

CONSTRUCTION INDUSTRY PAYMENT AND ADJUDICATION ACT (CIPAA) REMEDYING PAYMENT ISSUES: CIDB G7 CONTRACTOR'S PERSPECTIVE.

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Abstract

Payment defaults remain chronic and prevalent issues that affecting the entire delivery chain of construction industry. For that particular reason, Government of Malaysia have embarked serious effort to reduce payment default issues by enacting Construction Industry Payment and Adjudication Act (CIPAA) in 2012. Acknowledging the fact that CIPAA is relatively new to the industry, the possibility of industry's key players to be lack of information and awareness about CIPAA is greater. Therefore, this research aims to explore and reveal remedies offered via CIPAA as well as the awareness and expectation of CIDB G7 contractors towards CIPAA. Hence, the research objectives are to identify pertinent features of CIPAA in remedying payment default issues, to investigate the perceptions and expectations of CIDB G7 contractors towards CIPAA in addressing payment default issues and to examine the potential implications and limitations of such Act towards current construction industry practices. This research has adopted mixed methods of questionnaire survey and semi-structured interviews to CIDB G7 Contractors in Klang Valley area. The research suggested that the most pertinent feature of CIPAA from contractors' point of view is to streamline payment procedures for construction works. Apart from that, research also revealed that contractors are optimistic that CIPAA will be able to provide legal remedy to non-payment and improve the delivery system in construction industry. Although CIPAA will be the platform for resolving payment disputes by means of adjudication decision and establish payment process, procedures and timeframes, it is anticipated that CIPAA is depending on the competency and integrity of the adjudicators. In conclusion, it is aimed that the construction industry can be benefited from the enactment of CIPAA. Thus, the industry as a whole must collaborate and focus on their synergies to promote effective implementation of CIPAA.

Keyword: Payment default; Construction Industry Payment and Adjudication Act (CIPAA)

Introduction

In the attempt to promote and uphold the image of construction industry, payment constantly has been an issue and barrier that hinder such effort (Ameer Ali, 2006; Sahab and Ismail, 2011; and Hasmori, Ismail and Said, 2012). Often, the risk of late or non-payment in construction industry could be adversarial and disastrous and subsequently, affect the economic growth of the country (Hasmori, Ismail and Said, 2012 and Rahman and Ye, 2010). Although there are specific provisions provided in all standard forms of construction contract addressing the payment obligations, Judi and Muhamed Sabli (2010) revealed that payment defaults remain substantial in the Malaysian construction industry. As a result, cash flow problem that caused by payment defaults can severely affect the implementation of construction projects. Consequently, Construction Industry and Payment Adjudication Act (CIPAA) have been passed on June 18, 2012 and gazette on June 22, 2012 (Fong, 2012). Subsequent to that, the Act comes into operation effective on April 15, 2014 (Rajoo, 2014). Acknowledging the fact that CIPAA is newly introduced to the industry, simultaneously the possibility of industry's key players to be lack of information and awareness about CIPAA is greater.

Payment Defaults

Rahman and Ye (2010) and Judi and Mohamed Sabli (2010) defined payment as the sum of money paid to contractors, consultants and suppliers after their works, service or materials has been successfully realized or accepted. Therefore, payment always plays the significant point throughout the completion of the project (Sin, 2006 and Saad, 2008) and the ease of cash flow is an essential element in delivering a successful project (Karib, Shaffii, and Nor, 2008). Regular financial injection is crucial to ensure the contractor is able to proceed work diligently (Hasmori, Ismail and Said, 2012; Judi and Mohamd Sabli, 2010). Adversely, any payment defaults will give knocking effect on the whole of construction business chain (Karib, Shaffii, and Nor, 2008). To add, as each and every key player in construction industry are linked between one and another, hence, contractor is not the only party that affected, but owner and project itself will suffer in the event of payment defaults (Abraham, 2012). Hasmori, Ismail and Said (2012) and Fong (2007) added that, payment in construction industry is crucial as end products of the construction industry are becoming fixture to the ground and will not be able to remove or dismantle to recover for non-payment.

Issues of payment have plagued the construction industry for a long time. Frequently, disputes arise from under payment, late payment and non – payment to the contractor are commonly highlighted and discussed, contributing about 56.7% in profiling of construction disputes (Abdul Rashid et al. 2007). There are constant issues among key players of the industry, as payment defaults would always be revolving around in construction industry (Karib, Shaffii, and Nor, 2008). As such, contractors would be the direct and tremendous affected party due to the fact that Contractor is the party who upfront their capitals to ensure project delivery before receives payment from client (Karib, Shaffii, and Nor, 2008). Although there are specific provisions provided in all standard forms of construction contract addressing the payment obligations, Judi and Mohamed Sabli (2010) revealed that issues such as under, late or non-payment remain substantial in the Malaysian construction industry. As a result, cash flow problem can severely affect the implementation of construction projects and provision of the nation's infrastructure and built environment. Table 1 provides brief definition of payment defaults happened in construction industry, namely under payment, late payment and non-payment.

Table 1: Payment defaults (Ameer Ali, 2005 in Judi and Muhamed Sabli, 2010)

No.	Payment defaults	Description
1	Under Payment	The certified and paid amount by the Client is lower than the value of Contractor's work done.
2	Late Payment	Client taking longer time than the allocated time (beyond the period of honoring certificate) to issue/making payment to the Contractor.
3	Non-Payment	No payment is release to Contractor albeit the Contractor has completed certain area of works

Construction Industry Payment and Adjudication Act (CIPAA)

Ameer Ali (2006), Abdullah Habib and Abdul Rashid (2006) and Sahab and Ismail (2011) are of the opinion that Malaysia has followed the footsteps of United Kingdom, Australia, New Zealand and Singapore in introducing the concept of statutory adjudication to construction industry. With the aim to resolve cash flow issues, facilitate payment and expedite the dispute resolution, the facilities offered under CIPAA provisions are said to be comprehensive to achieve such target (Ameer Ali, 2006 and Fong, 2012). In general, Clause 2, Part I of the Act provides that CIPAA applies to all construction

contracts made in writing carried out wholly or partly within the territory of Malaysia and giving statutory right for unpaid parties to be paid for the work done.

There are some concerns that this new legislation may result claim culture, with the claimant proceeding to adjudication on the slightest dispute, resulting in precious time and energy being spent on continuous claims instead of focusing on completing the project (Fong, 2012). Contrary to that, Rajoo (2012) contested such opinion as the adjudicator is empowered to order for adjudication costs and fix the quantum of costs to be paid, thus it might deter any party from making frivolous payment claims.

Lessons learnt from other countries

Certain countries have already introduced Acts and Legislations to address payment defaults issues including United Kingdom (UK), Australia, New Zealand and Singapore (Karib, Shaffii, and Nor, 2008). Table 2 presents various Acts and Legislations from other countries together with their functions. Generally, all of the Acts focus on remedying payment defaults and improving cash flow. Apart from that, Table II also demonstrates the similarity in terms of function between CIPAA and the Construction Contracts Act 2002 (New Zealand) and Construction Contracts (Security of Payment) Act 2004 (Northern Territory, Australia).

Table 2: Payment Related Act and Functions in Other Countries (Karib, Shaffii, and Nor, 2008; Sahab and Ismail, 2011; Ramachandra, 2013)

No.	Acts and Litigations	Functions
1	Housing Grants, Construction and Regeneration Act 1996 (United Kingdom, England)	To improve payment practices
2	Building and Construction Industry Security of Payment Act 1999 amended in 2002 (New South Wales, Australia)	Reduce payment delay
3	Building and Construction Industry Security of Payment Act 2002 (Victoria, Australia)	Entitlements to progress payment
4	The Construction Contracts Act 2002 (New Zealand)	Facilitate regular and timely payment, speedy dispute resolution, provide remedies for non-payment
5	Building and Construction Industry of Payment Act 2004 (Queensland, Australia)	Entitlements to progress payment
6	Construction Contracts Act 2004 (Western Australia, Australia)	Ensure the money flows in the contractual chain by ensuring timely payment
7	Construction Contracts (Security of Payment) Act 2004 (Northern Territory, Australia)	Facilitate regular and timely payment, speedy dispute resolution, provide remedies for non-payment
8	Building and Construction Industry Security of Payment Act 2004 (Singapore)	Expediting payment and improving cash flow
9	Tasmanian Security of Payment Act 2009	Reform payment behavior in the industry

Pertinent Features of CIPAA

Among the pertinent features of CIPAA as drawn by Clause 5 (2), Part II and Clause 35, Part IV of the Act are outlawing the practices of “*Pay-When-Paid*” and “*Conditional Payment*” from construction contract. As the trend of “*Pay-When-Paid*” and “*Conditional Payment*” may disrupt the chain of business and affect other party that directly or indirectly involved, it is critical to discontinue this practice in the industry (Judi and Muhamed Sabli, 2010). In other words, CIPAA requires payment to be made for all work done that is practically accepted. In the event of payment default happens at any chain point, the relevant parties must resolve it themselves but not transferring the defaults to third parties (Abdullah Habib and Abdul Rashid, 2006).

Next, CIPAA is aimed to prevent uncertainties in payment among all parties in the construction contract (Karib, Shaffii, and Nor, 2008). However, these statutory implied terms shall be relevant and default mechanism in the absence of express terms in construction contract (Amer Ali, 2006; Rajoo, 2012 and Fong, 2011). Hence, Karib, Shaffii and Nor (2008) mentioned that, CIPAA will streamline payment process and timeframes for construction contracts and provide procedures on responses following payment claims. This pertinent feature is supported by Clause 6 of Part II as it mentioned that non-paying party may respond in several options to claimant depending on the case may be.

Another pertinent feature is establishing a cheaper, speedier, contemporaneous, binding, statutorily-enabled adjudication mechanism as mentioned in Clause 7, Part II of CIPAA. As pointed out by Karib, Ismail and Nor (2008), CIPAA have introduced new mechanism for settling construction disputes via adjudication. Under Clause 12 (2), Part II of CIPAA, the adjudicator must make decision on the disputes within 45 days; therefore, ensures the speedy resolution although it is not final (Rajoo, 2012). In similar vein, Abraham (2012) and Majid (2013) have mentioned that adjudication also provides flexibility in regards of reference to adjudication shall not hinder the reference to other dispute resolution as stated in Clause 13, Part II of CIPAA.

Last but not least, Part IV of the CIPAA – Enforcement of Adjudication Decision provides security and remedies for the recovery of payment following a decision by the adjudicator. As such, CIPAA allows the successful aggrieved party to recover its past debts and damages as well as avoid incurring further future exposure (Hasmori, Ismail and Said, 2012). Under this pertinent feature, the remedies available under the Act are interest on late payment (Clause 29, Part IV), suspension of works (Clause 29, Part IV), direct payment from principal (Clause 30, Part IV), judgment debt recovery (Clause 30 (4), Part IV), and other rights or remedies available in Construction Contract or any other written law (Clause 31 (2), Part IV).

Table 3: Pertinent Features of CIPAA (Karib, Shaffii and Nor, 2008)

No.	Pertinent Features of CIPAA	Clauses
1	Outlawing the Practice of Pay-When-Paid and Conditional Payment from Construction Contracts	Clause 5 (2), Part II and Clause 35, Part VI
2	Streamlining Payment Procedures for Construction Works	Clause 6, Part II
3	Establishing a Cheaper, Speedier, Contemporaneous, Binding, Statutorily-Enabled Adjudication Mechanism	Clause 7, Part II
4	Providing Security and Remedies for the Recovery of Payment Following a Decision by the Adjudicator	Clause 29, Part IV and Clause 30, Part IV

Expectation Towards CIPAA

The poor payment practices remain chronic problem and have affected the construction industry over years. Therefore, Ameer Ali (2006) and Karib, Ismail and Nor (2008) disclose that the intervention of CIPAA by way of creating a regulatory framework will provide for mechanism to remedy payment defaults. Firstly, contractors are optimistic that CIPAA will be able to offer speedy, time-bound, cheaper, binding and contemporaneous dispute resolution (Ameer Ali, 2006). Thus, CIPAA under Clause 7, Part II will allow swift resolution of disputes by way of adjudication, allowing projects to be completed without wasting time and money in litigation (Karib, Shaffii, and Nor, 2008). Karib, Ismail and Nor (2008) mentioned the next expectation towards CIPAA is to provide legal remedy to non-payment as by way of suspend or reduce the progress of performance or direct payment from principal. Simultaneously, contractors are looking forward that CIPAA will improve delivery system as Clause 12, Part II of CIPAA provides quicker and cheaper disputes resolution. As a result, inefficient dispute resolution methods which are peripheral to the core business of construction can be avoided (Majid, 2011 and Fong, 2012).

With the primary objective to ease the cash flow of contractors, CIPAA is expected to help the industry in sustaining the competitiveness of all parties to implement construction projects (Karib, Shaffii, and Nor, 2008). Ameer Ali (2006) added that as the good cash flow will eliminate the borrowing cost, it indirectly promotes and sustains the competitiveness of Contractor's offered price. Next, it encourages professionalism and promotes integrity amongst contractors, construction professionals, and client organizations (Karib, Shaffii, and Nor, 2008 and Ameer Ali, 2006). Apart from that, CIPAA will also enhance the value of human capital in the construction industry (Karib, Shaffii, and Nor, 2008). Additionally, Karib, Shaffii and Nor (2008) mentioned that CIPAA will allow all parties to focus in completing the works effectively and efficiently since the payment is no longer an issue to them. As a result, it will then give positive impact on the quality of construction works.

CIPAA – Remediating Payment Defaults and Dispute Resolution

Remediating Payment Defaults

From construction contract's perspective, contractors are entitled to be paid upon the fulfillment of their contractual obligations as provided under the contract (Ramachandra, 2013). The primary objective of the enacted CIPAA is facilitating regular and timely payment. Majid (2013) has further explained that CIPAA provides avenue for the Contractor to challenge the valuation and/or certification of works done. Moreover, CIPAA is to address critical cash flow issues in the construction industry (Sahab and Ismail, 2011). It should be noted that Clause 35, Part IV of CIPAA would removed the practice of conditional payment such as '*pay when paid*' or '*pay if paid*' (Rajoo, 2012). As such, Abraham (2012) outlined that any payment defaults can be avoided and improves the Contractor's cash flow.

Dispute Resolution

The need for cheaper and speedier mechanism to resolve dispute had led to the enactment of CIPAA as mentioned in Clause 7, Part II of the CIPAA. Thus, CIPAA will provide platform for dispute resolution by way of statutory adjudication. As a result, it allows the project to continue the regular activities without obstruction, whilst adjudication proceeding take place. KLRCA (n.d.) stated that Clause 12 (5), Part II of the Act allows a party (claimant) who is owed monies to promptly obtain payment from the non-paying party (respondent), based on assessment by industry expert known as adjudicator. To add, adjudication proceeding is conducted privately (Clause 20, Part II) and adjudicator's decision is temporarily binding the parties (Clause 13, Part II) (KLRCA, n.d.). Adjudication offers a faster procedure in resolving disputes among parties under the contract. Since

the adjudication decision is only binding but not final, it may lead the dissatisfied party to further refer such dispute to arbitration or court litigation (Fong, 2012). The following Figure 1 and Table 4 visualizes in clearer image of the process and time taken for adjudication proceeding.

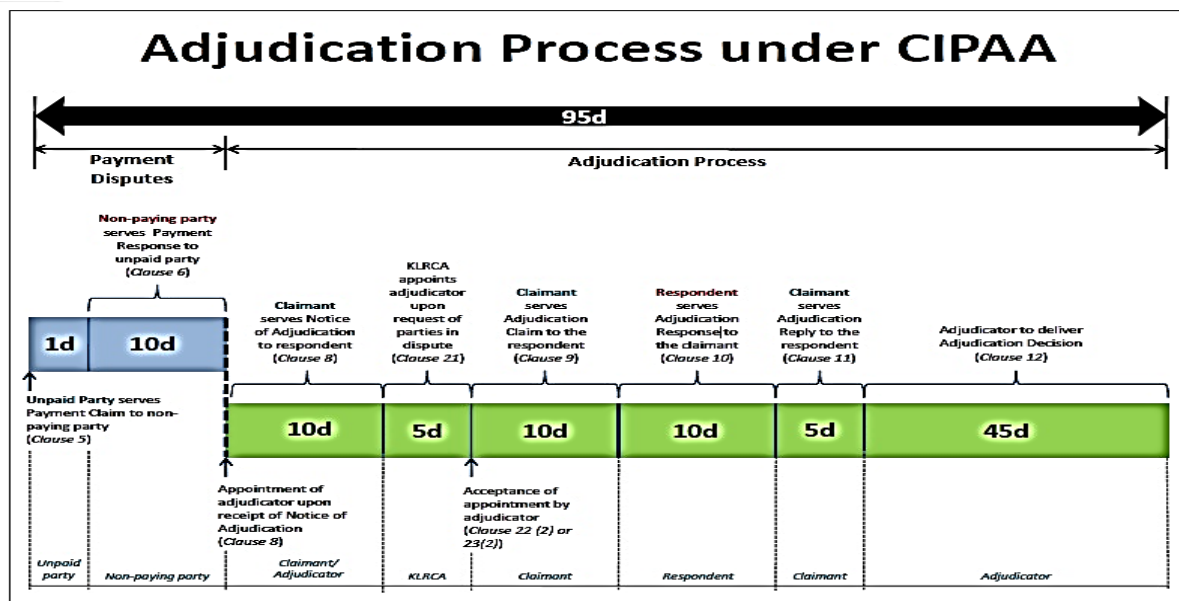


Figure 1: Adjudication Process under CIPAA (Rajoo, 2012)

Table 4: Procedure and time taken of adjudication (Shirley, 2012)

No.	Item	Section	Requirements	The Limit
1	Payment Claim	5	To state: (a) Amount claimed and due date (b) Cause of action and provision in contract relied on (c) Description of work or services to which payment relates (d) Statement that it is made under the Act	None
2	Payment Response	6	(a) May admit or dispute partly or wholly (b) Attach payment of amount admitted (c) If fail to respond then it is deemed that the entire claim is disputed	10 working days
3	Notice of Adjudication	7(2) and 8	State nature and description of dispute and remedy sought together with supporting documents	May serve on respondent after expiry of time limited for payment response
4	Adjudication Claim	9	State nature and description of dispute and remedy sought together with supporting documents	10 working days from receipt of acceptance of appointment by adjudicator under Section 22(2) or 23(2)

5	Adjudication Response	10	Answer the adjudication claim and include any supporting documents. . If not filed, claimant may proceed with the adjudication after time limited to do so	10 working days from receipt of adjudication claim
6	Adjudication Reply	11	Reply to response and include any supporting documents	5 working days from receipt of adjudication response

Implications and Limitations

Towards payment process and procedures

Under CIPAA provision, the unpaid party is allowed to refer any payment defaults including payment for variation order to adjudication. Thus, from the perspective of Government, Public Works Department (PWD) basically has taken into consideration of such provision towards current procedures (Majid, 2013). From the foregoing, government has introduced new guidelines in order to adhere with the provision outlined by CIPAA. Under new procedure, Majid (2013) has emphasize that contract administrator may apply for approval in principle. Consequently, the contract sum can be adjusted provisionally and appropriate payment of such variation order can be made accordingly.

Nevertheless, there are some limitations of CIPAA in addressing payment defaults. Firstly, the payment default is defined as the party claims payment of a sum is not being paid in whole or in part within specified time (Clause 5 (2) (a), Part II of the CIPAA). To address this, the paying party may indicate the period of honouring payment that accords with its financing capability (Fong, 2012). As such, the paying party is still having advantages as they holding discretion to specified payment term at their convenient. In addition, Fong (2012) mentioned that reference to CIPAA can only be made for dispute arises due to payment defaults only (Clause 7 (1), Part II). Besides, payment has also been narrowly defined in the CIPAA to mean payment for work done or services rendered under the express terms of the construction contract (Clause 2 and Clause 4 of Part I of CIPAA) (Fong, 2012). Hence, it has to await judicial clarification as to what constitutes or is encompassed by work done or services rendered under the express terms of the contract, especially whether a strict literal or otherwise, a purposive interpretation is accorded to the meaning of express terms (Fong, 2012 and Rajoo, 2012).

Towards disputes resolution process

Adjudication under CIPAA gives additional right to dispute resolution method conferred statutorily and provides an aggrieved party to refer the disputes to arbitration or court proceeding at the same time of such dispute has been referred to adjudication (Karib, Shaffii and Nor, 2008). Next, Ameer Ali (2006); Rajoo (2012); and Fong (2012) mentioned, statutory adjudication offers flexibility to the parties to terminate the adjudication upon agreement in writing or decision in arbitration or court. In addition, CIPAA improves the time taken for the adjudication in making decision any dispute proceeding (Ameer Ali, 2006 and Sahab and Ismail, 2011). Fong (2012) has further explained that CIPAA gives ample rooms for parties as well as adjudicator to present and determine the dispute on the merits rather than on technicalities. From the Government's perspective, Majid (2011) added that CIPAA will improve record keeping in order protecting the Client's interest against claims from the contractors.

Even so, the effectiveness of CIPAA is critically dependent on the competency and integrity of the adjudicators as well as the efficient and effective implementation of the CIPAA by both the KLRCA and the High Court (Fong, 2012). Furthermore, CIPAA is differs from Housing Grants, Construction and Regeneration Act 1996 in United Kingdom as it can only been commence when the disputes arise due to payment defaults (Fong, 2012 and Rajoo, 2012). Rajoo (2012) pointed out, in respect of appointing the adjudicator, the disputing parties are only at liberty to agree on the adjudicator after the dispute has arisen. If the parties are unable to agree, the default appointing body is the Director of KLRCA (Fong, 2012). The adjudicator is not empowered to determine and conclusively decide on his own jurisdiction due to the absence of “*Kompetenz - Kompetenz*” provision from CIPAA (Fong, 2012). As a result, the initial intention to resolve dispute in cheaper and quicker mode is remain arguable.

Research Aim and Objectives

This research aims to explore and reveal remedies offered via Construction Industry Payment and Adjudication Act (CIPAA) as well as the awareness and expectation of CIDB G7 contractors towards CIPAA. The research objectives are as follows:

1. To identify the pertinent features of Construction Industry Payment and Adjudication Act (CIPAA) in remedying payment default issues;
2. To investigate the perceptions and expectations of CIDB G7 contractors towards Construction Industry Payment and Adjudication Act (CIPAA) in addressing payment default issues;
3. To examine the potential implications and limitations of Construction Industry Payment and Adjudication Act (CIPAA) towards current construction industry practices.

Survey Result Analysis

A total of thirty (30) respondents from CIDB G7 Contractors have returned their response and feedback by completing and duly answered sets of questionnaires. Table 5 shows the tabulation of respondents’ profession.

Table 5: Tabulation according to respondents’ profession

No.	Profession	Total	Percentage (%)
1	Project Manager	6	20%
2	Architect	2	7%
3	Engineer	5	17%
4	Quantity Surveyor	17	57%
5	Others	0	0%
	TOTAL	30	100%

A total of five semi-structured interviews from CIDB G7 Contractors were conducted to validate and support the former results obtained from literature review and questionnaire survey. Table 6 illustrates the details of interviewees

Table 6: Tabulation according to respondents' profession

Interviewee ID	Position / Profession	Years of Experience	Nature of Project Involved	Years of Involvement
R001	Commercial Manager	25 years	Public Amenities / Infrastructure	20 years
R002	Project Manager	30 years	Public Amenities / Infrastructure	20 years
R003	Project Director	22 years	Public Amenities / Infrastructure	25 years
R004	Project Director	25 years	Public Amenities	12 years
R005	Senior Project Architect	15 years	Residential / Commercial	12 years

Respondent's experience in payment defaults

From the data collected, 1 respondent claimed that payment defaults are 'very often' whilst another 13 respondents or 43% pointed out that the occurrence of payment defaults is 'often'. Additionally, the other 11 respondents or 37% have opted for 'sometimes'. In contrast, 5 respondents or 17% have claimed that such defaults are 'rarely' happened.

Next, majority of the interviewees are of the opinion that payment default issues are still prevalent in the construction industry. Interviewees R001, R002 and R003 were unanimous that the payment problems have always been a dilemma within the industry while R005 stated that payment defaults are happened occasionally to his project. On the other hand, R004 claimed that payment issues are rarely happened to his company.

Common duration of the payment defaults listed

The subsequent element that has been outlined by questionnaire is duration taken in order to resolve payment defaults. From the data collected, 57% or 17 respondents claimed that payment defaults are normally took between 2 weeks to 1 month to resolve. In addition, 8 respondents (27%) indicated payment defaults can only be resolved within 1 to 2 months whilst 3 respondents (10%) claimed that such defaults require less than 2 weeks to be resolved. However, the remaining 2 respondents (7%) opted for 2 – 4 months duration.

From the semi-structured interview conducted, R001 and R002 mentioned that payment defaults basically took 2 to 4 weeks and 2 to 6 weeks, respectively to be resolved. In contrast, R003 indicated between 4 to 5 weeks to resolve payment defaults but in certain cases, it may prolong until 3 months. Nonetheless, R004 stated payment defaults require up to 1 to 2 weeks while R005 mentioned that payment defaults commonly take about 1 month to be resolved. In average, any payment defaults would require 2 to 6 weeks before it can be resolved. In short, payment defaults are critical issues and necessary improvement should take place to address the issue effectively.

Respondent's awareness about CIPAA

All of the interviewees are well-aware with the enactment of CIPAA. Despite of positive results from semi-structured interview, questionnaire survey indicated that out of 30 numbers of respondents, 13 respondents (43%) answered 'Yes'. In contrast, the remaining 57% or 17 respondents answered 'No'.

Table 7: Respondents' awareness towards CIPAA

Awareness About CIPAA	Frequency	Percentage (%)
Yes	13	43%
No	17	57%
TOTAL	30	100

Objective 1 : To identify the pertinent features of Construction Industry Payment and Adjudication Act (CIPAA) in remedying payment default issues;

This objective was achieved via mixed methods of questionnaire survey and semi-structured interview. Table 8 tabulated the comparison between literature review, results from questionnaire survey and semi-structured interview.

Table 8: Pertinent Features of CIPAA

No.	Literature review	Results from Questionnaire Survey	Results from Semi-structured Interview
1	Outlawing the practice of Pay-When-Paid and Conditional Payment from Construction Contracts (Karib, Shaffii and Nor, 2008; Judi and Muhamed Sabli, 2010).	Establishing a Cheaper, Speedier, Contemporaneous, Binding, Statutorily-Enabled Adjudication Mechanism (Hasmori, Ismail and said, 2012; Abraham, 2012; Rajoo, 2012; Majid, 2013).	Streamlining Payment Procedures for Construction Works (Ameer Ali, 2006; Saad, 2008; Fong, 2011; Rajoo, 2012). (R001 / R002 / R004)
2	Streamlining Payment Procedures for Construction Works (Ameer Ali, 2006; Saad, 2008; Fong, 2011; Rajoo, 2012).	Streamlining Payment Procedures for Construction Works (Ameer Ali, 2006; Saad, 2008; Fong, 2011; Rajoo, 2012).	Establishing a Cheaper, Speedier, Contemporaneous, Binding, Statutorily-Enabled Adjudication Mechanism (Hasmori, Ismail and said, 2012; Abraham, 2012; Rajoo, 2012; Majid, 2013). (R003 / R004)
3	Establishing a Cheaper, Speedier, Contemporaneous, Binding, Statutorily-Enabled Adjudication Mechanism (Hasmori, Ismail and said, 2012; Abraham, 2012; Rajoo, 2012; Majid, 2013).	Outlawing the practice of Pay-When-Paid and Conditional Payment from Construction Contracts (Karib, Shaffii and Nor, 2008; Judi and Muhamed Sabli, 2010).	Outlawing the practice of Pay-When-Paid and Conditional Payment from Construction Contracts (Karib, Shaffii and Nor, 2008; Judi and Muhamed Sabli, 2010). (R001)
4	Providing Security and Remedies for the Recovery of Payment Following a Decision by the Adjudicator (Hasmori, Ismail and said, 2012; Fong, 2006; Rajoo, 2012).	Providing Security and Remedies for the Recovery of Payment Following a Decision by the Adjudicator (Hasmori, Ismail and said, 2012; Fong, 2006; Rajoo, 2012).	Providing Security and Remedies for the Recovery of Payment Following a Decision by the Adjudicator (Hasmori, Ismail and said, 2012; Fong, 2006; Rajoo, 2012). (R005)

Objective 2 : To investigate the perceptions and expectations of CIDB G7 contractors towards Construction Industry Payment and Adjudication Act (CIPAA) in addressing payment default issues;

Likewise the first objective, this objective was achieved also via mixed methods of questionnaire survey and semi-structured interviews. Subsequent to that, these advantages have been listed in questionnaire survey and respondents were requested to rank such advantages based on the most expected to the least expected. The following Table 9 is comparative analysis between literature review and outcome from the field study. From the table, results from semi-structured interview indicates that out of 6 variables obtained from literature review, there are only 3 variables that been acknowledged by interviewees as primary and crucial. This situation might caused by limited amount of semi-structured interviewees conducted for this research.

Table 9: Comparative analysis between Literature Review and Field Study Outcomes

No.	Literature review	Results from Questionnaire Survey	Results from Semi-structured Interview
1	Speedy, Time-bound, Cheaper, Binding & Contemporaneous Dispute Resolution (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	Provides Legal Remedy to Non-Payment (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	Improves the Delivery System (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008). (R001 / R002 / R004, R005)
2	Provides Legal Remedy to Non-Payment (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	Enhances Industry Image & Professionalism and Enhances Human Capital & Integrity (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	Speedy, Time-bound, Cheaper, Binding & Contemporaneous Dispute Resolution (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008). (R003 / R005)
3	Improves the Delivery System (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	Improves the Delivery System (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	Provides Legal Remedy to Non-Payment (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008). (R004)
4	Sustains Competitiveness of Parties (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	Speedy, Time-bound, Cheaper, Binding & Contemporaneous Dispute Resolution (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	-
5	Enhances Industry Image & Professionalism and Enhances Human Capital & Integrity (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	Enhances Construction Quality (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	-
6	Enhances Construction Quality (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	Sustains Competitiveness of Parties (Ameer Ali, 2006; Karib, Shaffii and Nor, 2008).	-

Objective 3 : To examine the potential implications and limitations of Construction Industry Payment and Adjudication Act (CIPAA) towards current construction industry practices;

The third objective of the research is to examine the potential implications and limitations of Construction Industry Payment and Adjudication Act (CIPAA) towards current construction industry practices. Table 10 below showed the comparison of potential implications of CIPAA from questionnaire survey and semi-structured interview. From the table, results from semi-structured interview indicates that out of 12 variables obtained from literature review, there are only 6 variables that been considered by interviewees as significant. Therefore, the remaining 6 variables are considered as non-critical implications by the interviewees. As the semi-structured interview conducted on 5 number of CIDB G7 contractors only, an increase in interviewee numbers in contrast might give different pattern and result.

Apart from that, Table 11 demonstrates the potential limitations of CIPAA. Results from questionnaire survey found that “the absence of “kompetenz-kompetenz” provision, thus the adjudicator is not empowered to determine and conclusively decide on his own jurisdiction” has been disregarded from primary potential limitations of CIPAA by the respondents. To add, semi-structured interview discovered “the absence of “kompetenz-kompetenz” provision, thus the adjudicator is not empowered to determine and conclusively decide on his own jurisdiction” and “the paying party having advantages as they holding discretion to specify payment term at their convenient” are non-critical potential limitations. As such, the non-critical variables from both questionnaire survey and semi-structured interview are excluded from the table.

Table 10: Potential Implications of CIPAA

No.	Literature review	Results from Questionnaire Survey	Results from Semi-structured Interview
1	Establish payment process, procedures and timeframes for construction contracts (Majid, 2013).	Provide positive adjudication decisions which are enforceable (Fong, 2012).	Establish payment process, procedures and timeframes for construction contracts (Majid, 2013). (R001 / R002 / R003 / R004 / R005)
2	Introduction of approval in principle for intended variation orders to allow payment upon completion of such V.O (Majid, 2013).	Industry players will have to improve in terms of record-keeping to safeguard the interest for and against claims (Majid, 2011).	CIPAA will promotes the good practice by making timely payments and ensure accountability in the projects involved (Abraham, 2012; Fong, 2012). (R001 / R002 / R003 / R004 / R005)
3	Addressing payment irregularities in the multi-layer contractual arrangements (Majid, 2013).	CIPAA will promotes the good practice by making timely payments and ensure accountability in the projects involved (Abraham, 2012; Fong, 2012).	Ensures the speedy resolution of dispute (Abraham, 2012; Rajoo.2012). (R001 / R004 / R005)
4	Ensures the speedy resolution of dispute (Abraham, 2012; Rajoo.2012).	Ensures the speedy resolution of dispute (Abraham, 2012; Rajoo.2012).	Provide positive adjudication decisions which are enforceable (Fong, 2012). (R004 / R005)

5	Provide positive adjudication decisions which are enforceable (Fong, 2012).	Establish payment process, procedures and timeframes for construction contracts (Majid, 2013).	Industry players will have to improve in terms of record-keeping to safeguard the interest for and against claims (Majid, 2011). (R004 / R005)
6	The Act applies globally to construction industry as it has been enacted by the Parliament and have legal jurisdiction (karib, Shaffii, and Nor, 2008).	CIPAA also improve the time taken for the adjudication in making decision in any dispute proceeding (Ameer Ali, 2006; Sahab and Ismail, 2011).	CIPAA also improve the time taken for the adjudication in making decision in any dispute proceeding (Ameer Ali, 2006; Sahab and Ismail, 2011). (R004)
7	CIPAA allow reference to arbitration/court proceeding while such dispute has been referred to adjudication (karib, Shaffii, and Nor, 2008).	CIPAA allow reference to arbitration/court proceeding while such dispute has been referred to adjudication (karib, Shaffii, and Nor, 2008).	-
8	CIPAA offers flexibility to the parties to terminate the adjudication upon agreement by both parties (Ameer Ali, 2006; Rajoo, 2012; Fong, 2012).	Addressing payment irregularities in the multi-layer contractual arrangements (Majid, 2013).	-
9	CIPAA also improve the time taken for the adjudication in making decision in any dispute proceeding (Ameer Ali, 2006; Sahab and Ismail, 2011).	CIPAA gives opportunity for parties and adjudicator to present and determine the dispute on the merits (Fong, 2012).	-
10	CIPAA gives opportunity for parties and adjudicator to present and determine the dispute on the merits (Fong, 2012).	Introduction of approval in principle for intended variation orders to allow payment upon completion of such V.O (Majid, 2013).	-
11	Industry players will have to improve in terms of record-keeping to safeguard the interest for and against claims (Majid, 2011).	The Act applies globally to construction industry as it has been enacted by the Parliament and have legal jurisdiction (karib, Shaffii, and Nor, 2008).	-
12	CIPAA will promotes the good practice by making timely payments and ensure accountability in the projects involved (Abraham, 2012; Fong, 2012).	CIPAA offers flexibility to the parties to terminate the adjudication upon agreement by both parties (Ameer Ali, 2006; Rajoo, 2012; Fong, 2012).	-

Table 11: Potential Limitations of CIPAA

No.	Literature review	Results from Questionnaire Survey	Results from Semi-structured Interview
1	The paying party having advantages as they holding discretion to specified payment term at their convenient (Fong, 2012).	The effectiveness of CIPAA is critically dependent on the competency and integrity of the adjudicators (Rajoo, 2012).	The effectiveness of CIPAA is critically dependent on the competency and integrity of the adjudicators (Rajoo, 2012). (R001 / R002 / R004)
2	The paying party may indicate the period of honoring payment that accords with their financing capability (Fong, 2012).	The paying party may indicate the period of honoring payment that accords with their financing capability (Fong, 2012).	To enforce the adjudication decision, the party may opt for suspension or reduction of works or direct payment from principal only (Fong, 2012; Rajoo, 2012). (R001 / R004 / R005)
3	Reference and commencement of adjudication under the CIPAA is limited to payment dispute only (Fong, 2012; Rajoo, 2012).	Reference and commencement of adjudication under the CIPAA is limited to payment dispute only (Fong, 2012; Rajoo, 2012).	CIPAA never be feasible to achieve unanimous, voluntary adherence as the opportunism of the minority will drive the entire CIPAA objective down (Fong, 2012; Rajoo, 2012). (R003 / R005)
4	The interpretation of payment as outlined by CIPAA may exclude payment for variation work, loss and expense, damages and quantum merits claims (Fong, 2012).	To enforce the adjudication decision, the party may opt for suspension or reduction of works or direct payment from principal only (Fong, 2012; Rajoo, 2012).	The paying party may indicate the period of honoring payment that accords with their financing capability (Fong, 2012). (R003)
5	CIPAA never be feasible to achieve unanimous, voluntary adherence as the opportunism of the minority will drive the entire CIPAA objective down (Fong, 2012; Rajoo, 2012).	The paying party having advantages as they holding discretion to specified payment term at their convenient (Fong, 2012).	Reference and commencement of adjudication under the CIPAA is limited to payment dispute only (Fong, 2012; Rajoo, 2012). (R002)
6	The effectiveness of CIPAA is critically dependent on the competency and integrity of the adjudicators (Rajoo, 2012).	The interpretation of payment as outlined by CIPAA may exclude payment for variation work, loss and expense, damages and quantum merits claims (Fong, 2012).	The interpretation of payment as outlined by CIPAA may exclude payment for variation work, loss and expense, damages and quantum merits claims (Fong, 2012). (R002)

7	The absence of “Kompetenz - Kompetenz” provision, thus the adjudicator is not empowered to determine and conclusively decide on his own jurisdiction (Fong, 2012).	CIPAA never be feasible to achieve unanimous, voluntary adherence as the opportunism of the minority will drive the entire CIPAA objective down (Fong, 2012; Rajoo, 2012).	-
8	To enforce the adjudication decision, the party may opt for suspension or reduction of works or direct payment from principal only (Fong, 2012; Rajoo, 2012).	-	-

Conclusion

From the research, the literature review provides overview on the occurrence of payment default issues in Malaysian construction industry and how to Construction Industry Payment and Adjudication Act (CIPAA) offers remedies to the payment default issues. The research found that payment default issues are still prevalent dilemma that lingered among the contractors in Malaysia and to resolve or at least minimize the problem, the Parliament of Malaysia has enacted CIPAA to address these long-plagued issues. The construction industry is optimistic that CIPAA will be the best platform to resolve payment default issues in timely manner. In spite of several pertinent features of CIPAA that have been identified in various papers before, the research discovered the most pertinent feature of CIPAA from contractors’ point of view is “to streamlining payment procedures for construction works”. In addition to that, the research revealed that most of CIDB G7 contractors’ were expecting the enacted CIPAA would be able to provide legal remedy to non-payment and improve the delivery system in construction industry. Furthermore, the research discovered that most of the CIDB G7 contractors are optimistic that CIPAA will be able to provide positive adjudication decision and establish payment procedures for construction contracts. Additionally, the research disclosed that the major limitation of the Act is CIPAA critically dependent on the competency and integrity of the adjudicators. Finally, despite of all barriers and limitations of CIPAA as discussed, it is aimed that the construction industry can be benefited from the enactment of CIPAA. As such, all parties have significant roles and must take ownership of the issues and challenges. To this end, the industry as a whole must collaborate and focus on their synergies to promote effective implementation of CIPAA.

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