionnaires were completed by thirty respondents. The data have been collected to investigate the level of awareness among the construction industrial players on the introduction of AIAC standard form of contract. More importantly, data collected are also for the purpose of observing the perspective of the construction players towards the direct payment clause under the AIAC standard form of contract (with quantities).

4.3.1 Awareness on the AIAC standard form of contract

The question asked on whether the respondents were aware of the new AIAC 2018 standard form of contract. Less than a third of the respondents (24%) indicated that they were aware of the existence of AIAC standard form of contract. Unfortunately, despite its objective to resolve the prevalent payment disputes, more than two third of the respondents (23 people) indicated that they were not aware of AIAC standard form of contract.

The result may indicate that the AIAC standard form of contract is yet fully embraced by the construction industry. The initiatives taken by AIAC to organize road shows to promote the standard forms of contract are inadequate to increase the awareness of the forms' presence in the industry. This could possibly be due to lack of communication channel that may not reach out to much smaller players of the industry. Subcontractors are the critical parties that are expected to face higher disadvantages when payment disputes arise. As the data have indicated that there are a lack of awareness in the adoption of AIAC standard form of contract, more promotional activities need to be made in order for the subcontractors to be aware of the existence of the new form.

4.3.2 AIAC 2018 standard form of contract in future project

The following question asked was to assess the potential of the

Awareness towards introduction of AIAC standard form of contract

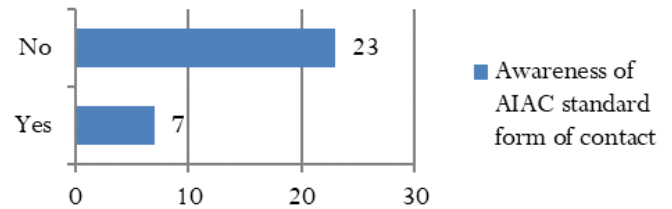


Figure 1 Awareness of AIAC standard form of contract

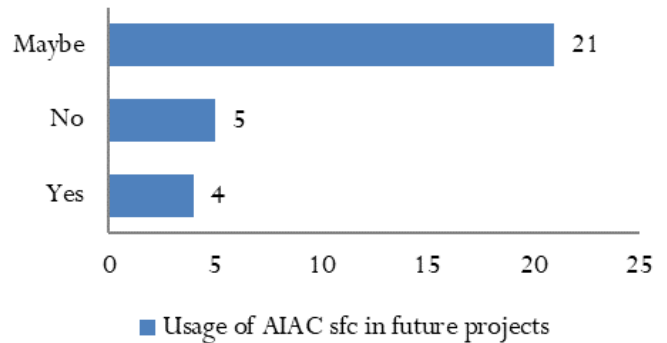


Figure 2 Usage of AIAC standard form in future project.

respondents to use the AIAC standard form of contract in the future. Only four respondents confidently answered positively, while another five respondents indicated that they would not expected to be using the form. Two third responded that they may be using the form in their future projects.

On a positive remark, the positive response promises that the future use of this form looks bright. On the other hand, majority of the responses give different indication to the future use of the form. They are either indecisive because they have not been fully exposed to the form, or that they could be skeptical on the practicality of the form. Another reason contributing to the “uncertain” responses given by the respondents could also be expressed by the smaller numbers of direct payment cases that are resolved with the provisions provided in the form. Similarly, the negative response indicates that the respondents did not have trust in the new form and there are possibilities that they are complacent with the forms that have been established in the industry. Relatively, the reasons behind these responses are further discussed in the analysis under section C of the questionnaire.

4.3.3 Direct Payment (Clause 30A.0) AIAC 2018 standard form of contract can help in reducing “non-payment” or “paid when paid” issues

Following the previous question, the next question was to examine the respondents' agreement on whether the direct payment clause would be able to assist in eliminating or reducing the payment issues. This response would give an indication on the potential success of the direct payment clause on its full implementation. The RII is calculated at an index of 0.77 for this statement. The result reveals that the respondents, though they agree that the direct payment clause can help in reducing the “non-payment” or “paid when paid” issues, there is a possibility of some reservation on their part on its success. This could be due to the fact that the AIAC standard form of contract is still considered new in the industry and has not been used widely.

4.3.4 Direct payment clause of the standard form contract will change the construction industry payment culture in future

The subsequent question is to gauge on the respondents' level of agreement on the statement that direct payment may have an effect in changing the payment culture that has been inculcated in the industry. The response that inclines positively towards the statement would give an indication that the direct payment clause would have a chance in setting a new culture of payment in the construction industry. The RII reveals an index of 0.72 which is interpreted as "Agree". This result indicates that the direct payment clause has the potential to change the payment culture in the industry. On the contrary, there is a small chance that the change in culture would lead to a bigger problem in the construction industry. One of the possibilities is the mitigation of obligation to pay the subcontractors by the contractors. This potential problem could be due to the fact the direct payment clause is rather vague on the types of payment that are covered under the clause.

4.3.5 For future improvement of the payment and claim system, all standard form of contract should be CIPAA compliance

The final question in the questionnaire was targeted to assess the probability that all standard forms of contracts should be improved and be CIPAA compliance. The response would indicate if the AIAC standard form of contract would be successful as a model form that complies with CIPAA and can be benchmarked as payment solution in direct payment issues. From the RII analysis, the index for this question was recorded at 0.79. This shows that most of the respondents agree with the idea of remodeling standard forms of contracts that are available in construction industry to be CIPAA compliance. It is likely that the respondents could identify the importance of CIPAA in solving payment related issue especially for Subcontractors who are directly at the disadvantage of payment issues. All regulatory bodies such as CIDB, PAM and PWD should take the initiative to upgrade their standard form of contracts and adopt CIPAA into their contracts. They should imitate AIAC's move immediately since their current forms are yet to adopt CIPAA. The extra effort in improving the standard form of contract may give a break through to the construction industry players who are reluctant of changes.

On the legal research, out of the five cases, only two cases were heard after CIPAA were enacted. However, both cases do not opt for adjudication as the mode for their payment dispute resolution method. Most of the cases were heard in High Court, a couple of cases went through Court of Appeal and one of the cases went to Federal Court. It is time consuming and costly process to go have a case being heard at the court. Instead of a long-awaited process in litigation, AIAC has made ready the solution to direct payment problems by producing standard form of contract with CIPAA compliance. The standard form synchronously compliments CIPAA's purpose in solving and avoiding short-term cash-flow problems during project delivery. On the contrary, it is also observed that the cases showed certain limitations in the AIAC direct payment clause.

One of the set back is that the direct payment clause does not clearly define the terms of "any payment". The term "any payment" in clause 30A.1 in AIAC could lead to misuse and abuse of the clause. From the responds of the questionnaire distributed, all thirty respondents have given a very good cooperation in assisting this research process. Most of the respondents are also well qualified in terms of their education level and experience in working. Based on the findings, the direct payment Clause 30A.0 in AIAC standard form of contract has a very bright future and gives big impact in the construction industry payment system.

5. Conclusion and recommendations

5.1 Issues pertaining direct payment

Based on the legal case analysis findings, the major reasons of the direct payment issue being referred to court is the validity of the direct payment agreement between the disputant's parties and the fact that other dispute resolutions methods apart from litigation have not been chosen. Without express agreement on direct payment clause, these can jeopardise subcontractors' to express their rights to be paid by the main contractors. In addition, from the findings, the even though some of the cases were held after CIPAA enactment, the disputants does not opt for adjudication as the payment dispute resolution method.

Meanwhile, the research has managed to achieve the objective in investigating the perception on the inclusion of the direct payment clause 30A.0 in AIAC standard form of contract. The research has identified that the clause could be successfully adopted for future use of the industry. Even though with the lack of awareness such form existed and the understanding direct payment concept, the AIAC standard form of contract were not fully utilize. Nonetheless, the findings may highlight that there is a reluctant on the part of the industry players to change from what they are comfortable with to something new.

5.2 Possible steps in promoting direct payment clause in AIAC standard form of contract

To enhance and elevate the usage of AIAC standard form of contract, AIAC could have a wider and extensive promotion on the forms. Since AIAC is now recognised internationally, it is only appropriate to spread the exposure internationally. AIAC may also be a bench mark for local standard form of contract to emulate. In addition to that, it is recommended that for the parties concern to have more trainings and conferences to educate them on this latest standard form. From the data obtained, the respondents are from younger generations who are open to challenges and willing to accept changes. This contributes to probable success of the AIAC standard form of contract.

The more educated construction players on the AIAC standard form of contract, the more successful it would be in the future. It is hoped that the findings can be an eye opener for the related construction industry players on the awareness of direct payment in scaling down the prevalent payment issue in the Malaysian construction industry.

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