



ASIAN INTERNATIONAL ARBITRATION CENTRE
(Formerly known as KLRCA)

CONSTRUCTION INDUSTRY PAYMENT AND ADJUDICATION ACT 2012

REGIONAL RESOLUTION
GLOBAL SOLUTION



ASIAN INTERNATIONAL ARBITRATION CENTRE
(Formerly known as KLRCA)



**CONSTRUCTION
INDUSTRY
PAYMENT AND
ADJUDICATION
ACT 2012**

According to Section 3(1) of the Arbitration (Amendment) Act 2018 [Act A1563] and the Ministers' appointment of the date of coming into operation, gazetted on 27th February 2018, the name of Kuala Lumpur Regional Centre for Arbitration (the "**KLRCA**") was changed to the Asian International Arbitration Centre (Malaysia) (the "**AIAC**") starting from 28th February 2018. Any reference to the KLRCA in Construction Industry Payment and Adjudication Act 2012 published by the KLRCA, in any written law or in any instrument, deed, title, document, bond, agreement or working arrangement shall, after the 28th February 2018, be construed as a reference to the AIAC. All approvals, directions, notices, guidelines, circulars, guidance notes, practice notes, rulings, decision, notifications, exemptions and other executive acts, howsoever called, given or made by the KLRCA before 28th February 2018, shall continue to remain in full force and effect, until amended, replaced, rescinded or revoked.

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Please refer to www.aiac.world for the most updated rules

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DIRECTOR'S MESSAGE

The construction industry is the driver of economic growth for the nation. The strong performance of the construction industry is attributed to the mega projects implemented by the government through the Public Private Partnerships, the Economic Transformation programme and the various Economic Corridors.

Over the past three years, the country saw the launch of 195 projects under the National Key Economic Areas (NKEA) listed in the ETP and these projects are expected to contribute RM144 billion to gross national income.

The demand for construction services is further expected to grow with new projects such as the RM1.2 billion Langat 2, the RM5 billion Warisan Merdeka Tower and the RM8 billion Suke and Dash highways.

Therefore the coming into force of the Construction Industry Payment & Adjudication Act 2012 ("CIPAA") on the 15th April 2014 is timely.

The Malaysian construction industry, like other construction industries in developing nations, has had a long history of lengthy payment times, which has caused many contractors to suffer from cash-flow problems and thus delaying projects.

The legislation provides for compulsory statutory adjudication and aims to facilitate cash flow in the industry. Parties will be able to obtain a quick interim decision with regards to progress payment disputes, thereby avoiding potential short-term cash-flow problems during project delivery. AIAC has been named as the adjudication authority by virtue of Part V of CIPAA, which means that the centre has a key role to play in being the default appointing and administrative authority.

In line with this, the AIAC has come up with the AIAC Adjudication Rules & Procedure to supplement the CIPAA and to enable us to provide administrative support for the efficient conduct of adjudication. The AIAC Adjudication Rules & Procedure will assist both adjudicators and parties in the adjudication process.

In addition, we continue to conduct training and certification courses for interested parties to become adjudicators. These programmes together with introductory talks and road shows to educate and raise awareness on CIPAA, will train and certify adjudicators as well as the relevant parties so that the construction industry is prepared as the country embraces this new adjudication process.

This booklet has been put together as a reference and starting point to guide you through CIPAA's scope and application, its processes as well as its impact on the construction industry. It contains general information and a FAQ, a copy of the Act together with the Regulations and Exemption Order and a copy of the AIAC Adjudication Rules & Procedure.

I hope that you will find it useful, and strongly encourage you to find out more about the programmes and register your interest to be part of this new process as Malaysia enters into an exciting new phase that will transform the construction industry in the country.

Thank you.



Datuk Professor Sundra Rajoo

Part I

CONSTRUCTION
INDUSTRY
PAYMENT &
ADJUDICATION
ACT 2012

LAWS OF MALAYSIA

ACT 746

CONSTRUCTION INDUSTRY PAYMENT & ADJUDICATION ACT 2012

An Act to facilitate regular and timely payment, to provide a mechanism for speedy dispute resolution through adjudication, to provide remedies for the recovery of payment in the construction industry and to provide for connected and incidental matters.

ENACTED by the Parliament of Malaysia as follows:

PART I PRELIMINARY

1. Short title and commencement

- 1) This Act may be cited as the Construction Industry Payment and Adjudication Act 2012.
- 2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

2. Application

This Act applies to every construction contract made in writing relating to construction work carried out wholly or partly within the territory of Malaysia including a construction contract entered into by the Government.

3. Non-application

This Act does not apply to a construction contract entered into by a natural person for any construction work in respect of any building which is less than four storeys high and which is wholly intended for his occupation.

4. Interpretation

In this Act, unless the context otherwise requires—

“adjudication decision” means the decision made by an adjudicator under subsection 12(2);

“adjudication proceedings” means the process of adjudication under this Act;

“adjudicator” means an individual appointed to adjudicate a dispute under this Act;

“claimant” means an aggrieved party in a construction contract who initiates adjudication proceedings;

“construction consultancy contract” means a contract to carry out consultancy services in relation to construction work and includes planning and feasibility study, architectural work, engineering, surveying, exterior and interior decoration, landscaping and project management services;

“construction contract” means a construction work contract or construction consultancy contract;

“construction work” means the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of:

- a) Any building, erection, edifice, structure, wall, fence or chimney, whether constructed wholly or partly above or below ground level;
- b) Any road, harbour works, railway, cableway, canal or aerodrome;
- c) Any drainage, irrigation or river control work;
- d) Any electrical, mechanical, water, gas, oil, petrochemical or telecommunication work; or
- e) Any bridge, viaduct, dam, reservoir, earthworks, pipeline, sewer, aqueduct, culvert, drive, shaft, tunnel or reclamation work,

and includes—

- a) Any work which forms an integral part of, or are preparatory to or temporary for the works described in paragraphs (a) to (e), including site clearance, soil investigation and improvement, earth-moving, excavation, laying of foundation, site restoration and landscaping; and
- b) Procurement of construction materials, equipment or workers, as necessarily required for any works described in paragraphs (a) to (e);

“construction work contract” means a contract to carry out construction work;

“contract administrator” means an architect, engineer superintending officer or other person howsoever designated who administers a construction contract;

“Government” means the Federal Government or the State Government;

“High Court” means the High Court in Malaya or the High Court in Sabah and Sarawak, as the case may require;

“KLRC” means the Kuala Lumpur Regional Centre for Arbitration;

“Minister” means the Minister charged with the responsibility for works;

“non-paying party” means a party against whom a payment claim is made pursuant to a construction contract;

“payment” means a payment for work done or services rendered under the express terms of a construction contract;

“principal” means a party who has contracted with and is liable to make payment to another party where that other party has in turn contracted with and is liable to make payment to a further person in a chain of construction contracts;

“respondent” means the person on whom the notice of adjudication and adjudication claim has been served;

“**site**” means the place where the construction work is affixed whether on-shore or off-shore;

“**unpaid party**” means a party who claims payment of a sum which has not been paid in whole or in part under a construction contract;

“**working day**” means a calendar day but exclude weekends and public holidays applicable at the State or Federal Territory where the site is located.

PART II ADJUDICATION OF PAYMENT DISPUTES

5. Payment Claim

- 1) An unpaid party may serve a payment claim on a non-paying party for payment pursuant to a construction contract.
- 2) The payment claim shall be in writing and shall include—
 - a) The amount claimed and due date for payment of the amount claimed;
 - b) Details to identify the cause of action including the provision in the construction contract to which the payment relates;
 - c) Description of the work or services to which the payment relates; and
 - d) A statement that it is made under this Act.

6. Payment Response

- 1) A non-paying party who admits to the payment claim served on him shall serve a payment response on the unpaid party together with the whole amount claimed or any amount as admitted by him.
- 2) A non-paying party who disputes the amount claimed in the payment claim, either wholly or partly, shall serve a payment response in writing on the unpaid party stating the amount disputed and the reason for the dispute.
- 3) A payment response issued under subsection (1) or (2) shall be served on the unpaid party within ten working days of the receipt of the payment claim.
- 4) A non-paying party who fails to respond to a payment claim in the manner provided under this section is deemed to have disputed the entire payment claim.

7. Right to Refer Dispute to Adjudication

- 1) An unpaid party or a non-paying party may refer a dispute arising from a payment claim made under section 5 to adjudication.
- 2) The right to refer a dispute to adjudication shall only be exercised after the expiry of the period to serve a payment response as specified under subsection 6(3).
- 3) A dispute referred to adjudication under this Act is subject to the Limitation Act 1953 [Act 254], Sabah Limitation Ordinance [Cap. 72] or Sarawak Limitation Ordinance [Cap. 49] as the case may be.

8. Initiation of Adjudication

- 1) A claimant may initiate adjudication proceedings by serving a written notice of adjudication containing the nature and description of the dispute and the remedy sought together with any supporting document on the respondent.
- 2) Upon receipt by the respondent of the notice of adjudication, an adjudicator shall be appointed in the manner described in section 21.
- 3) A party to the adjudication proceedings may represent himself or be represented by any representative appointed by the party.

9. Adjudication Claim

- 1) The claimant shall, within ten working days from the receipt of the acceptance of appointment by the adjudicator under subsection 22(2) or 23(2), serve a written adjudication claim containing the nature and description of the dispute and the remedy sought together with any supporting document on the respondent.
- 2) The claimant shall provide the adjudicator with a copy of the adjudication claim together with any supporting document within the time specified under subsection (1).

10. Adjudication Response

- 1) The respondent shall, within ten working days from the receipt of the adjudication claim under subsection 9(1), serve a written adjudication response which shall answer the adjudication claim together with any supporting document on the claimant.
- 2) The respondent shall provide the adjudicator with a copy of the adjudication response together with any supporting document within the time specified under subsection (1).
- 3) If the respondent fails to serve any adjudication response, the claimant may proceed with the adjudication after the expiry of the time specified under subsection (1).

11. Adjudication Reply

- 1) The claimant may, within five working days from the receipt of the adjudication response, serve a written reply to the adjudication response together with any supporting document on the respondent.
- 2) The claimant shall provide the adjudicator with a copy of the adjudication reply together with any supporting document within the time specified under subsection (1).

12. Adjudication and Decision

- 1) The adjudicator shall conduct the adjudication in the manner as the adjudicator considers appropriate within the powers provided under section 25.
- 2) Subject to subsection 19(5), the adjudicator shall decide the dispute and deliver the adjudication decision within—
 - a) Forty-five working days from the service of the adjudication response or reply to the adjudication response, whichever is later;
 - b) Forty-five working days from the expiry of the period prescribed for the service of the adjudication response if no adjudication response is received; or
 - c) Such further time as agreed to by the parties.
- 3) An adjudication decision which is not made within the period specified in subsection (2) is void.
- 4) The adjudication decision shall be made in writing and shall contain reasons for such decision unless the requirement for reasons is dispensed with by the parties.
- 5) The adjudication decision shall also determine the adjudicated amount and the time and manner the adjudicated amount is payable.
- 6) The adjudicator shall serve a copy of the adjudication decision, including any corrected adjudication decision made under subsection (7), on the parties and the Director of the KLRCA.

- 7) The adjudicator may at any time correct any computational or typographical error on the adjudicator's own initiative or at the request of any party.
- 8) The enforcement of the adjudication decision shall not be affected in any way by a request for correction under subsection (7) and any correction made is deemed take effect from the date of the original adjudication decision.
- 9) The Evidence Act 1950 [Act 56] shall not apply to adjudication proceedings under this Act.

13. Effect of Adjudication Decision

The adjudication decision is binding unless—

- a) It is set aside by the High Court on any of the grounds referred to in section 15;
- b) The subject matter of the decision is settled by a written agreement between the parties; or
- c) The dispute is finally decided by arbitration or the court.

14. Consolidation of Adjudication Proceedings

If two or more adjudication proceedings in respect of the same subject matter are being adjudicated before the same adjudicator, the adjudicator may, with the consent of all the parties to the adjudication proceedings, consolidate and adjudicate the matters in the same proceedings.

15. Improperly Procured Adjudication Decision

An aggrieved party may apply to the High Court to set aside an adjudication decision on one or more of the following grounds:

- a) The adjudication decision was improperly procured through fraud or bribery;
- b) There has been a denial of natural justice;
- c) The adjudicator has not acted independently or impartially; or
- d) The adjudicator has acted in excess of his jurisdiction.

16. Stay of Adjudication Decision

- 1) A party may apply to the High Court for a stay of an adjudication decision in the following circumstances:
 - a) An application to set aside the adjudication decision under section 15 has been made; or
 - b) The subject matter of the adjudication decision is pending final determination by arbitration or the court.
- 2) The High Court may grant a stay of the adjudication decision or order the adjudicated amount or part of it to be deposited with the Director of the KLRCA or make any other order as it thinks fit.

17. Withdrawal and Recommencement of Adjudication Proceedings

- 1) A claimant may at any time withdraw an adjudication claim by serving a notice of withdrawal in writing on the respondent and the adjudicator.
- 2) The claimant shall bear the costs arising out of the withdrawal of the adjudication proceedings unless the adjudicator orders otherwise.
- 3) The claimant who has withdrawn the adjudication claim is free to recommence adjudication on the same subject matter by serving a new notice of adjudication in accordance with section 8.
- 4) If an adjudicator dies, resigns or is unable through illness or any other cause to complete the adjudication proceedings—
 - a) The adjudication proceedings come to an end and the parties are free to recommence adjudication proceedings afresh; or
 - b) The adjudication proceedings may be continued by a new adjudicator appointed by the parties and the adjudication proceedings shall continue as if there is no change of adjudicator.

18. Costs of Adjudication Proceedings

- 1) The adjudicator in making the adjudication decision in relation to costs of the adjudication proceedings shall order the costs to follow the event and shall fix the quantum of costs to be paid.
- 2) Subsection (1) shall prevail over any agreement made by the parties prior to the commencement of the adjudication proceedings by which one party agrees to pay the other party's costs or bear the adjudicator's fees and expenses.

19. Adjudicator's Fees and Expenses, etc.

- 1) The parties and the adjudicator shall be free to agree on the terms of appointment of the adjudicator and the fees to be paid to the adjudicator.
- 2) If the parties and the adjudicator fail to agree on the terms of appointment and the fees of the adjudicator, the KLRCA's standard terms of appointment and fees for adjudicators shall apply.
- 3) The parties to the adjudication are jointly and severally liable to pay the adjudicator's fees and expenses and the adjudicator may recover the fees and expenses due as a debt.
- 4) The parties shall contribute and deposit with the Director of the KLRCA a reasonable proportion of the fees in equal share as directed by the adjudicator in advance as security.

- 5) Before releasing the adjudication decision to the parties, the adjudicator may require full payment of the fees and expenses to be deposited with the Director of the KLRCA.
- 6) An adjudicator is not entitled to any fees or expenses relating to the adjudication if the adjudicator fails to decide the dispute within the period specified under subsection 12(2) except when the delay in the delivery of the decision is due to the failure of the parties to deposit the full payment of the adjudicator's fees and expenses with the Director of the KLRCA under subsection (5).

20. Confidentiality of Adjudication

The adjudicator and any party to the dispute shall not disclose any statement, admission or document made or produced for the purposes of adjudication to another person except—

- a) With the consent of the other party;
- b) To the extent that the information is already in the public domain;
- c) To the extent that disclosure is necessary for the purposes of the enforcement of the adjudication decision or any proceedings in arbitration or the court; or
- d) To the extent that disclosure is required for any purpose under this Act or otherwise required in any written law.

PART III ADJUDICATOR

21. Appointment of Adjudicator

An adjudicator may be appointed in the following manner:

- a) By agreement of the parties in dispute within ten working days from the service of the notice of adjudication by the claimant; or
- b) By the Director of the KLRCA-
 - i) Upon the request of either party in dispute if there is no agreement of the parties under paragraph (a); or
 - ii) Upon the request of the parties in dispute.

22. Appointment of Adjudicator by Parties

- 1) The claimant shall notify the adjudicator to be appointed under paragraph 21(a) in writing and provide him with a copy of the notice of adjudication.
- 2) The adjudicator shall propose and negotiate his terms of appointment including fees chargeable with the parties and shall within ten working days from the date he was notified of his appointment, indicate his acceptance and terms of his appointment.

- 3) If the adjudicator rejects his appointment or fails to indicate his acceptance of the appointment within the period specified in subsection (2), the parties may proceed to appoint another adjudicator in the manner provided under section 21.

23. Appointment of Adjudicator by Director of the KLRCA

- 1) The Director of the KLRCA shall appoint an adjudicator under paragraph 21(b) within five working days upon receipt of a request and shall notify the parties and the adjudicator in writing.
- 2) The adjudicator shall propose and negotiate his terms of appointment including fees chargeable with the parties and shall within ten working days from the date he was notified of his appointment, indicate his acceptance and terms of his appointment.
- 3) If the adjudicator rejects his appointment or fails to indicate his acceptance of the appointment within the period specified in subsection (2)-
 - a) The parties may agree to appoint another adjudicator in the manner provided under paragraph 21(a); or
 - b) The Director of the KLRCA may proceed to appoint another adjudicator in the manner provided under paragraph 21(b).

24. Duties and Obligations of the Adjudicator

The adjudicator shall at the time of the acceptance of appointment as an adjudicator make a declaration in writing that—

- a) There is no conflict of interest in respect of his appointment;
- b) He shall act independently, impartially and in a timely manner and avoid incurring unnecessary expense;
- c) He shall comply with the principles of natural justice; and
- d) There are no circumstances likely to give rise to justifiable doubts as to the adjudicator's impartiality and independence.

25. Powers of the Adjudicator

The adjudicator shall have the powers to—

- a) Establish the procedures in conducting the adjudication proceedings including limiting the submission of documents by the parties;
- b) Order the discovery and production of documents;
- c) Set deadlines for the production of documents;
- d) Draw on his own knowledge and expertise;

- e) Appoint independent experts to inquire and report on specific matters with the consent of the parties;
- f) Call for meetings with the parties;
- g) Conduct any hearing and limiting the hearing time;
- h) Carry out inspection of the site, work, material or goods relating to the dispute including opening up any work done;
- i) Inquisitorially take the initiative to ascertain the facts and the law required for the decision;
- j) Issue any direction as may be necessary or expedient;
- k) Order interrogatories to be answered;
- l) Order that any evidence be given on oath;
- m) Review and revise any certificate issued or to be issued pursuant to a construction work contract, decision, instruction, opinion or valuation of the parties or contract administrator relevant to the dispute;
- n) Decide or declare on any matter notwithstanding no certificate has been issued in respect of the matter.
- o) Award financing costs and interest; and
- p) Extend any time limit imposed on the parties under this Act as reasonably required.

26. Power of Adjudicator Not Affected by Non-compliance

- 1) Subject to subsection (2), the non-compliance by the parties with the provisions of this Act whether in respect of time limit, form or content or in any other respect shall be treated as an irregularity and shall not invalidate the power of the adjudicator to adjudicate the dispute nor nullify the adjudication proceedings or adjudication decision.
- 2) The adjudicator may on the ground that there has been non-compliance in respect of the adjudication proceedings or document produced in the adjudication proceedings—
 - a) Set aside either wholly or partly the adjudication proceedings;
 - b) Make any order dealing with the adjudication proceedings as the adjudicator deems fit; or
 - c) Allow amendment to be made to the document produced in the adjudication proceedings.

27. Jurisdiction of Adjudicator

- 1) Subject to subsection (2), the adjudicator's jurisdiction in relation to any dispute is limited to the matter referred to adjudication by the parties pursuant to sections 5 and 6.
- 2) The parties to adjudication may at any time by agreement in writing extend the jurisdiction of the adjudicator to decide on any other matter not referred to the adjudicator pursuant to sections 5 and 6.

- 3) Notwithstanding a jurisdictional challenge, the adjudicator may in his discretion proceed and complete the adjudication proceedings without prejudice to the rights of any party to apply to set aside the adjudication decision under section 15 or to oppose the application to enforce the adjudication decision under subsection 28(1).

PART IV ENFORCEMENT OF ADJUDICATION DECISION

28. Enforcement of adjudication decision as judgment

- 1) A party may enforce an adjudication decision by applying to the High Court for an order to enforce the adjudication decision as if it is a judgment or order of the High Court.
- 2) The High Court may make an order in respect of the adjudication decision either wholly or partly and may make an order in respect of interest on the adjudicated amount payable.
- 3) The order made under subsection (2) may be executed in accordance with the rules on execution of the orders or judgment of the High Court.

29. Suspension or Reduction of Rate of Progress of Performance

- 1) A party may suspend performance or reduce the rate of progress of performance of any construction work or construction consultancy services under a construction contract if the adjudicated amount pursuant to an adjudication decision has not been paid wholly or partly after receipt of the adjudicated decision under subsection 12(6).
- 2) The party intending to suspend the performance or reduce the rate of progress of performance under subsection (1) shall give written notice of intention to suspend performance or reduce the rate of progress of performance to the other party if the adjudicated amount is not paid within fourteen calendar days from the date of receipt of the notice.
- 3) The party intending to suspend the performance or reduce the rate of progress of performance under subsection (1) shall have the right to suspend performance or reduce the rate of progress of performance of any construction work or construction consultancy services under a construction contract upon the expiry of fourteen calendar days of the service of the notice given under subsection (2).
- 4) The party who exercises his right under subsection (3) —
 - a) Is not in breach of contract;
 - b) Is entitled to a fair and reasonable extension of time to complete his obligations under the contract;

- c) Is entitled to recover any loss and expenses incurred as a result of the suspension or reduction in the rate of progress of performance from the other party; and
- d) Shall resume performance or the rate of progress of performance of the construction work or construction consultancy services under a construction contract in accordance with the contract within ten working days after having been paid the adjudicated amount or an amount as may be determined by arbitration or the court pursuant to subsection 37(1).

30. Direct Payment from Principal

- 1) If a party against whom an adjudication decision was made fails to make payment of the adjudicated amount, the party who obtained the adjudication decision in his favour may make a written request for payment of the adjudicated amount direct from the principal of the party against whom the adjudication decision is made.
- 2) Upon receipt of the written request under subsection (1), the principal shall serve a notice in writing on the party against whom the adjudication decision was made to show proof of payment and to state that direct payment would be made after the expiry of ten working days of the service of the notice.
- 3) In the absence of proof of payment requested under subsection (2), the principal shall pay the adjudicated amount to the party who obtained the adjudication decision in his favour.

- 4) The principal may recover the amount paid under subsection (3) as a debt or set off the same from any money due or payable by the principal to the party against whom the adjudication decision was made.
- 5) This section shall only be invoked if money is due or payable by the principal to the party against whom the adjudication decision was made at the time of the receipt of the request under subsection (1).

31. Concurrent Exercise of Remedies

- 1) Unless a stay is granted under section 16, a party who obtained an adjudication decision in his favour may exercise any or all of the remedies provided in this Act concurrently to enforce the adjudication decision.
- 2) The remedies provided by this Act are without prejudice to other rights and remedies available in the construction contract or any written law, including any penalty provided under any written law.

PART V ADJUDICATION AUTHORITY

32. Functions of KLRCA

The KLRCA shall be the adjudication authority and shall be responsible for the following:

- a) Setting of competency standard and criteria of an adjudicator;
- b) Determination of the standard terms of appointment of an adjudicator and fees for the services of an adjudicator;
- c) Administrative support for the conduct of adjudication under this Act; and
- d) Any functions as may be required for the efficient conduct of adjudication under this Act.

33. Policy Directions

- 1) In carrying out its functions under section 32, the KLRCA shall obtain policy directions from the Minister charged with the responsibility for legal affairs.
- 2) The Minister charged with the responsibility for legal affairs shall consult the Minister before making any policy directions on the functions of the KLRCA under section 32.

PART VI GENERAL

34. Immunity of Adjudicator and KLRCA

- 1) No action or suit shall be instituted or maintained in any court against an adjudicator or the KLRCA or its officers for any act or omission done in good faith in the performance of his or its functions under this Act.
- 2) An adjudicator who has adjudicated a dispute under this Act cannot be compelled to give evidence in any arbitration or court proceedings in connection with the dispute that he has adjudicated.

35. Prohibition of Conditional Payment

- 1) Any conditional payment provision in a construction contract in relation to payment under the construction contract is void.
- 2) For the purposes of this section, it is a conditional payment provision when:
 - a) The obligation of one party to make payment is conditional upon that party having received payment from a third party; or
 - b) The obligation of one party to make payment is conditional upon the availability of funds or drawdown of financing facilities of that party.

36. Default Provisions in the Absence of Terms of Payment

- 1) Unless otherwise agreed by the parties, a party who has agreed to carry out construction work or provide construction consultancy services under a construction contract has the right to progress payment at a value' calculated by reference to—
 - a) The contract price for the construction work or construction consultancy services;
 - b) Any other rate specified in the construction contract;
 - c) Any variation agreed to by the parties to the construction contract by which the contract price or any other rate specified in the construction contract is to be adjusted; and
 - d) The estimated reasonable cost of rectifying any defect or correcting any non-conformance or the diminution in the value of the construction work or construction consultancy services performed, whichever is more reasonable.

- 2) In the absence of any of the matters referred to in paragraphs (1)(a) to (d), reference shall be made to:
 - a) The fees prescribed by the relevant regulatory board under any written law; or
 - b) If there are no prescribed fees referred to in paragraph (a), the fair and reasonable prices or rates prevailing in the construction industry at the time of the carrying out of the construction work or the construction consultancy services.

- 3) The frequency of progress payment is:
 - a) Monthly, for construction work and construction consultancy services; and
 - b) Upon the delivery of supply, for the supply of construction materials, equipment or workers in connection with a construction contract.
- 4) The due date for payment under subsection (3) is thirty calendar days from the receipt of the invoice.

37. Relationship Between Adjudication and Other Dispute Resolution Process

- 1) A dispute in respect of payment under a construction contract may be referred concurrently to adjudication, arbitration or the court.
- 2) Subject to subsection (3), a reference to arbitration or the court in respect of a dispute which is being adjudicated shall not bring the adjudication proceedings to an end nor affect the adjudication proceedings.
- 3) An adjudication proceeding is terminated if the dispute being adjudicated is settled by agreement in writing between the parties or decided by arbitration or the court.

PART VII MISCELLANEOUS

38. Service of Notices and Documents

Service of a notice or any other document under this Act shall be effected on the party to be served—

- a) By delivering the notice or document personally to the party;
- b) By leaving the notice or document at the usual place of business of the party during the normal business hours of that party;
- c) By sending the notice or document to the usual or last-known place of business of the party by registered post; or
- d) By any other means as agreed in writing by the parties.

39. Regulations

The Minister may, upon considering the recommendation of the KLRCA, make regulations as may be expedient or necessary for giving full effect or the better carrying out of the provisions of this Act.

40. Exemption

The Minister may, upon considering the recommendation of the KLRCA, by order published in the *Gazette*, exempt—

- a) Any person or class of persons; or
- b) Any contract, matter or transaction or any class thereof,

from all or any of the provisions of this Act, subject to such terms and conditions as may be prescribed.

41. Savings

Nothing in this Act shall affect any proceedings relating to any payment dispute under a construction contract which had been commenced in any court or arbitration before the coming into operation of this Act.

Part II

CONSTRUCTION
INDUSTRY
PAYMENT &
ADJUDICATION
REGULATIONS
2014

CONSTRUCTION INDUSTRY PAYMENT & ADJUDICATION ACT 2012

CONSTRUCTION INDUSTRY PAYMENT & ADJUDICATION REGULATIONS 2014

IN exercise of the powers conferred by section 39 of the Construction Industry Payment and Adjudication Act 2012 [Act 746], the Minister, upon considering the recommendation of the Kuala Lumpur Regional Centre of Arbitration (KLRCA), makes the following regulations:

1. Citation and commencement

- 1) These regulations may be cited as the **Construction Industry Payment and Adjudication Regulations 2014**.
- 2) These Regulations come into operation on 15 April 2014.

2. Responsibility of KLRCA

The KLRCA is responsible, in accordance with the policy directions from the Minister charged with the responsibility for legal affairs—

- a) for maintaining a register of the KLRCA's Panel of Adjudicators;

- b) for determining the code of conduct for an adjudicator;
- c) for providing training and conducting examinations for an adjudicator;
- d) for determining fees for the services and expenses of an adjudicator;
- e) for receiving and holding any fees and expenses deposited by the parties in dispute on behalf of an adjudicator.

3. KLRCA's Panel of Adjudicators

- 1) The KLRCA shall maintain a register of the KLRCA's Panel of Adjudicators.
- 2) The KLRCA may remove the name and other particulars of an adjudicator from the KLRCA's Panel of Adjudicators if—
 - a) the adjudicator requests in writing for his name to be removed from the KLRCA's Panel of Adjudicators; or
 - b) the adjudicator ceases to satisfy the competency standard and criteria as an adjudicator as specified in regulation 4.
- 3) For the purpose of paragraph [2](b), the KLRCA shall notify the adjudicator before the name and other particulars of the adjudicator is removed from the KLRCA's Panel of Adjudicators.

4. Competency standard and criteria of adjudicator

The competency standard and criteria of an adjudicator are as follows:

- a) the adjudicator has working experience of at least seven years in the building and construction industry in Malaysia or any other fields recognized by the KLRCA;
- b) the adjudicator is a holder of a Certificate in Adjudication from an institution recognized by the Minister;
- c) the adjudicator is not an undischarged bankrupt; and
- d) the adjudicator has not been convicted of any criminal offence within or outside Malaysia.

5. Appointment of adjudicator

- 1) For the purpose of the appointment of an adjudicator by parties in dispute under section 22 of the Act, the claimant shall notify the adjudicator to be appointed in writing and provide him with a copy of the notice of adjudication.
- 2) For the purpose of the appointment of an adjudicator by the Director of the KLRCA under section 23 of the Act, the parties in dispute shall make a written request to the Director of the KLRCA.

- 3) Upon receipt of the written request under subregulation (2), the Director of the KLRCA shall appoint an adjudicator within five working days and shall notify the parties in dispute and the adjudicator in writing.
- 4) The adjudicator appointed—
 - a) by parties in dispute under section 22 of the Act; or
 - b) by the Director of the KLRCA under section 23 of the Act,shall, at the time of the acceptance of appointment, make a declaration in writing pursuant to section 24 of the Act and submit such declaration to the Director of the KLRCA.
- 5) The declaration under subregulation (4) shall specify that the adjudicator has no conflict of interest in respect of his appointment.
- 6) For the purpose of subregulation (5), an adjudicator has a conflict of interest in his appointment to adjudicate a dispute in respect of a construction contract if—
 - a) the adjudicator is—
 - i) an employee or partner of either party in dispute; or
 - ii) a director or shareholder of a corporation, where the party in the dispute is a corporation;

- b) the adjudicator is an employee, a director, a partner or shareholder of a corporation owned by either party in the dispute;
- c) either party in the dispute is a member of the adjudicator's family; or
- d) the adjudicator—
 - i) has assisted either party in the dispute to prepare any document; or
 - ii) has provided either party in the dispute any advice,in relation to the construction contract.

7) For the purpose of subregulation (6) —

- a) “corporation” has the same meaning assigned to it in subsection 41) of the Companies Act 1965 [Act 125];
- b) “member of the adjudicator's family” includes—
 - i) his spouse;
 - ii) his parent (including a parent of his spouse);
 - iii) his child (including an adopted child or stepchild);
 - iv) his brother or sister (including a brother or sister of his spouse); and
 - v) a spouse of his child, brother or sister.

6. KLRCA's standard fees for services and expenses of adjudicator

The KLRCA's standard fees for the services and expenses of an adjudicator as specified in the Schedule shall apply if the parties in dispute and the adjudicator fail to agree on the terms of appointment and the fees of the adjudicator.

7. Costs of adjudication proceedings

For the purpose of subsection 181) of the Act, the quantum of costs in the adjudication proceedings to be paid by any party to a dispute shall be determined by an adjudicator in accordance with all relevant circumstances including—

- a) the complexity of the claim or matter arises from the claim and the difficulty or novelty of the issues relating to the claim;
- b) specialized skill, knowledge and responsibility of, and time and labour expended by, any party to the dispute, its consultant, expert or representatives;
- c) the preparation of documents in the adjudication proceedings; and
- d) the amount or value of the adjudication claim.

8. Fees and expenses of adjudicator

- 1) For the purpose of section 19 of the Act—
 - a) the adjudicator appointed under subsection 19(1) or (2) of the Act shall submit to the Director of the KLRCA a copy of his terms of appointment and fees to be paid by the parties in dispute prior to the commencement of the adjudication proceedings;
 - b) the adjudicator shall submit to the Director of the KLRCA a copy of his direction to the parties in dispute to contribute and deposit with the Director of the KLRCA proportion of fees in advance as security including the date of payment to be made by the parties in dispute;
 - c) the adjudicator shall submit to the Director of the KLRCA a copy of his direction to the parties in dispute to require full payment of fees and expenses payable including the date of payment to be made by the parties in dispute;
 - d) the adjudicator may submit to the Director of the KLRCA a copy of his direction to the parties in dispute to pay the fees and expenses if the parties in dispute fail to make such payment within the period as directed by the adjudicator;
 - e) the adjudicator shall release the adjudication decision to the parties in dispute upon full payment of the adjudicator's fees and expenses to be deposited with the Director of the KLRCA by the parties in dispute;

- f) the adjudicator shall furnish other documents and information relating to the fees and expenses payable by the parties in dispute as may be required by the Director of the KLRCA.
- 2) The Director of the KLRCA shall—
- a) pay to the adjudicator any fees and expenses deposited by the parties in dispute upon receiving a copy of the adjudication decision within the period specified under subsection 12(2) of the Act; and
 - b) refund to the parties in dispute any fees and expenses relating to the adjudication if the adjudicator fails to decide the dispute within the period specified under subsection 12(2) of the Act.
- 3) The KLRCA shall be responsible for all payment of fees and expenses deposited under section 19 of the Act including any interest earned from such payment and such interest earned shall be retained by the KLRCA.

SCHEDULE [REGULATION 6]

KLIRCA'S STANDARD FEES FOR SERVICES AND EXPENSES OF ADJUDICATOR

PART I FEES FOR THE SERVICES OF AN ADJUDICATOR

Item	Amount in dispute (RM)	Fees (RM)
1.	50,000 and below	2,760
2.	50,001 to 150,000	5,760
3.	150,001 to 300,000	7,087 + 2.7% of excess over 150,000
4.	300,001 to 800,000	11,137 + 1.08% of excess over 300,000
5.	800,001 to 1,300,000	16,537 + 1.08% of excess over 800,000
6.	1,300,001 to 1,800,000	21,937 + 1.2826% of excess over 1,300,000
7.	1,800,001 to 2,300,000	28,350 + 0.3374% of excess over 1,800,000
8.	2,300,001 to 2,800,000	30,037 + 0.3376% of excess over 2,300,000
9.	2,800,001 to 3,300,000	31,725 + 1.4714% of excess over 2,800,000

10.	3,300,001 to 5,000,000	39,082 + 0.54% of excess over 3,300,000
11.	5,000,001 and above	50,000

Notes:

The fees for the services of an adjudicator in Part I shall include all taxes as may be imposed by the Government on the fees earned by an adjudicator.

PART II EXPENSES OF AN ADJUDICATOR

Item	Description	Expenses (RM)
Lodging / hotel	<p>The following claim is for an area of more than 25km from home:</p> <p>a) hotel charges and supported by receipt</p> <p>b) lodging allowances</p> <p>c) additional tax related to the hotel charges and supported by actual receipt</p>	<p>Hotel (actual rate for a standard room)</p> <p>Peninsular Malaysia: RM400 and below</p> <p>Sabah/Sarawak: RM400 and below</p> <p>Lodging</p> <p>Peninsular Malaysia: RM70</p> <p>Sabah/Sarawak: RM80</p>

Meal allowance	a) For a period of more than 24 hours	Peninsular Malaysia: RM85 Sabah/Sarawak: RM115
	b) For a period of more than 8 hours but less than 24 hours	Peninsular Malaysia: RM42.50 Sabah/Sarawak: RM57.50
Communication	Claim is based on the actual receipt	
Laundry / dry cleaning / ironing	Claim is supported by receipt if the adjudicator stays outside area of not less than 3 nights	
Transportation by air	a) Limited to economy class of local airlines company, at a low rate in a particular time b) Claim is based on the actual round-trip fare by the local airlines company	

<p>Transportation other than transportation by air</p>	<p>a) A taxi from home to the airport (vice-versa), tolls and parking fees are based on the actual rate</p> <p>b) Claim is based on the actual rate</p>	<p>Mileage claim is subject to the following rates:</p> <p>a) Distance first 500 km: RM0.70/km</p> <p>b) Distance 501 to 1000 km: RM0.65/km</p> <p>c) Distance 1001 to 1700 km: RM0.55/km</p> <p>d) Distance 1701 km and next: RM0.50/km</p>
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Notes:

The claim for the expenses in Part II is subject to the submission of actual invoice or receipt or such evidence acceptable to the parties in dispute or the KLRCA.

Made 14 April 2014

[KKR.PUU.110-1/5/3/1; PN(PU2)720/II]

DATUK HAJI FADILAH BIN YUSOF

Minister of Works

Part III

**CONSTRUCTION
INDUSTRY
PAYMENT &
ADJUDICATION
(EXEMPTION
ORDER) 2014**

CONSTRUCTION INDUSTRY PAYMENT & ADJUDICATION ACT 2012

CONSTRUCTION INDUSTRY PAYMENT & ADJUDICATION (EXEMPTION) ORDER 2014

IN exercise of the powers conferred by paragraph 40(b) of the Construction Industry Payment and Adjudication Act 2012 [Act 746], the Minister, upon considering the recommendation of the Kuala Lumpur Regional Centre for Arbitration, makes the following order:

1. Citation and commencement

- 1) This order may be cited as the **Construction Industry Payment and Adjudication (Exemption) Order 2014**.
- 2) This Order comes into operation on 15 April 2014.

2. Exemption

- 1) A Government construction contract as specified in the First Schedule is exempted from all provisions of the Act.
- 2) Subject to subparagraph (3), a Government construction contract as specified in the Second Schedule is exempted from the application of subsections 6(3), 7(2), 10(1), 10(2), 11(1) and 11(2) of the Act from 15 April 2014 to 31 December 2015.

- 3) The exemption referred to in subparagraph (2) is subject to the following terms and conditions:
 - a) a payment response under section 6 of the Act shall be served on the unpaid party within thirty days of the receipt of the payment claim;
 - b) the right to refer a dispute to adjudication by the unpaid party or non-paying party under subsection 7(2) of the Act shall only be exercised after the expiry of the period to serve a payment response under subparagraph (a);
 - c) the respondent referred to in section 10 of the Act, within thirty days from the receipt of the adjudication claim, shall—
 - i) serve a written adjudication response which shall answer the adjudication claim together with any supporting document on the claimant; and
 - ii) provide the adjudicator with a copy of the adjudication response together with any supporting document; and
 - d) the claimant referred to in section 11 of the Act, within thirty days from the receipt of the adjudication response—
 - i) may serve a written reply to the adjudication response together with any supporting document on the respondent; and
 - ii) shall provide the adjudicator with a copy of the adjudication reply together with any supporting document.

FIRST SCHEDULE

A contract for any construction works—

- a) that is carried out urgently and without delay due to natural disaster, flood, landslide, ground subsidence, fire and other emergency and unforeseen circumstances;
- b) that relates to national security or security related facilities which includes the construction of military and police facilities, military bases and camps, prison and detention camps, power plant and water treatment plant.

SECOND SCHEDULE

A contract for any construction works as defined under the Act with the contract sum of twenty million ringgit (RM20,000,000) and below.

Made 14 April 2014

[KKR.PUU.110-1/5/3/1; PN(PU2)720/II]

DATUK HAJI FADILAH BIN YUSOF

Minister of Works

Part IV

**AIAC
ADJUDICATION
RULES &
PROCEDURE**

(Previously issued by the KLRCA)

ASIAN INTERNATIONAL ARBITRATION CENTRE ADJUDICATION RULES & PROCEDURE

Pursuant to Sections 32 and 33 of the Construction Industry Payment and Adjudication Act 2012 (Act 746) (hereinafter referred to as “the Act”), the Asian International Arbitration Centre (“AIAC”) makes these Asian International Arbitration Centre Adjudication Rules. The Rules are set out in Part A.

Pursuant to section 32(d) and section 33 of the Act and in accordance with the policy directions obtained from the Minister charged with the responsibility for the legal affairs, the AIAC makes the following procedure for an application for exemption made to the Director of the AIAC for a recommendation under section 40 of the Act. The Procedure is set out in Part B.

The Rules & Procedure meet the requirements of adjudication procedure as set out in the Act and are collectively called the “Asian International Arbitration Centre Adjudication Rules & Procedure.”

PART A RULES

Rule 1 General

1. All adjudication commenced under the Act shall be conducted and administered by the AIAC in accordance with the Act, Construction Industry Payment and Adjudication Regulations 2014 (hereinafter referred to as “the Regulations”) and the Rules & Procedure.
2. The Rules & Procedure applicable to the adjudication shall be those in force at the time of commencement of the adjudication unless the parties have agreed otherwise.

Rule 2 Commencement & Registration of Adjudication

1. The Claimant shall upon serving a notice of adjudication on the Respondent pursuant to Section 8(1) of the Act register the adjudication matter at the AIAC by serving a notice on the Director of AIAC containing the following particulars and enclosing a copy of the Payment Claim and Payment Response (if any) and the Notice of Adjudication:
 - a) the names and service addresses of the claimant and the respondent;
 - b) the date of service of the Notice of Adjudication;
 - c) the date of service of the Payment Claim;
 - d) the date of service of the Payment Response (if any);

- e) the particulars of the relevant contract, comprising
 -
 - i) the project title or reference, or a brief description of the project;
 - ii) the contract number or a brief description of the contract;
 - iii) the date the contract was made;
 - f) the claimed amount;
 - g) the response amount (if any);
 - h) a brief description of the dispute;
 - i) the remedy sought.
2. The notice in sub-Rule 2(1) must be accompanied with a non-refundable registration fee payable to the AIAC in the amount of that prescribed in Schedule III herein.

Rule 3

Appointment of Adjudicator

1. Where the parties have agreed upon the identity of an adjudicator who confirms his readiness and willingness to embark upon the adjudication and has either:
- a) reached an agreement with the parties on the terms of his appointment including fees chargeable, or
 - b) failing which, agreed to the AIAC's standard terms of appointment in Schedule II hereto,

and the default fees for adjudicator provided under the Regulations,

then that person shall be the Adjudicator.

2. Where the parties have not so agreed upon an adjudicator within ten (10) working days from the service of notice of adjudication by the claimant, or where such person has not so confirmed his willingness to act within ten (10) working days from the date he was notified of his appointment, then any party or both parties jointly may apply to the Director of the KLCRA for appointment of an adjudicator upon expiry of ten (10) working days from the service of notice of adjudication. The following procedure shall apply: -
 - a) For the purposes of section 21(b) and section 23 of the Act, the request made to the Director of AIAC shall be in writing and accompanied with such administrative fees as prescribed in Schedule III herein.
 - b) The request to appoint an adjudicator shall be preceded by a notice to the Director of AIAC to register the adjudication as in sub-Rule 2(1).
 - c) The request to appoint an adjudicator shall be made in writing to the Director of the AIAC by hand, post or courier at its business address.
 - d) The request shall be lodged with AIAC at any time from 8.30 am to 4.00 pm from Monday to Friday (except public holidays) and 9.00am to 12.00 noon on the eves of public holidays. Any documents lodged to AIAC after the operation hours shall be considered to have been lodged the next working day.

- e) Upon receiving the receipt of request of either party, the Director of AIAC shall appoint an adjudicator within five (5) working days and notify the parties and the adjudicator in writing.
- f) Any adjudicator appointed under Section 21(a) or Section 21(b) of the Act shall at the time of the acceptance of appointment submit to the AIAC a copy of the declaration in writing made pursuant to Section 24 of the Act.
- g) The adjudicator shall abide by the Adjudicator Code of Conduct in Schedule IV.

Rule 4

Notification of Adjudication Claim

1. The claimant shall within seven (7) working days after serving a written adjudication claim pursuant to Section 9(1) of the Act deliver a copy of the adjudication claim to the AIAC. Unless otherwise directed by the Director of the AIAC, the claimant is not required to deliver the supporting documents to the AIAC.

Rule 5

Notification of Adjudication Response

1. The respondent shall within seven (7) working days after serving a written adjudication response pursuant to Section 10(1) of the Act, or Paragraph 2(3)(c) of the Construction Industry Payment and Adjudication (Exemption) Order 2014, as the case may be, deliver a copy of the adjudication response to the AIAC. Unless otherwise directed by the Director of the AIAC, the respondent is not required to deliver the supporting documents to the AIAC.

Rule 6**Notification of Adjudication Reply, If Any**

1. The claimant shall within seven (7) working days after serving a written reply to the adjudication response pursuant to Section 11(1) of the Act, or Paragraph 2(3)(d) of the Construction Industry Payment and Adjudication (Exemption) Order 2014, as the case may be, deliver a copy of the adjudication reply to the AIAC. Unless otherwise directed by the Director of the AIAC, the claimant is not required to deliver the supporting documents to the AIAC.

Rule 7**The Purpose of The Adjudication and
The Role of The Adjudicator**

1. The underlying purpose of the adjudication is to decide dispute between the Parties that are within the scope of the adjudication as rapidly and economically as is reasonably possible.
2. The adjudicator shall act fairly and impartially.
3. Unless the parties agree that any decisions of the adjudicator shall be final and binding, any decision of the adjudicator shall be binding until the decision is set aside by the High Court, or the dispute is finally determined by court, by arbitration or by written agreement between the parties.

Rule 8**Conduct of The Adjudication**

1. The adjudicator shall conduct the adjudication in the manner as the adjudicator considers appropriate within the powers provided under section 25 of the Act.

2. The adjudicator shall exercise such powers with a view of fairness and impartiality, giving each party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponents.
3. The adjudicator may not:
 - a) receive any submissions from one party that are not also made available to the others;
 - b) except in the event of misconduct by that representative, refuse any party the right at any hearing or meeting to be represented by any representative of that party's choosing who is present;
 - c) act or continue to act if he has a conflict of interest.

Rule 9

Fees and Expenses

1. The adjudicator, whether appointed under Section 19(1) or 19(2) of the Act, shall within seven (7) days upon his acceptance of his appointment send a copy of his terms of appointment and fees to be paid to the adjudicator to the Director of the AIAC.
2. Pursuant to subregulations 8(1)(b) and 8(1)(c) of the Regulations, the adjudicator shall not later than fourteen (14) days after his acceptance of the appointment issue a direction ordering the parties to deposit with the AIAC the following fees and expenses in advance as security:
 - a) the full adjudicator's fees and expenses as estimated by the adjudicator, and any taxes as may be imposed by the Government; and

- b) all administrative fee payable to the AIAC as provided in Schedule III of the AIAC Adjudication Rules & Procedure.
3. The adjudicator shall upon issuing a direction under sub-rule 9(2) above furnish a copy of his direction to the Director of the AIAC indicating the full payment of fees and expenses payable by the parties to be deposited with the Director of the AIAC and the date by which such fees and expenses are to be paid.
 4. If any parties fails to make payment within the time ordered by the adjudicator, the adjudicator shall within seven (7) days thereafter issue such direction as he thinks fit including inviting another party or parties to make such payment and notify the Director of the AIAC accordingly.
 5. In the event full payment of the fees and expenses, including the AIAC's administrative fee and any taxes as may be imposed by the Government, are not deposited with the Director of the AIAC under Section 19(5) of the Act, the adjudicator shall not release the adjudication decision to the parties.
- 5A. In the event that the Claimant withdraws its adjudication claim before the delivery of the adjudication decision by the adjudicator pursuant to Section 17(1) of the Act, the adjudicator may, after consultation with the Director of the AIAC, order the Claimant to pay reasonable costs arising out of the withdrawal of the adjudication proceedings. In determining the quantum of costs payable by the Claimant, the adjudicator shall have regard to all relevant circumstances including the terms of the appointment of the adjudicator, the stage of the proceedings at the time of the withdrawal, the

administrative fee payable to the AIAC, and the reasonable costs incurred by the Respondent.

6. The adjudicator shall from time to time, as requested by the Director of the AIAC, furnish other documents and information as may be required by the Director of the AIAC to indicate the fees and expenses payable, including the AIAC's administrative fee, and the timeline of such payment.
7. Subject to Rule 9(8), any fees and expenses due to the adjudicator as deposited with the Director of the AIAC shall –
 - a) be paid to the adjudicator:
 - i) upon the Director of the AIAC having received a copy of the notice of withdrawal of the adjudication claim served under Section 17(1) of the Act and the adjudicator's order for the costs payable pursuant to sub-rule 9(5A) above; or
 - ii) upon the Director of the AIAC having received a copy of the adjudication decision within the time specified under Section 12(2) of the Act and a written confirmation from the adjudicator that the requirements under Section 12(2) of the Act have been complied with;
 - and
 - b) be refunded to the parties in the share contributed by the parties in the event the adjudicator fails to decide the dispute within the time specified under Section 12(2) of the Act.

8. The AIAC is entitled to retain from any fees and expenses deposited with the AIAC its administrative fee as stipulated in Schedule III herein.
9. The AIAC shall account for all payments deposited with the AIAC under Section 19(4), 19(5) and 16(2) of the Act and any interest earned thereon shall be retained by the AIAC.
10. Pursuant to Section 19(4) and 16(2) of the Act, any deposit made to the Director of the AIAC shall be subjected to any and all applicable taxes, administrative charges and financing costs including but not limited to foreign exchange losses.
11. If a party shall request adjudication, and it is subsequently established that he was not entitled to do so, that party shall be solely responsible for the adjudicator's fees and expenses and all administrative fees as may be chargeable by the AIAC.
12. The adjudicator shall be entitled to his fees and expenses notwithstanding that his adjudication decision is subsequently set aside by the Court provided that he has acted in good faith in the performance of his duties under the Act.

Rule 10

Adjudication Decision

1. The adjudicator shall decide the dispute and deliver the adjudication decision within –
 - a) forty-five (45) working days from the service of the adjudication response or reply to the adjudication response, whichever is later;

- b) forty-five (45) working days from the expiry of the period prescribed for the service of the adjudication response if no adjudication response is received; or
 - c) such further time as agreed to by the parties.
2. Any decision shall be in writing. The adjudicator shall provide written reasons for his decision unless the requirement for reasons is dispensed with by the parties.
 3. The adjudicator may, on his own initiative or on the application of a party, correct his decision so as to remove any computational or typographical mistake and/or error.
 4. Any correction of a decision shall be made as soon as practicable after the date that the application was received by the adjudicator or, where the correction is made by the adjudicator on his own initiative as soon as possible after he becomes aware of the need to make a correction.

Rule 11

Confidentiality

1. Subject to Rule 12, all persons involved in the adjudication shall keep all matters and/or documents related to the adjudication confidential in accordance with the Act and the Regulations.

Rule 12

Permission To Publish Redacted Adjudication Decision

1. Unless otherwise informed to the Director of the AIAC in writing by any of the parties or the adjudicator before an adjudication decision is made, the parties and the adjudicator in an adjudication shall be deemed to have consented to the AIAC disclosing, producing or publishing the adjudication decision in any means as the AIAC deems fit provided that the following confidential information and details as determined by the AIAC are deleted before its disclosure, production or publication:
 - a) the names of the parties in the adjudication;
 - b) the name of the adjudicator;
 - c) the name and details of the subject project;
 - d) the payment claim amount;
 - e) the payment response amount;
 - f) the adjudicated amount.

PART B PROCEDURE

1. An application for exemption under section 40 of the Act shall be made in writing to the Director of AIAC.
2. The application for exemption must –
 - a) be accompanied by a non-refundable application fee in the amount of RM40,000.00;
 - b) contain the name and address of the applicant;

- c) identify the person or class of persons, or contract, matter, transaction or any class thereof, and the provisions of the Act from which the applicant seeks to be exempted; and
 - d) contain a statement of the grounds and furnish any relevant documents (if any), in support of the application.
- 3. Upon receiving an application for exemption, the Director of AIAC may –
 - a) decline the application if it fails to comply with paragraph 2 above; or
 - b) request any further information from the applicant that he or she may require for his or her review; or
 - c) review the application.
- 4. The Director of AIAC may consult with any relevant party for the purpose of reviewing an application for exemption upon receipt of the application or of the further information referred to in paragraph 3(b) above.
- 5. The Director of AIAC will thereafter make a recommendation to the Minister pursuant to section 40 of the Act, to –
 - a) accept the application, with or without conditions; or
 - b) decline the application, wholly or partly.

SCHEDULE I

FORMS¹

FORM 1

Payment Claim

(Construction Industry Payment & Adjudication Act 2012, section 5)

Payment Claim Reference:

Date:

Note:

This is a payment claim made under the Construction Industry Payment & Adjudication Act 2012²

<p>From the Unpaid Party:</p> <p>Name:</p> <p>Address:</p>	<p>To the Non-Paying Party:</p> <p>Name:</p> <p>Address:</p>
	<i>(Mode of service³)</i>

1 ©Professor Datuk Sundra Rajoo, Lam Wai Loon, Ivan Loo Y.F. Reproduced with permission of the copyright holders. These Forms contained in Schedule 1 are suggested forms only, intended merely to highlight the matters and procedures which the relevant parties may have to consider when taking the steps in question.

2 Section 5(2)(d) of the CIPA Act 2012.

3 As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

Claimed Amount ⁴ :	Basis of Claim / Reference period of this Claim ⁵ :	Due date for payment ⁶ :	Relevant contract provision / Default Provision of the CIPA Act 2012 ⁷
(Amount)	(e.g. Interim/ Final Payment Certificate/ Claim Submission/ Joint Valuation conducted on (date), etc.)	(Date)	(Provision of Contract)

Contract Reference Number:

Date Contract Was Made:

Project / Work Description:

Project Site Location:

Contract Sum:

4 Section 5(2)(a) of the CIPA Act 2012.

5 Section 5(2)(b) of the CIPA Act 2012.

6 Section 5(2)(a) of the CIPA Act 2012.

7 Section 5(2)(b) of the CIPA Act 2012. Refer to sections 36(3) and 36(4) of the CIPA Act 2012 for default provisions, if relevant.

8 Section 5(2)(c) of the CIPA Act 2012.

9 Section 5 of the CIPA Act 2012 does not envisage supporting documents to be provided in the Payment Claim. However, it may be good practice to do so.

****PARTICULARS OF CLAIM⁸:**

Description of Work/ Services	Amount	Supporting Documents
1) Total Contract Sum: a) Original Contract Sum b) Total Variation as of (Date) (if applicable)	(A) (B)	Schedule 1 Schedule 2
TOTAL ADJUSTED CONTRACT SUM	(A + B)	
2) Total Value of Works Certified/ Claimed/ as per Joint Valuation No: [] as of (Date), etc. a) Total original contract work certified/ claimed/ valued as of (Date), etc. b) Total variation work certified/ claimed/ valued as of (Date), etc. c) Total unfixed goods and materials on site (if applicable) #(set out any other applicable items)	(C) (D) (E)	Schedule 3 Schedule 4 Schedule 5
TOTAL VALUE OF WORKS CERTIFIED/ CLAIMED/ AS PER JOINT VALUATION, ETC.	(F) = (C + D + E)	
LESS:		
3) Retention Monies []% as per Clause [] of the Conditions of Contract (if applicable)	(G)	Schedule 6
4) Total amount previously paid/ claimed/certified (*depending on how the payment claim is made) #(set out any other applicable items)	(H)	Schedule 7
TOTAL DEDUCTION	(I) = (G + H)	
AMOUNT CLAIMED	(J) = (F - I)	

****ATTACHMENTS:****Schedule 1:**

Relevant Extracts from the Contract showing the agreed Original Contract Sum. If the valuation is based on any of the default provisions in sub-sections in 36(1) or 36(2) of the CIPA Act 2012, a Table showing the computation of the value and the relevant documents supporting the basis of the valuation.

Schedule 2:

Relevant Instructions (eg. Architect's Instructions/ S.O.'s Instructions/ Engineer's Instructions) and a Table showing the breakdown and description of each variation work ordered and the computation of the total value of these variation works. If the valuation is based on any of the default provisions in sub-sections in 36(1) or 36(2) of the CIPA Act 2012, a Table showing the computation of the value and the relevant documents supporting the basis of the valuation.

Schedule 3:

Relevant Payment Certificates/ Claim Submissions/ Records of Joint Valuation Conducted/ etc., and a Table showing the breakdown and description of the works done, the percentage of the works done as certified/ claimed/ valued, and the total value completed as at the relevant date. If the valuation is based on any of the default provisions in sub-sections in 36(1) or 36(2) of the CIPA Act 2012, a Table showing the computation of the value and the relevant documents supporting the basis of the valuation.

Schedule 4:

Relevant Payment Certificates/ Claim Submissions/ Records of Joint Valuation Conducted/ etc (as the case may be), and a Table showing the breakdown and description of the variation works done, the percentage of these variation works done as certified/ claimed/ valued, and the total value completed as at the relevant date. If the valuation is based on any of the default provisions in sub-sections in 36(1) or 36(2) of the CIPA Act 2012, a Table showing the computation of the value and the relevant documents supporting the basis of the valuation.

Schedule 5:

Relevant extracts from the Contract showing the entitlement for payment for unfixed goods and materials delivered to site, the necessary documents to show the goods and materials delivered to the site, and a Table showing the breakdown and description of the unfixed goods and materials delivered to site, and the computation of the value of these goods and materials.

Schedule 6:

Relevant extracts from the Contract relating to the withholding of Retention Monies, and a Table showing the computation of the value of the Retention Monies entitled to be withheld as at the relevant date.

Schedule 7:

Relevant documents showing the amount previously paid/claimed/certified.

FORM 2
Payment Response
*(Construction Industry Payment &
 Adjudication Act 2012, section 6)*

Payment Response Reference:	Date:
From the Non-Paying Party: Name: Address:	To the Unpaid Party: Name: Address:
	¹⁰ (Mode of service)

In response to Payment Claim Reference:	Date of Receipt:	Amount Claimed:	Amount Admitted:	Amount Disputed:
<i>(Identify the Payment Claim)</i>	<i>(Date)</i>	<i>(Amount)</i>	<i>(Amount: State 'Nil' where no amount is admitted)</i>	<i>(Amount: State 'Nil' where no amount is disputed)</i>

Contract Reference Number:

Date Contract Was Made:

Project / Work Description:

Project Site Location:

Contract Sum:

¹⁰ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

¹¹ Section 6 of the CIPA Act 2012 does not envisage supporting documents to be provided in the Payment Response. However, it may be good practice to do so.

****PAYMENT RESPONSE PARTICULARS:**

Description of Work/ Services	Amount Claimed	Response	Reasons for difference/ dispute	Supporting Documents ¹¹
1) Total Contract Sum: a) Original Contract Sum b) Total Variation as of (<i>Date</i>) (<i>if applicable</i>) TOTAL ADJUSTED CONTRACT SUM	(as in Payment Claim)	(A) (B) (A + B)		Schedule 1* Schedule 2*
2) Total Value of Works Certified/ Claimed/ as per Joint Valuation No: [] as of (<i>Date</i>), etc. a) Total original contract work certified/ claimed/ valued as of (<i>Date</i>), etc. b) Total variation work certified/ claimed/ valued as of (<i>Date</i>), etc. c) Total unfixed goods and materials on site (<i>if applicable</i>) <i># (set out any other applicable items)</i> TOTAL VALUE OF WORKS CERTIFIED/ CLAIMED/ AS PER JOINT VALUATION, ETC.	(as in Payment Claim)	(C) (D) (E) (F) = (C+D+E)		Schedule 3* Schedule 4* Schedule 5*

Description of Work/ Services	Amount Claimed	Response	Reasons for difference/ dispute	Supporting Documents ^{††}
LESS: 3) Retention Monies []% as per Clause [] of the Conditions of Contract (if applicable) 4) Total amount previously paid/ claimed/certified 5) Defective / Rectification Works 6) Liquidated and Ascertained Damages (from [date] to [date]) # (set out any other applicable items) TOTAL DEDUCTION	(as in Payment Claim)	(G) (H) (I) (J) (K) = (G + H + I + J)		Schedule 6* Schedule 7* Schedule 8 Schedule 9
TOTAL AMOUNT ADMITTED		(Amount: State 'Nil' where no amount is admitted)		Schedule 10
TOTAL AMOUNT DISPUTED		(Amount: State 'Nil' where no amount is disputed)		
TOTAL CROSS-CLAIM AMOUNT BY THE NON-PAYING PARTY AGAINST THE UNPAID PARTY (if any)		(L)		

* If the Response Amount differs from the Claimed Amount.

****ATTACHMENTS:****Schedule 1:**

Relevant Extracts from the Contract showing the agreed Original Contract Sum. If the valuation is based on any of the default provisions in sub-sections in 36(1) or 36(2) of the CIPA Act 2012, a Table showing the computation of the value and the relevant documents supporting the basis of the valuation.

Schedule 2:

Relevant Instructions (eg. Architect's Instructions/ S.O.'s Instructions/ Engineer's Instructions) and a Table showing the breakdown and description of each variation work ordered and the computation of the total value of these variation works. If the valuation is based on any of the default provisions in sub-sections in 36(1) or 36(2) of the CIPA Act 2012, a Table showing the computation of the value and the relevant documents supporting the basis of the valuation.

Schedule 3:

Relevant Payment Certificates/ Claim Submissions/ Records of Joint Valuation Conducted / etc (as the case may be), and a Table showing the breakdown and description of the works done, the percentage of the works done as certified / claimed/ valued, and the total value completed as at the relevant date. If the valuation is based on any of the default provisions in sub-sections in 36(1) or 36(2) of the CIPA Act 2012, a Table showing the computation of the value and the relevant documents supporting the basis of the valuation.

Schedule 4:

Relevant Payment Certificates/ Claim Submissions/ Records of Joint Valuation Conducted/ etc, and a Table showing the breakdown and description of the variation works done, the percentage of these variation works done as certified/ claimed/ valued, and the total value completed as at the relevant date. If the valuation is based on any of the default provisions in sub-sections in 36(1) or 36(2) of the CIPA Act 2012, a Table showing the computation of the value and the relevant documents supporting the basis of the valuation.

Schedule 5:

Relevant extracts from the Contract showing the entitlement for payment for unfixed goods and materials delivered to site, the necessary documents to show the goods and materials delivered to the site, and a Table showing the breakdown and description of the unfixed goods and materials delivered to site, and the computation of the value of these goods and materials.

Schedule 6:

Relevant extracts from the Contract relating to the withholding of Retention Monies, and a Table showing the computation of the value of the Retention Monies entitled to be withheld as at the relevant date.

Schedule 7:

Relevant documents showing proof/ acknowledgement of the payments made as at the relevant date.

Schedule 8:

Relevant Instructions (eg. Architect's Instructions/ S.O.'s Instructions/ Engineer's Instructions) and a Table showing, essentially:

- a) the breakdown and description of defective work identified/ rectification works ordered to be carried out;
- b) the computation of the total value of these defective works/ rectification works which have been carried and which have not been carried out;
- c) the total value of defective works, or any rectification works carried out/ to be carried out by third party contractor (if any).

Set out or enclose extracts of the relevant contractual provision.

Schedule 9:

Relevant Certificate/s of Extension of Time, Certificate of Non-Completion, Certificate of Practical Completion (if any), relevant extracts from the Contract showing entitlement to charge or deduct Liquidated and Ascertained Damages for delay from payment claims, and a Table showing the computation of the Liquidated and Ascertained Damages sought to be deducted. Set out or enclose extracts of the relevant contractual provision.

Schedule 10:

Payment in respect of the amount as admitted by the Non-Paying Party.

FORM 3
Notice of Adjudication
*(Construction Industry Payment &
 Adjudication Act 2012, sections 7 and 8)*

From the Claimant ¹² :	To the Respondent:
Name:	Name:
Address:	Address:
	(Date)
	(Mode of service ¹³)
Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum:	
Payment Claim Reference: Payment Claim Amount: Payment Response Reference (if any): Payment Claim Amount Admitted and Paid (if any): Total abatement / set off / cross claim sum (if any): Amount In Dispute: [Amount Claimed or Cross-Claimed by the Claimant]:	

12 The Claimant refers to the aggrieved party in a construction contract who initiates adjudication proceedings. The Claimant can either be the Unpaid Party or the Non-Paying Party.

13 As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

NOTICE OF ADJUDICATION

1. A dispute has arisen between us and you under the Contract arising from the above referenced Payment Claim *[and Payment Response (if any)]*.
2. The Payment Claim was served on *[us or you, as the case may be]* by *[state the mode of service]* on *[date]*. *[We or You (as the case may be) thereafter served a Payment Response by (state the mode of service) on (date)]* *[*If applicable]*
3. The dispute involves the following:

[Set out the nature and description of the dispute¹⁴]
4. In accordance with sections 7 and 8 of the Construction Industry Payment & Adjudication Act 2012, we hereby give you notice to refer the aforesaid Dispute arising from the Payment Claim to adjudication.
5. We seek the following reliefs or remedies:

[Set out the nature and description of the relief(s)/ remedy(ies)¹⁵]
6. The documents in support of the relief(s) or remedy(ies) sought are as follows:

[Identify the documents and attach all relevant documents in support hereof]

14 Section 8(1) of the CIPA Act 2012.

15 Section 8(1) of the CIPA Act 2012.

7. Pursuant to section 21(a) of the Construction Industry Payment & Adjudication Act 2012, we propose [*name, occupation & address of the proposed person*] to be appointed as adjudicator to determine the dispute. Please indicate your agreement on the proposed person to be appointed as adjudicator, or any other suitable person of your choice for our consideration. If we do not receive any response from you by [*date*¹⁶], we will proceed to make a request to the Director of the Asian International Arbitration Centre to appoint an adjudicator pursuant to section 21(b)(i) of the Construction Industry Payment & Adjudication Act 2012.

[*signed*]

[*Name of the authorised representative of the Claimant and designation*]

Copy: (Director of the Asian International
Arbitration Centre)
(*Service address*) (Mode of Service)

¹⁶ Section 21(a) of the CIPA Act 2012 provides that the parties may by agreement appoint an adjudicator within 10 working days from the service of the notice of adjudication by the claimant.

FORM 3A
Notice to the Director of AIAC
to register the adjudication
(AIAC Adjudication Rules & Procedure, Rule 2)

To: Director of the Asian International Arbitration Centre <i>(Service address)</i>
From: <i>(Claimant)</i> <i>(Service address)</i> Person In Charge: <i>(Name and designation)</i>
<i>(Date)</i>
<i>(Mode of Service)</i>

PARTICULARS OF THE RESPONDENT

Respondent:
 (Name)
 (Service address)

ENCLOSURES¹⁷

1. A copy of the Payment Claim;
2. A copy of the Payment Response (if any).

NOTICE OF ADJUDICATION

Date of Notice of Adjudication:
 Date of Service of the Notice of
 Adjudication on the Respondent:

¹⁷ See Rules 2(1) of the AIAC Adjudication Rules & Procedure.

REGISTRATION FEE

Enclosed herewith is [cheque / Bank Draft/ any other approved mode of payment] in the amount of [amount] being payment for the registration fee for this adjudication reference.

PARTICULARS OF CONTRACT

Contract Reference Number:
Type of Contract:
Date Contract Was Made:
Project / Work Description:
Project Site Location:
Contract Sum:

SUMMARY OF THE DISPUTE

Information of Claimant, Respondent and the dispute involved:

(set out the type of contract involved, the identity / role of both the Claimant and the Respondent under the Contract, and a brief description of the dispute involved)

Payment Claim:

Payment Claim Reference:
Date of Payment Claim:
Date when Payment was Due¹⁸:
Date of Service of Payment Claim the Non-Paying Party:
Claimed Amount:

18 This refers to the date when the non-paying party is alleged to have failed to make payment by the contractual due date for payment.

Payment Response: (if any)

Payment Response Reference:

Date of Payment Response:

Date of Service of Payment Response on the
Unpaid Party:Amount Admitted (if any) and Date of Payment of
the Amount Admitted:**Amount In Dispute:** *(Amount)***Relief(s) or Remedy(ies):***(set out the relief(s) / remedy(ies) sought as per the
Notice of Adjudication)**(signed)**(Name of the authorised representative
of the Claimant and designation)***Copy:** (Respondent) (Mode of Service)
(service address)

FORM 4
Request to the chosen adjudicator to act
*(Construction Industry Payment &
 Adjudication Act 2012, sections 21(a) and 22)*

To: <i>(Name of the chosen adjudicator)</i> <i>(service address)</i>
From: <i>(Claimant)</i> <i>(Service address)</i> Person In Charge: <i>(Name and designation)</i>
<i>(Date)</i>
<i>(Mode of Service¹⁹)</i>
Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum: Date of Notice of Adjudication: Date of Service of the Notice of Adjudication by the Claimant:

¹⁹ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

REQUEST TO ACT AS ADJUDICATOR

(pursuant to sections 21(a) and 22 of the Construction Industry Payment & Adjudication Act 2012)

1. A dispute has arisen between [*Name*], the Claimant and [*Name*], the Respondent under the above referenced construction contract.
2. A copy of the above referenced Notice of Adjudication is attached. Please let us know should you require a copy of the documents identified in the Notice of Adjudication to be delivered to you.
3. The parties have agreed for you to act as adjudicator to determine the dispute between the parties. A copy of the documents evidencing the agreement is attached for your perusal.
4. Please indicate within [5]²⁰ working days from the date of receipt of this request whether you are willing and able to act as the adjudicator for the dispute, and if you are, forward to us and the Respondent the following:

20 Pursuant to section 22(2) of the CIPA Act 2012, the adjudicator who is able and willing to act as adjudicator, is required to propose and negotiate his terms of appointment, including his fees chargeable, with the parties, and indicate his acceptance of the appointment and the terms of his appointment within 10 working days from the date he was notified of his appointment. The provision of 5 working days is merely a suggestion, intended to leave another 5 working days for the parties and the chosen adjudicator to negotiate and agree on the terms of appointment.

- a) a written confirmation that you have satisfied the competency standard and criteria of an adjudicator as required under the Construction Industry Payment & Adjudication Act 2012²¹ or any Regulations or rules made thereunder, and that you are eligible to act as adjudicator in our dispute; and
- b) your proposed terms and conditions for engagement (including your fees and expenses).

(signed)

*(Name of the authorised representative
of the Claimant and designation)*

Copy: (Respondent) (service address)	(Mode of Service ²²)
Copy: (Director of the Asian International Arbitration Centre) (Service address)	(Mode of Service ²³)

21 Section 32(a) of the CIPA Act 2012.

22 As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

23 As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

FORM 5
Request to the Director of AIAC
to appoint an adjudicator
(Construction Industry Payment &
Adjudication Act 2012, section 21(b)(i))

To: <i>(Director of the Asian International Arbitration Centre) (Service address)</i>
From: <i>(Claimant and/or Respondent, as the case may be) (Service address)</i>
Person In Charge: <i>(Name and designation)</i>
<i>(Date)</i>
<i>(Mode of Service²⁴)</i>
Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum: Date of Notice of Adjudication: Date of Service of the Notice of Adjudication by the Claimant:

²⁴ As per Rule 3(2)(e) of the AIAC Adjudication Rules and Procedure.

APPOINTMENT FEE

Enclosed herewith is [cheque / Bank Draft/ any other approved mode of payment] in the amount of [amount] being payment for the appointment fee for this request to appoint.

REQUEST TO APPOINT AN ADJUDICATOR

(pursuant to sections 21(b)(i) of the Construction Industry Payment & Adjudication Act 2012)

1. A dispute has arisen between [*Name*], the Claimant and [*Name*], the Respondent under the above referenced construction contract.
2. A copy of the above referenced Notice of Adjudication is attached. Please let us know should you require a copy of the documents identified in the Notice of Adjudication to be delivered to you.
3. The parties have been unable to agree on an adjudicator to determine the dispute within 10 working days from the date of service of the Notice of Adjudication by the Claimant pursuant to section 21(a) of the Construction Industry Payment & Adjudication Act 2012.
4. In accordance with section 21(b)(i) of the Construction Industry Payment & Adjudication Act 2012, we hereby request you to appoint a suitable person to act as adjudicator in our dispute and notify the parties in writing within 5 working days from the date of receipt of this request.

(signed)
*(Name of the authorised representative
of the Claimant and/or the Respondent,
as the case may be, and designation)*

Copy: (Respondent and/or Claimant,
as the case may be)
(*service address*) (*Mode of Service*²⁵)

²⁵ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

FORM 6
**Notice of acceptance of the appointment
to act as adjudicator**

To: {Claimant} {Service address}
To: {Respondent} {Service address}
From: {Adjudicator} {Service address}
(Date)
(Mode of Service ²⁶)
Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum: Date of Notice of Adjudication: AIAC Case Registration Number (if any):

**NOTICE OF ACCEPTANCE OF THE APPOINTMENT TO
ACT AS ADJUDICATOR**

1. I refer to the letter of [*request*²⁷/*appointment*²⁸] dated [Date] for me to act as adjudicator in the dispute as identified in the above referenced Notice of Adjudication which was sent to me by [*the Claimant pursuant to section 21(a) of the Construction Industry Payment & Adjudication Act 2012 / the Director of*

²⁶ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

²⁷ Pursuant to section 21(a) of the CIPA Act 2012.

²⁸ Pursuant to section 23(1) of the CIPA Act 2012.

the Asian International Arbitration Centre pursuant to section 23(1) of the Construction Industry Payment & Adjudication Act 2012].

2. I, [Name of the adjudicator] hereby accept the appointment to act as adjudicator as per the Terms and Conditions of the Appointment agreed by the parties, a copy of which is attached [*or, the AIAC's standard terms of appointment and fees for the services of an adjudicator in force as of the date of this letter*]. My fees and expenses are as contained in the attached Terms and Conditions of the Appointment agreed by the parties [*or, the Schedule [Regulation 6] AIAC's Standard Fees For Services And Expenses Of Adjudicator, or the AIAC's Recommended Schedule of Fees pursuant AIAC CIPAA Circular 02, as the case may be*].

3. I confirm that:
 - a) I have satisfied the competency standard and criteria of an adjudicator as required under the Construction Industry Payment & Adjudication Act 2012²⁹ or any Regulations or rules made thereunder; and

 - b) I am eligible to act as adjudicator in the dispute.

4. As required by section 24 of the Construction Industry Payment & Adjudication Act 2012, I hereby declare that:
 - a) there is no conflict of interest in respect of my appointment;

 - b) I shall act independently, impartially and in a timely manner and avoid incurring unnecessary expense;

²⁹ Section 32(a) of the CIPA Act 2012.

- c) I shall comply with the principles of natural justice; and
 - d) there are no circumstances likely to give rise to justifiable doubts as to my impartiality and independence.
5. Pursuant to section 9 of the Construction Industry Payment & Adjudication Act 2012, I hereby direct the Claimant to serve a written adjudication claim containing the nature and description of the dispute and the remedy sought together with any supporting document on the Respondent, and forward a copy of the same to me within 10 working days from the date of receipt of this notice of acceptance of my appointment as adjudicator.
6. I further direct the parties to contribute and deposit with the Director of the Asian International Arbitration Centre a sum of [*an amount representing a reasonable proportion of the adjudicator's fees and expenses, the AIAC's administrative fee and any taxes as may be imposed by the Government*] in equal share as security in advance within [] working days from the date of receipt of this notice.

(signed)
(Name of adjudicator)

Copy: (Director of the Asian International
Arbitration Centre)
(Service address) (Mode of Service³⁰)

³⁰ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

FORM 7
Adjudication Claim
*(Construction Industry Payment &
 Adjudication Act 2012, section 9)*

From the Claimant: Name: Address:	To the Respondent: Name: Address: To the Adjudicator: Name: Address:
	[Date]
	[Mode of service ³¹]
Adjudication reference number (if any): Date of Notice of Adjudication: Date of Receipt of Acceptance of Appointment by Adjudicator: Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum:	
Payment Claim Reference: Payment Claim Amount: Payment Response Reference (if any): Payment Claim Amount Admitted and Paid (if any): Total abatement / set off / cross claim sum (if any): Amount In Dispute: [Amount Claimed or Cross-Claimed by the Claimant]:	

³¹ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

ADJUDICATION CLAIM

A: Parties

1. The Claimant is [*a private limited company, public listed company, partnership, individual, etc, as the case may be*] having its business address at [*address*]. [*Describe the nature of its business*]
2. The Respondent is [*a private limited company, public listed company, partnership, individual, etc, as the case may be*] having its business address at [*address*]. [*Describe the nature of its business*]

B: The Construction Contract

3. By a contract in writing entered into by the parties on [*date the contract was made*], the [*claimant/ the respondent*] appointed [*or engaged, etc.*] the [*respondent/claimant*] as the [*contractor/ subcontractor/supplier/consultant etc.*] for the [*describe the nature of the construction work or consultancy services*] for the [*describe the Project*] in consideration of a contract sum of [*amount*].
4. Relevant extracts of the contract are attached hereto as **Schedule 1**.

C: Background facts relating to the claim in dispute

5. [*set out the relevant background facts relating to the dispute*]

D: Relevant contractual provisions and/or statutory default provisions relating to the claim in dispute

6. The following are the relevant terms and conditions of the contract [and/or *the relevant default provisions in section 36 of the CIPA Act 2012, if applicable*]:

[set out the relevant contractual provisions and/or statutory default provisions (if applicable)]

E: Payment Claim, Payment Response (if any) and Notice of Adjudication

7. On [date], [the Claimant/the Respondent] served the Payment Claim on [the Respondent/the Claimant] by [state the mode of service] on [date]. A copy of the Payment Claim is attached hereto as **Schedule 2**.
8. On [date], [the Claimant/the Respondent] served the Payment Response [if any] on [the Respondent/the Claimant] by [state the mode of service] on [date]. A copy of the Payment Response is attached hereto as **Schedule 3**.
9. On [date], the Claimant served the Notice of Adjudication on the Respondent by [state the mode of service] on [date]. A copy of the Notice of Adjudication is attached hereto as **Schedule 4**.

F: The nature and description of the dispute

10. The dispute involves the following:
[Set out the nature and description of the dispute³²]

³² Section 9(1) of the CIPA Act 2012.

- G: [Grounds in support of the claimed amount in the Payment Claim** (where the Claimant is the Unpaid Party) or, **Grounds for disputing the claimed amount by reasons of set-off, abatement and/or cross-claim** (where the Claimant is the Non-Paying Party)]
11. [*Set out the relevant grounds in support*]
12. The Claimant relies on the following documents in support of its claim:
- a) [*set out all the relevant documents*], a copy of which is attached hereto as **Schedule 5**;
 - b) [*factual witness statement(s) of (Name(s) of the witness(es))*], a copy of which is attached hereto as **Schedule 6**;
 - c) [*expert witness statement(s) of (Name(s) of the witness(es))*], a copy of which is attached hereto as **Schedule 7**.

Wherefore, the Claimant seek the following relief(s) and/or remedy(ies):

[*Set out the nature and description of the relief(s)/remedy(ies)³³ sought as referred in the Notice of Adjudication*]

[*signed*]

[*Name of the authorised representative of the Claimant and designation*]

Copy: (Director of the Asian International Arbitration Centre)
 (Service address) (Mode of Service)
 (Without Attachments)

FORM 8
Adjudication Response
*(Construction Industry Payment &
 Adjudication Act 2012, section 10)*

From the Respondent: Name: Address:	To the Claimant: Name: Address: To the Adjudicator: Name: Address:
	(Date)
	(Mode of service ³⁴)
Adjudication reference number (if any): Date of Notice of Adjudication: Date of Receipt of Adjudication Claim: Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum:	
Payment Claim Reference: Payment Claim Amount: Payment Response Reference (if any): Payment Claim Amount Admitted and Paid (if any): Total abatement / set off / cross claim sum (if any): Amount In Dispute: [Amount Claimed or Cross-Claimed by the Claimant]:	

³⁴ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

ADJUDICATION RESPONSE

A: Parties

1. *[Describe the parties, if it differs from the Claimant's description]*

B: The Construction Contract and/or Default Statutory Provisions

2. *[Describe the Construction Contract, if it differs from the Claimant's description, e.g. the date of contract was made, the description of the work and project, the contract sum, the contract is oral or partly oral and partly in writing, etc.]*
3. *[Set out the any part of the default provisions in section 36 of the CIPA Act 2012, where relevant]*
4. Relevant extracts of the contract are attached hereto as **Schedule 1** *[e.g. the relevant contractual provisions relating to the valuation and claimed amount (where the Respondent is an Unpaid Party), or to the set-off, abatement and/or cross-claim (where the Respondent is the Non-Paying Party)].*

C: Background facts relating to the claim in dispute

5. *[set out the relevant background facts relating to the dispute if they differ from the Claimant's view]*

D: Relevant contractual provisions and/or statutory default provisions relating to dispute

6. The following are the relevant terms and conditions of the contract [and/or *the relevant default provisions in section 36 of the CIPA Act 2012*]:

[Set out the relevant contractual provisions relating to the valuation and claimed amount (where the Respondent is an Unpaid Party), or to the set-off, abatement and/or cross-claim (where the Respondent is the Non-Paying Party) and/or statutory default provisions (if relevant)]

E: Payment Claim, Payment Response (if any) and Notice of Adjudication

7. *[Identify and describe the Payment Claim, Payment Response (if any) and Notice of Adjudication, if they differ from the Claimant's view].*

F: The nature and description of the dispute

8. *[Set out the nature and description of the dispute, if it differs from the Claimant's view]*

G: Respondent's answer to the Adjudication Claim

9. *[Set out the grounds and basis thereof in response to the claim(s) made in the Adjudication Claim³⁵]*

³⁵ Section 10(1) of the CIPA Act 2012.

v10. The Respondent relies on the following documents in support of its contentions [*and/or claim*]:

- a) [*set out all the relevant documents*], a copy of which is attached hereto as **Schedule 2**;
- b) [*factual witness statement(s) of (Name(s) of the witness(es))*], a copy of which is attached hereto as **Schedule 3**;
- c) [*expert witness statement(s) of (Name(s) of the witness(es))*], a copy of which is attached hereto as **Schedule 4**.

[*Set out the relief(s) or remedy(ies) on which the Respondent seeks a determination from the adjudicator, if any*]

[*signed*]

[*Name of the authorised representative of the Respondent and designation*]

Copy: (Director of the Asian International
Arbitration Centre)
(*Service address*) (Mode of Service)
(*Without Attachments*)

FORM 9
Adjudication Reply
*(Construction Industry Payment &
 Adjudication Act 2012, section 11)*

From the Claimant: Name: Address:	To the Respondent: Name: Address: To the Adjudicator: Name: Address:
	(Date)
	(Mode of service ³⁶)
Adjudication reference number <i>(if any)</i> : Date of Notice of Adjudication: Date of Receipt of Adjudication Response: Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum:	
Payment Claim Reference: Payment Claim Amount: Payment Response Reference <i>(if any)</i> : Payment Claim Amount Admitted and Paid <i>(if any)</i> : Total abatement / set off / cross claim sum <i>(if any)</i> : Amount In Dispute : [<i>Amount Claimed or Cross-Claimed by the Claimant</i>]:	

³⁶ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

ADJUDICATION REPLY

1. In reply to the Adjudication Response, the Claimant states: *[Set out the Claimant's reply to the Adjudication Response]*
2. In addition to the documents and/or evidence attached to the Adjudication Claim, the Claimant submit the following:

[Identify and attach the further documents / evidence that the Claimant relies on in support of its Adjudication Claim and/or in answer to the Adjudication Response]

[signed]

[Name of the authorised representative of the Claimant and designation]

Copy: (Director of the Asian International
Arbitration Centre)
(*Service address*) (Mode of Service)
(Without Attachments)

FORM 10

Agreement to extend the adjudicator's jurisdiction
*(Construction Industry Payment &
 Adjudication Act 2012, section 27(2))*

THIS AGREEMENT IS DATED [Date]	
To:	(Adjudicator) (service address)
From:	(Claimant or Respondent, as the case may be) (Service address)
Person In Charge:	(Name and designation)
Copy:	(Claimant or Respondent, as the case may be) (Service address)
Copy:	Director of Asian International Arbitration Centre (Service address)
	[Date]
	(Mode of Service ³⁷)
Adjudication reference number (if any): Date of Notice of Adjudication: Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum:	

³⁷ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

AGREEMENT TO EXTEND THE ADJUDICATOR'S JURISDICTION

(pursuant to section 27(2) of the Construction Industry Payment & Adjudication Act 2012)

1. In accordance with section 27(2) of the Construction Industry Payment & Adjudication Act 2012, the Claimant and the Respondent hereby agree to extend your jurisdiction to decide on the following matter(s) in dispute which was [were] not previously referred to you:

[(a) set out the nature and description of the matter, e.g. the parties to the dispute, the date on which the dispute arose, the matters in dispute, etc.; (b) set out the nature and description of the relief(s) / remedy(ies) in relation to the matter]

2. The parties agree that the above-mentioned matter(s) in dispute [is/are] to be referred to you for your determination in the present adjudication.

(signed)

(Claimant) (Date)

(signed)

(Respondent) (Date)

FORM 11
**Notice of withdrawal of adjudication
claim proceedings**
*(Construction Industry Payment &
Adjudication Act 2012, section 17(1))*

To:	(Respondent) (Service address)
To:	(Adjudicator) (Service address)
Copy:	Director of Asian International Arbitration Centre (Service address)
From:	(Claimant) (Service address)
Person In Charge:	(Name and designation)
	(Date)
	(Mode of Service ³⁸)
Adjudication reference number <i>(if any)</i> : Date of Notice of Adjudication: Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum:	

³⁸ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

NOTICE OF WITHDRAWAL OF ADJUDICATION CLAIM/ PROCEEDINGS

(pursuant to section 17(1) of the Construction Industry Payment & Adjudication Act 2012)

1. In accordance with section 17(1) of the Construction Industry Payment & Adjudication Act 2012, we, the Claimant herein, hereby give notice of withdrawal of our adjudication claim/proceedings against you, the Respondent, concerning [*describe the dispute*] which was referred to [*name of adjudicator*] for adjudication.³⁹
2. [*Set out the reasons for the withdrawal, and (if the Claimant is of the view that it should not bear the costs arising from the withdrawal, state the reasons)*].
3. [*We reserve our right to recommence adjudication on the same (or any part of the) matter in dispute*⁴⁰].

(signed)

(Claimant)

(Date)

³⁹ Section 17(1) of the CIPA Act 2012 requires the notice of withdrawal to be served on both the Respondent and the Adjudicator.

⁴⁰ See section 17(3) of the CIPA Act 2012.

FORM 12
Notice of consolidation of
adjudication proceedings
(Construction Industry Payment &
Adjudication Act 2012, section 14)

Date of Notice of Adjudication
 [and Adjudication reference number (if any)]:
 [Adjudication No.1]

Contract Reference Number:
 Date Contract Was Made:
 Project / Work Description:
 Project Site Location:
 Contract Sum:

To: *(Claimant – Adjudication No.1)*
 (Service address)

To: *(Respondent – Adjudication No.1)*
 (Service address)

[Adjudication reference number]:
 Date of Notice of Adjudication:
 Contract Reference Number:
 Date Contract Was Made:
 Project / Work Description:
 Project Site Location:
 Contract Sum:

To: *(Claimant – Adjudication No.2)*
 (Service address)

To: *(Respondent – Adjudication No.2)*
 (Service address)

<i>(Set out any further adjudications sought to be consolidated, if there are more than two)</i>	
Copy:	Director of Asian International Arbitration Centre <i>(Service address)</i>
From:	<i>(Adjudicator)</i> <i>(Service address)</i>
	<i>(Date)</i>
	<i>(Mode of Service⁴¹)</i>

NOTICE OF CONSOLIDATION OF ADJUDICATION PROCEEDINGS

(pursuant to section 14 of the Construction Industry Payment & Adjudication Act 2012)

1. The following adjudication proceedings are pending in which I have been appointed as adjudicator:

[Set out the particulars of Adjudication No.1 & Adjudication No.2 (and of any other adjudications agreed to be consolidated)]

2. It is hereby confirmed that all parties to the above referenced pending adjudication proceedings have consented :
 - a) to consolidate the adjudication proceedings to be determined at the same time as one adjudication proceedings; and

⁴¹ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

- b) that I shall adjudicate the matters in dispute in the same proceedings in accordance with section 14 of the Construction Industry Payment & Adjudication Act 2012 [*and deliver the adjudication decision by (date)*⁴²].

(signed)
(Name of Adjudicator)

(signed)
(Claimant – Adjudication No.1) (Date)

(signed)
(Respondent – Adjudication No. 1) (Date)

(signed)
(Claimant – Adjudication No.2) (Date)

(signed)
(Respondent – Adjudication No. 2) (Date)

[*other Claimant(s) and Respondent(s),
where applicable*]

⁴² If all parties agree to a specific date or extended date when the adjudicator is to deliver his adjudication decision.

FORM 13
**Adjudicator's request for extension of
time to deliver the adjudication decision**
*(Construction Industry Payment &
Adjudication Act 2012, section 12(2)(c))*

To: {Claimant} {Service address}
To: {Respondent} {Service address}
Copy: Director of Asian International Arbitration Centre {Service Address}
From: {Adjudicator} {Service address}
{Date}
{Mode of Service ⁴³ }
Adjudication reference number <i>(if any)</i> : Date of Notice of Adjudication: Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum:

⁴³ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

ADJUDICATOR'S REQUEST FOR EXTENSION OF TIME TO DELIVER THE ADJUDICATION DECISION

1. I refer to the above referenced adjudication whereby I am required to decide the dispute and deliver my decision by *[date]* under section [12(2)(a)/12(2)(b)] of the Construction Industry Payment & Adjudication Act 2012.
2. I request for the parties' agreement to extend the time for the delivery of my decision to *[date]* for the following reasons:

[set out reasons for the request]
3. Please indicate within [] working days of receiving this request whether you agree to the extension of time as requested.

(signed)

(Adjudicator)

FORM 14

**Notice for withholding the release of the decision
until payment of fees and expenses in full**
*(Construction Industry Payment &
Adjudication Act 2012, section 19(5))*

To:	{Claimant} {Service address}
To:	{Respondent} {Service address}
Copy:	Director of Asian International Arbitration Centre {Service address}
From:	{Adjudicator} {Service address}
	{Date}
	{Mode of Service ⁴⁴ }
Adjudication reference number (if any): Date of Notice of Adjudication: Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum:	

⁴⁴ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

NOTICE FOR WITHHOLDING THE RELEASE OF THE DECISION UNTIL PAYMENT OF FEES AND EXPENSES IN FULL

(pursuant to section 19(5) of the Construction Industry Payment & Adjudication Act 2012)

1. This is to notify the parties that the adjudication decision has been completed and is ready to be delivered to the parties.
2. As of this date, the full sum of [*amount*] representing full payment of my fees and expenses, the AIAC's administrative fee [*and any taxes as may be imposed by the Government*] has not been deposited with the Director of the Asian International Arbitration Centre as requested in my letter dated [*date*].
3. In accordance with section 19(5) of the Construction Industry Payment and Adjudication Act 2012, I will release the adjudication decision only after the full sum of [*amount*] has been deposited with the Director of the Asian International Arbitration Centre, and after being duly notified and served with proof of such payment.

(signed)

(Adjudicator)

FORM 15
Sample Format of an adjudication decision

**IN THE MATTER OF AN ADJUDICATION CONDUCTED
PURSUANT TO THE AIAC RULES AND CONSTRUCTION
INDUSTRY PAYMENT & ADJUDICATION ACT 2012**
[Adjudication Reference No:]

BETWEEN

XXX ... CLAIMANT AND
YYY ... RESPONDENT

Before: [Name of the Adjudicator]

ADJUDICATION DECISION DATED (DD/MM/YY)

A: THE PARTIES

[Describe the parties to the adjudication and state whether they were represented. If they were represented, identify the representatives.]

**B: THE CONSTRUCTION CONTRACT AND
BACKGROUND FACTS**

[Describe the relevant construction contract, and set out the background facts relating to the matters in dispute]

D: THE CLAIMANT'S PAYMENT CLAIM

[Set out the details of the Payment Claim, e.g. the amount claimed, the due date for payment of the amount claimed, the cause of action as identified therein, a description of the work or services to which the payment relates, etc.]

E: RESPONDENT'S PAYMENT RESPONSE (if any)

[Set out the details of the Payment Response, e.g. the amount admitted, the amount paid, the amount, in dispute, the reason for withholding payment such as set-off, abatement, cross-claim, etc.]

F: REFERENCE TO ADJUDICATION

[Set out the scope of reference and the reliefs / remedies claimed in the Notice of Adjudication, and particulars relating to the Notice of Adjudication, ie. the date when it was served, etc.]

G: APPOINTMENT OF ADJUDICATOR

[How the appointment was made, ie. whether by agreement or by the Director of the AIAC, when the adjudicator accepted the appointment, etc]

H: ISSUES

[Set out the issues requiring the determination of the adjudicator, e.g. relating to liability and quantum of the claim]

I: ADJUDICATION CLAIM

[Set out the details of the adjudication claim, e.g. nature and description of the claim, the basis for the claim, the relief(s) / remedy(ies) sought in the adjudication claim, and identify briefly the documents / evidence relied on by the Claimant]

I: ADJUDICATION RESPONSE

[Set out the details of the adjudication response, e.g. the Respondent's answer to the adjudication claim, the grounds advanced by the Respondent, and identify briefly the documents / evidence relied on by the Respondent]

J: ADJUDICATION REPLY (if any)

[Set out the answer by the Claimant to the Adjudication Response, and identify briefly any further documents / evidence produced by the Claimant]

K: HEARING / MEETING / SITE VISIT

[Set out the number of days of hearing / meeting, and the evidence taken during the hearing or meeting, the date of the site visit, any other action taken by the adjudicator etc.]

L: FINDINGS AND REASONS

[Discuss each issue by providing his findings and reasons for his findings.]

M: COSTS & ADJUDICATOR'S FEES AND EXPENSES

[Discuss as to who shall bear the costs, and fix the quantum of costs to be paid. Set out the amount of adjudicator's fees and expenses payable, and the details thereof]

N: DETERMINATION

[Set out the decision of the adjudicator]

e.g.

Example 1: Where claim or cross-claim is successful

- a) *[State the adjudicated amount (if any), the paying party, and the party entitled to receive payment from the paying party, and the time within which the adjudicated amount is to be paid⁴⁵];*
- b) *[Financing cost and/or Interest awarded pursuant to section 25(o) of the CIPA Act 2012, if any];*
- c) *[Costs of the adjudication proceedings to be borne (by the losing party) pursuant to Section 18(1) of CIPA Act 2012 in the amount of (amount), which shall include the Adjudicator's fees and expenses in the amount of (amount). State the time within which payment of the costs of the adjudication proceedings are to be paid];*
- d) *[State the manner the adjudicated amount, together with interests and costs, are to be paid⁴⁶].*

⁴⁵ Section 12(5) of the CIPA Act 2012.

⁴⁶ Section 12(5) of the CIPA Act 2012.

Example 2: Where claim is unsuccessful

- a) [State that the claim is dismissed];
- b) [*Costs of the adjudication proceedings to be borne (by the losing party) pursuant to Section 18(1) of CIPA Act 2012 in the amount of (amount), which shall include the Adjudicator's fees and expenses in the amount of (amount). State the time within which payment of the costs of the adjudication proceedings are to be paid*]:
- c) [*State the manner the costs are to be paid*⁴⁷].

Dated this (DD/MM/YY)

(signed)
(Adjudicator's Name)

⁴⁷ Section 12(5) of the CIPA Act 2012.

FORM 16
Delivery of Adjudication Decision
*(Construction Industry Payment &
 Adjudication Act 2012, section 12(2) and AIAC
 Adjudication Rules & Procedure, Rules 9(5) & 9(7))*

To:	{Claimant} {Service address}
To:	{Respondent} {Service address}
To:	Director of Asian International Arbitration Centre {Service address}
From:	{Adjudicator} {Service address}
	{Date}
	{Mode of Service ⁴⁸ }
Adjudication reference number (if any): Date of Notice of Adjudication: Contract Reference Number: Date Contract Was Made: Project / Work Description: Project Site Location: Contract Sum:	

⁴⁸ As per any of the prescribed modes of service under section 38(a) – 38(d) of the CIPA Act 2012.

DELIVERY OF ADJUDICATION DECISION

(pursuant to section 12(2) of the Construction Industry Payment & Adjudication Act 2012 and Rules 9(5) & 9(7) of the AIAC Adjudication Rules & Procedure)

I enclose herewith my written Adjudication Decision made on [*date*].

I confirm that:

- a) full payment of expenses and fees, including the AIAC's administrative fee [*and any taxes as may be imposed by the Government*] for this adjudication as directed by me in my letter dated [*date*] have been deposited with the Director of the AIAC pursuant to Section 19(5) of the Construction Industry Payment and Adjudication Act 2012⁴⁹;
- b) I have complied with the prescribed time for the delivery of adjudication decision as set out in Section 12(2) of the Construction Industry Payment and Adjudication Act 2012⁵⁰.

Yours faithfully,

(signed)
(Adjudicator)

49 Rule 9(5) of the AIAC Adjudication Rules & Procedure.

50 Rule 9(7) of the AIAC Adjudication Rules & Procedure.

SCHEDULE II

AIAC STANDARD TERMS OF APPOINTMENT

- 1 The adjudicator is to be impartial and independent of the parties and shall inform the parties immediately of anything of which could affect his impartiality or independence.
- 2 The adjudicator shall treat all matters which have been referred to him for adjudication as confidential and shall not disclose such matters without the prior written consent of the parties.
- 3 The adjudicator shall explain and ensure that the parties to the adjudication proceedings are reasonably informed as to the procedural requirements and expectations of them in the adjudication proceedings.
- 4 The adjudicator may not be called as a witness by either party to give evidence concerning the matter referred or adjudicated by him in any proceedings.
- 5 The adjudicator shall not assign, delegate or obtain legal or technical assistance related to his work under the Act and Regulations without the approval of the parties.
- 6 No suit or other legal proceedings shall lie against the adjudicator in respect of anything done or omitted to be done provided the adjudicator acts in good faith in the discharge of the duties and functions as an adjudicator under the Act.

- 7 The adjudicator shall be entitled to:
 - a) Be paid the agreed fee and expenses;
 - b) Be reimbursed by the parties for expenses reasonably incurred in carrying out his duties;
 - c) Direct the parties to contribute and deposit with the Director of the AIAC, anticipated fees and expenses in equal shares in advance as security;
 - d) Exercise a lien on his decision until any outstanding fees and expenses, including the AIAC's administrative fee and any taxes as may be imposed by the Government including, inter alia, goods and services tax, have been paid in full.
- 7A The adjudicator shall be entitled to his fees and expenses notwithstanding that his adjudication decision is subsequently set aside by the Court provided that he has acted in good faith in the performance of his duties under the Act.
- 8 Where a party fails to comply with a request for payment within the stipulated period, the other party may make and recover such payment from the defaulting party.
- 9 The adjudicator's fees and expenses incurred shall be paid in full prior to the delivery of the adjudication decision and the parties are, and shall remain jointly and severally liable to the adjudicator for payment of the fees and expenses in accordance with these terms.

- 10 The appointment of the adjudicator may be terminated by:
 - a) The mutual agreement in writing by the parties; or
 - b) The withdrawal of the Adjudication Claim by the Claimant pursuant to Section 17(1) of the Act; or
 - c) The final determination of the dispute referred to him by arbitration or the court; or
 - d) The death, resignation or incapacity of the adjudicator to complete the adjudication proceedings pursuant to Section 17(4) of the Act.

- 11 The adjudicator shall be entitled to collect reasonable fees and expenses incurred up to the date of the service of notice of termination of the adjudication proceedings or the date of settlement, if:
 - a) the parties settle the dispute before the making of the adjudicator's decision; or
 - b) the adjudicator's appointment is terminated pursuant to Clause 10 above.

- 12 The adjudicator shall determine the matter and serve his decision to the parties within the time period stipulated in Section 12(2) of the Act. The decision shall be made in writing and shall, subject to the settlement of all outstanding fees and expenses, be served on the parties and the Director of the AIAC.

SCHEDULE III

ADMINISTRATIVE FEE SCHEDULE

1 Administrative Fee of AIAC

1.1 The list of administrative fees chargeable (where applicable) –

- a) **Registration fee** of RM 250 to register the adjudication matter;
- b) **Adjudicator Appointment fee** of RM400 to request the Director of AIAC to appoint the adjudicator;
- c) **Administrative fee** calculated at 20% of the adjudicator's fee. This fee is in addition to the adjudicator's fee and expenses payable by the parties.
- d) All taxes as may be imposed by the Government including, inter alia, goods and services tax applicable to the AIAC's administrative fees as prescribed in sub-paragraph 1.1(a), 1.1(b) and 1.1(c).

1.2 The administrative fees referred to in sub-paragraph 1.1 (where applicable) is payable even though the proceedings are prematurely ended, withdrawn, settled or the adjudication decision is void.

1.3 All administrative fee to be payable upon registration and/or in accordance to the adjudicator's direction, and are non-refundable.

2 Amendments to Administrative Fee of AIAC

2.1 AIAC reserves the right to amend and/or vary the Administrative Fee from time to time at the discretion of the Director of the AIAC without prior notification.

SCHEDULE IV

ADJUDICATOR CODE OF CONDUCT

This Code of Conduct (“this Code”) applies to all persons appointed by the parties in dispute or appointed by AIAC to act as Adjudicators pursuant to the Construction Industry Payment and Adjudication Act.

1 Acceptance of Assignment

1.1 An Adjudicator will, before accepting an appointment to a case, ensure that he is able to conduct the adjudication independently, impartially and expeditiously.

2 Impartiality

2.1 An Adjudicator will be impartial and fair to the parties, and be seen to be so.

2.2 An adjudicator must seek to disclose any information which may lead to the impression that he may not be impartial or fair, including, that:

- a) He (or any member of his firm or company) has acted in any capacity for any of the parties;
- b) He has a financial or any other interest (direct or indirect) in any of the parties or the outcome of the adjudication; or
- c) He has any confidential information about the parties or the matter which is the subject of the adjudication derived from sources outside the adjudication proceedings.

- 2.3 If there is an actual, potential or apparent conflict of interest between the Adjudicator and any of the parties, the Adjudicator shall highlight this to all the relevant parties.
- 2.4 If, at any stage during the adjudication proceedings, new circumstances arise that could give rise to doubt as to the impartiality or independence of the Adjudicator, he shall promptly disclose such circumstances to the relevant parties.
- 2.5 An Adjudicator shall not accept an appointment if he is ineligible by virtue of the Act or the Regulations.
- 2.6 An Adjudicator (or any member of his firm or company) shall not act for any of the parties subsequently in any matter related to or arising out of the subject matter of the adjudication without the written informed consent of all the parties.

3 The Adjudication Procedure

- 3.1 An Adjudicator will act in accordance with the Act and the Regulations.

4 Confidentiality

- 4.1 Any document or information supplied for and/or disclosed in the course of the adjudication will be kept confidential. An Adjudicator will only disclose the same if required to do so by law, or pursuant to an order of a court, or with the consent of all the relevant parties.

5 Preparation and Diligence

- 5.1 The Adjudicator will prepare himself appropriately before the commencement of the adjudication.
- 5.2 An Adjudicator should carry out his role in a conscientious and diligent manner.

6 Compliance with Act

- 6.1 The obligations found in this code are over and above the obligations of Adjudicators under the Act and the Regulations. An Adjudicator must comply with the requirements of the Act and the Regulations.

7 Withdrawal

- 7.1 An Adjudicator shall withdraw from a case:
- a) When he realises that he has committed a breach of any of the terms of this Code; or
 - b) When he is required by any of the parties to do anything in breach of the terms of this Code, the Act or the Regulations.

The Adjudicator shall, on the occurrence of (a) or (b) above, immediately inform the parties and or, the AIAC of his withdrawal.

- 7.2 In the event that an Adjudicator is requested to withdraw because of prejudice or bias, the Adjudicator should withdraw unless, the Adjudicator after carefully considering the matter and in consultation with the parties determine that:

- a) The reason for the challenge is not substantial;
- b) The Adjudicator can act and decide the case impartially and fairly; and
- c) The withdrawal would cause unfair delay or expense or would be contrary to the ends of justice.

8 Fees

- 8.1 Where the Adjudicator has expressly agreed to the fees as agreed with the parties in dispute or to the adjudicator's standard fees provided in the Regulations, as the case may be, he shall not subsequently make any unilateral arrangements with any of the parties for additional fees.
 - 8.1.1 Where the Adjudicator's has expressly agreed to the standard fees for adjudicator provided under the Regulations or the AIAC's recommended schedule of fees under AIAC CIPAA Circular 02, as the case may be, the fees calculated shall be based on the claimed amount under the Payment Claim pursuant to Section 5(2)(a) of the Act.
- 8.2 AIAC is not liable to the Adjudicator for any or any part of the Adjudicator Fee due to the Adjudicator under the Act and the Regulations.
- 8.3 The Adjudicator will only be paid the Adjudicator Fee when AIAC has obtained full payment of the Fees and expenses from the parties.

Part V

AIAC CIRCULARS

(Previously issued as KLRCA Circulars)

AIAC CIPAA CIRCULAR 1A

(Previously issued as KLRCA CIPAA CIRCULAR 1A)

CIRCULAR BY KLRCA ON THE SCOPE OF APPLICATION OF CIPAA AND THE ADMINISTRATION OF ADJUDICATION CASES BY KLRCA

The KLRCA through Circular 01 issued on 23rd April 2014 had advised that the KLRCA would administer adjudication cases in accordance with the position taken therein.

On the 31st October 2014, the High Court in **UDA HOLDINGS BHD V BISRAYA CONSTRUCTION SDN BHD (24C-6-09/2014)** and **CAPITAL AVENUE DEVELOPMENT SDN BHD V BAUER (M) SDN BHD (24C-5-09/2014)**, had determined that CIPAA 2012 was intended to apply retrospectively, namely, subject to sections 3 and 41 of the Act, the Act applies to every construction contract made in writing within the meaning of Section 4 of the Act regardless of when it was made and under which a payment claim is made.

Section 3 provides that CIPAA 2012 shall not apply to a construction contract entered into by a natural person for any construction work in respect of any building which is less than four storeys high and which is wholly intended for his occupation.

Section 41 provides that CIPAA 2012 shall not affect the proceedings relating to any payment dispute under a construction contract which had been commenced in Court or Arbitration before the coming into operation of the Act.

Given that the issue relating to the scope of the application of CIPAA 2012 has been determined by the High Court, the KLRCA will comply and administer adjudication cases in accordance with the decision of the High Court.

Therefore the KLRCA will henceforth register and administer adjudication cases filed with it under CIPAA 2012 provided that the relevant requirements of the KLRCA Adjudication Rules & Procedure are complied with.

This Circular 1A supersedes Circular 1 issued on 23rd April 2014 with immediate effect.

Dated this 11th November 2014.



Professor Datuk Sundra Rajoo
Director of KLRCA

AIAC CIPAA CIRCULAR 02

(Previously issued as KLRCA CIPAA CIRCULAR 02)

CIRCULAR ON KLRCA'S RECOMMENDED SCHEDULE OF FEES (Amended as at 1st August 2014)

The Construction Industry Payment and Adjudication Act 2012 ("CIPAA") and Construction Industry Payment and Adjudication Regulations 2014 ("Regulations") came into effect on the 15th April 2014.

The Schedule of Fees under the Regulations sets out the standard fees for services and expenses of an adjudicator as imposed by the Ministry of Works.

The KLRCA is of the view that the schedule of fees under the Regulations may not be reasonable enough to attract qualified and experienced people capable of working under the very tight deadlines imposed by the CIPAA 2012.

The KLRCA highlighted its concerns to the Ministry of Works that should the scale fee be set too low there is a high likelihood that the selected adjudicator will try to negotiate with the parties to agree on a reasonable fee acceptable to the selected adjudicator, and decline the appointment if such an agreement cannot be reached. However, the Ministry of Works did not incorporate our comments and concerns in the imposition of the standard fees under the Regulations.

Therefore the KLRCA recommends an alternative adjudicator fee schedule to reduce the likelihood of adjudicators declining appointment due to the low fees. The recommended adjudicator fees takes into account

factors such as the quality of professionalism required of an adjudicator, the timeline within which an adjudicator will be required to complete the adjudication as well as the claimed amount involved in an adjudication.

The adjudicator and parties can agree to adopt the KLRCA Recommended Schedule of Fees at any time during the negotiations of the adjudicator's terms of appointment and fees chargeable.

1. KLRCA's Recommended Adjudicator Fee Schedule is set out below:-

1.1 KLRCA's recommended adjudicator fee schedule -

Amount in Dispute (RM)	Adjudicator's Fees (RM)
Up to 150 000	8,400
150 001 to 300 000	8,400 + 3.5% of excess over 150 000
300 001 to 800 000	13,650 + 1.3% of excess over 300 000
800 001 to 1 300 000	20,150 + 1.25% of excess over 800 000
1 300 001 to 1 800 000	26,400 + 1.1% of excess over 1 300 000
1 800 001 to 2 300 000	31,900 + 0.7% of excess over 1 800 000
2 300 001 to 2 800 000	35,400 + 0.5% of excess over 2 300 000
2 800 001 to 3 300 000	37,900 + 0.683% of excess over 2 800 000
3 300 001 to 5 000 000	41,315 + 0.65% of excess over 3 300 000

Amount in Dispute (RM)	Adjudicator's Fees (RM)
5 000 001 to 10 000 000	52,365 + 0.365% of excess over 5 000 000
10 000 001 to 15 000 000	70,615 + 0.38% of excess over 10 000 000
Over 15 000 000	89,615

- 1.2 Adjudicator fees to be paid by the parties as directed by the adjudicator.
- 1.3 Adjudicator fees prescribed in sub-paragraph 1.1 exclude the 20%* administrative support fee prescribed in Schedule III of the KLRCA Adjudication Rules & Procedure and all taxes as may be imposed by the Government of Malaysia on the fee earned by the adjudicator.

2. Expenses

- 2.1 An adjudicator who is required to travel outside his place of residence to conduct a site visit and the like will be reimbursed with an economy class airfare, reasonable mileage claim (as agreed by both parties) or as prescribed by KLRCA or any other reasonable fare for mode of transportation (as agreed by both parties) whichever is applicable, subject to the submission of invoice, receipt or in original or such evidence acceptable to the KLRCA.

* Subject to the latest revision by the AIAC as reflected on www.aiac.world

- 2.2 A *per diem* of RM1800 shall be paid to an adjudicator who is required to travel outside his place of residence to conduct a site visit and the like, whenever overnight accommodation is required. Where no overnight accommodation is required, a *per diem* of RM900 shall be paid.
- 2.3 The expenses covered by the *per diem* above shall include the following items –
- Hotel accommodation
 - Meals/beverages
 - Laundry/dry cleaning/ironing
 - City transportation (excluding airport transfers)
 - Communication costs (telephone, fax, internet usage etc)
 - Tips
- 2.4 Expenses to be paid by the parties as directed by the adjudicator.

A copy of the KLRCA Recommended Schedule of Fees together with the complete set of the KLRCA Rules & Procedure can be found at: www.klrca.org

Dated 1st August, 2014.



Professor Datuk Sundra Rajoo
Director of KLRCA

AIAC CIPAA CIRCULAR 03

(Previously issued as KLRCA CIPAA CIRCULAR 03)

CIRCULAR ON KLRCA'S GUIDELINE ON THE MEANING OF "CONSTRUCTION CONTRACT MADE IN WRITING"

The Construction Industry Payment and Adjudication Act 2012 ("CIPAA") came into operation on 15 April 2014. Section 2 of the Act provides that statutory adjudication regime shall apply to construction contracts made in writing.

However, no definition or further elaboration is provided in the Act as to what 'construction contract made in writing' means.

Given the fact that there are various means by which a construction contract may be made, a clear guideline on the meaning of a 'construction contract made in writing' will ensure that parties to a construction contract are guided as to whether or not payment disputes arising under their contract can be referred to adjudication under the Act. Further, it will eliminate the need for the adjudicator who may not be legally trained to grapple with the complexity of the issue of whether a construction contract is in writing.

As such the KLRCA is of the view that it would be expedient and/or necessary to provide clear guidance and definition as to what the phrase 'construction contract made in writing' mean, for giving full effect and the better carrying out of the provisions of the Act.

The KLRCA adopts the following definition of a 'construction contract in writing':-

'CONSTRUCTION CONTRACT IN WRITING'

1. There is a contract in writing:-
 - a) if the contract is made in writing (whether or not it is signed by the parties);
 - b) if the contract is made by exchange of communications in writing; or
 - c) if the contract is evidenced in writing.
2. Where parties agree otherwise than in writing by reference to terms which are in writing, they make a contract in writing.
3. A contract is evidenced in writing if a contract made otherwise than in writing is recorded by one of the parties, or by a third party, with the authority of the parties to the contract.

The KLRCA Guideline on Construction Contract in Writing shall apply to all adjudication cases commenced under CIPAA. A copy of the KLRCA Guideline can be found at: www.klrca.org

Dated 28th day of April, 2014.



Professor Datuk Sundra Rajoo
Director of KLRCA

AIAC CIPAA CIRCULAR 04

(Previously issued as KLRCA CIPAA CIRCULAR 04)

CIRCULAR ON KLRCA'S PROCEDURE FOR EXEMPTION APPLICATION MADE UNDER SECTION 40 OF THE CONSTRUCTION INDUSTRY PAYMENT AND ADJUDICATION ACT 2012

Under Section 40 of the Construction Industry Payment and Adjudication Act 2012 ("CIPAA"), the Minister may upon considering the recommendation of the KLRCA, make an order for exemption of any person or class of persons or any contract, matter or transaction or any class thereof, from all or any of the provisions of CIPAA, subject to such terms and conditions as may be prescribed.

In order for the Director of KLRCA to make a recommendation to the Minister of Works for exemption under Section 40 of the CIPAA, the KLRCA has introduced a procedure for an application for exemption.

The KLRCA procedure for the application of exemption, as set out in the KLRCA Adjudication Rules & Procedure, is set out below:-

PROCEDURE FOR EXEMPTION APPLICATION

1. An application for exemption under section 40 of the Act shall be made in writing to the Director of KLRCA.
2. The application for exemption must –
 - a) be accompanied by a non-refundable application fee in the amount of RM20,000.00* ;
 - b) contain the name and address of the applicant;
 - c) identify the person or class of persons, or contract, matter, transaction or any class thereof, and the provisions of the Act from which the applicant seeks to be exempted; and
 - d) contain a statement of the grounds and furnish any relevant documents (if any), in support of the application.
3. Upon receiving an application for exemption, the Director of KLRCA may –
 - a) decline the application if it fails to comply with paragraph 2 above; or
 - b) request any further information from the applicant that he or she may require for his or her review; or
 - c) review the application.

* Subject to the latest revision by the AIAC as reflected on www.aiac.world

4. The Director of KLRCA may consult with any relevant party for the purpose of reviewing an application for exemption upon receipt of the application or of the further information referred to in paragraph 3(b) above.
5. The Director of KLRCA will thereafter make a recommendation to the Minister pursuant to section 40 of the Act, to -
 - a) accept the application, with or without conditions; or
 - b) decline the application, wholly or partly.

All applications for exemption must comply with the above procedure prior to the Director of KLRCA making the recommendation to the Minister of Works.

A copy of the KLRCA Adjudication Rules & Procedure can be found at: www.klrca.org

Dated 28th day of April, 2014.



Professor Datuk Sundra Rajoo
Director of KLRCA

AIAC CIPAA CIRCULAR 05

(Previously issued as KLRCA CIPAA CIRCULAR 05)

CIRCULAR BY KLRCA ON THE PROCEDURE FOR IMPLEMENTATION OF GOODS AND SERVICES TAX IN CIPAA PROCEEDINGS ADMINISTERED BY KLRCA

Pursuant to the Goods and Services Tax Act 2014, commencing 1 April 2015 a 6% Goods and Services Tax ("GST") will become payable on the provision of all services. This will include the provision of services by the KLRCA and also by adjudicators in relation to all CIPAA proceedings administered pursuant to the CIPAA 2012, the CIPAA Regulations 2014 and the KLRCA Adjudication Rules & Procedure.

The procedure for the collection of GST will be as follows.

Upon the adjudicator issuing a direction pursuant to Rule 9(2) of the KLRCA Adjudication Rules & Procedure ordering the parties to deposit with the KLRCA the full adjudicator's fees and expenses and the administrative fees of the KLRCA, the KLRCA will collect the full costs of the adjudication by way of security deposit.

The security deposit, including the adjudicator's fees plus GST and the administrative fees of the KLRCA plus GST, will be collected in equal shares from the parties by the KLRCA. No fees shall be payable to the adjudicator at this stage.

Payments requested by the KLRCA in MYR can be made by cheque made out to the Asian International Arbitration Centre or to the following account:

Account Name: AIAC EVENT
Account Number: 5143 5650 4056
Bank Name: Malayan Banking Berhad
Bank Address: Ground & Mezzanine Floors,
Wisma Genting, Jalan Sultan
Ismail, 50250 Kuala Lumpur
SWIFT Code: MBBEMYKL

After the security deposit has been paid, the adjudicator shall issue tax invoices reflecting the full adjudicator's fees and expenses as well as any GST payable. The tax invoices will be issued in the parties' names and delivered to the KLRCA. The KLRCA will subsequently forward the tax invoice to the parties.

If the adjudicator is registered in Malaysia for the purposes of GST, GST will be payable on their fees. If the adjudicator is not registered, the party will need to account for the GST directly to the Department of Customs.

The KLRCA, after the security deposit has been paid, shall issue tax invoices reflecting the administrative fees of the KLRCA as well as the GST payable. The tax invoices will be issued in the parties' names and delivered to the parties.

The security deposits already paid by the parties will be entirely set off against the costs of the adjudication in satisfaction of the tax invoices issued by the adjudicator and the KLRCA.

Any additional or supplementary deposits that may become payable over the course of proceedings will be collected in the same way. Tax invoices will be issued in the parties' names by the relevant service provider (being the adjudicator or the KLRCA), including GST, with the deposit thereafter collected by the KLRCA. If the service provider is not registered for GST, GST will not be included.

Should proceedings be completed prior to the delivery of the final decision, the adjudicator may direct reasonable costs to be paid, including reasonable fees and expenses of the adjudicator. The adjudicator shall issue tax invoices reflecting those reasonable fees and expenses. In the event there is any difference between those reasonable costs and any tax invoice previously issued then a corresponding credit note will need to be issued by the adjudicator.

Any unexpended balance will then be refunded to the parties.

This Circular 05* will take effect on 1 June 2015.

Dated this 1 June 2015.



Professor Datuk Sundra Rajoo
Director of KLRCA

*As revised on 1 June 2015.

AIAC CIPAA CIRCULAR 06

(Previously issued as KLRCA CIPAA CIRCULAR 06)

CIRCULAR BY KLRCA ON THE EXEMPTION OF GOVERNMENT CONSTRUCTION CONTRACTS AS SPECIFIED IN THE SECOND SCHEDULE OF THE CONSTRUCTION INDUSTRY PAYMENT & ADJUDICATION (EXEMPTION ORDER) 2014

Reference is made to **subparagraph 2(2)** of the **Construction Industry Payment & Adjudication (Exemption Order) 2014 (hereinafter referred to as “Exemption Order”)**, which makes the following order:

‘2. Exemption

- 2) *Subject to subparagraph (3), a Government construction contract as specified in the Second Schedule is exempted from the application of subsections 6(3), 7(2), 10(1), 10(2), 11(1) and 11(2) of the Act from 15 April 2014 to 31 December 2015.’*

The **Second Schedule** of the Exemption Order reads as follows:

‘A contract for any construction works as defined under the Act with the contract sum of twenty million ringgit (RM20, 000,000) and below.’

The above subparagraph 2(2) provides that the operative period of the Exemption Order upon a Government construction contract as specified in the Second Schedule shall lapse after 31st December 2015.

Accordingly, commencing 1st January 2016 and pursuant to subparagraph 2(2) of the Exemption Order, a Government construction contract as specified in the Second Schedule shall cease to be exempted from the provisions of subsections 6(3), 7(2), 10(1), 10(2), 11(1) and 11(2) of the Construction Industry Payment & Adjudication Act 2012.

Following the same, the procedures under subparagraph 2(3) of the Exemption Order shall also cease to apply to a Government construction contract as specified in the Second Schedule from 1st January 2016 onwards.

This Circular 06 will take effect on 1st January 2016.

Dated this 1st January 2016.



Professor Datuk Sundra Rajoo
Director of KLRCA

Part VI

**GUIDE TO
CIPAA 2012**

INTRODUCTION

- The Construction Industry Payment and Adjudication Act (“CIPAA”) was passed by Parliament in March 2012 and received Royal Assent on 18th June 2012. It came into operation on the 15th April 2014.
- CIPAA provides a new mechanism for speedy dispute resolution of payment disputes under construction contract via statutory adjudication. It is a summary procedure for the resolution of payment disputes under construction contracts at an intermediate stage, without waiting for the final resolution through traditional process of arbitration or litigation.
- The primary objective of the Act is to address cash flow problems in the construction industry. It aims to alleviate the pervasive and prevalent practice of delayed, non-payment and/or under-payment for works or services carried out under a construction contract.
- CIPAA expressly outlaws conditional payment provisions (such as ‘pay when paid’, ‘pay if paid’ and ‘back to back payment’ provisions) which have contributed to the delay in payments in the construction industry.
- Adjudication decisions under CIPAA are immediately binding pending the final resolution of the subject disputes by arbitration, litigation or agreement between the parties.

- CIPAA provides various remedies for the enforcement of adjudication decisions. The winning party may (1) apply to the High Court for an order to enforce the adjudication decision as a judgment or order of the High Court, or (2) suspend performance or reduce the rate of progress of performance of the construction works or consultancy services under a construction contract, or (3) make a written request for payment of the adjudicated amount directly from the principal of the losing party. CIPAA allows the winning party to exercise one or all of these remedies concurrently or one after another.

What Is Statutory Adjudication?

- Adjudication is a summary procedure for resolution of disputes under a construction contract. It allows a party (“the claimant”) who is owed monies under a construction contract to have the disputes resolved with the non-paying party (“the respondent”) in a quick and cheap manner. Disputes which may be referred to adjudication under CIPAA relate to payment for work done and services rendered under the express terms of a construction contract.
- It is a mandatory statutory process that does not require the agreement of the parties’ to commence the process and prevails over any contractual agreements to the contrary between the parties.
- Statutory adjudication can be commenced at any time whether during or after project completion.
- It is conducted privately and ensures confidentiality.

- It offers a relatively simpler, cheaper and faster process compared to arbitration and/or court proceedings by virtue of express provisions prescribed by CIPAA.
- The adjudicator must decide the dispute and deliver his decision within forty five (45) working days from the date of service of adjudication response, or reply (whichever is later), or the period prescribed for the submission of adjudication response (if no adjudication response is received), unless this period is extended by mutual agreement of the parties. Should the adjudicator fail to comply with the specified period, his decision shall be regarded as void and the adjudicator will not be entitled to any fees or expenses relating to the adjudication.
- The decision is temporarily but immediately binding pending the final resolution of the subject disputes by arbitration, litigation or agreement between the parties. In the interim, the losing party is required to comply with the adjudicator's decision and pay the adjudicated amount unless the decision has been stayed or set aside by the High Court.
- However, if there is no challenge to the decision taken, then it will achieve finality.
- Under CIPAA, an adjudication decision can only be set aside on limited grounds, namely, where the adjudication decision was improperly procured through fraud or bribery; there has been a denial of natural justice; the adjudicator has not acted independently or impartially; or the adjudicator has acted in excess of his jurisdiction.

Who Does It Affect?

- Only disputes relating to payment for work done and services rendered under the express terms of a construction contract may be referred to adjudication under CIPAA. However, the parties may agree after the appointment of the adjudicator to extend the jurisdiction of the adjudicator to decide on any other matter arising from the construction contract.
- Section 41 of CIPAA provides:

Nothing in this Act shall affect any proceedings relating to any payment dispute under a construction contract which had been commenced in any court or arbitration before the coming into operation of this Act.

- For the purposes of administration of adjudication cases by the AIAC under CIPAA, including the appointment of an adjudicator under CIPAA, the AIAC takes the position that CIPAA applies to a payment dispute which arose under a construction contract on or after 15.4.2014, regardless of whether the relevant construction contract was made before or after 15.4.2014. In this regard, a payment dispute under a construction contract is said to have arisen when the non-paying party has, in breach of the contract, failed to make payment by the contractual due date for payment.
- CIPAA is wide ranging and covers *inter alia*, the building industry, the oil and gas industry, the petrochemical industry, telecommunication, utilities, infrastructure, supply contracts and consultancy contracts.

- CIPAA applies to every 'construction contract' made in writing relating to construction work carried out wholly or partly in Malaysia, including a construction contract entered into by the Government. It applies to both local and international contracts, provided the subject construction work is carried out wholly or partly in Malaysia.
- CIPAA defines 'construction contract' to include construction work contracts and consultancy services contracts.
- CIPAA only applies to contracts which are made "in writing". However, no definition or elaboration is provided in CIPAA as to what constitutes construction contract made in writing. AIAC considers that a construction contract must be wholly in writing, and that it is made in writing:-
 - 1) a) if the contract is made in writing (whether or not it is signed by the parties);
b) if the contract is made by exchange of communications in writing; or
c) if the contract is evidenced in writing.
 - 2) Where parties agree otherwise than in writing by reference to terms which are in writing, they make a contract in writing.
 - 3) A contract is evidenced in writing if a contract made otherwise than in writing is recorded by one of the parties, or by a third party, with the authority of the parties to the contract.

(* Refer to KLRCA Circular on Construction Contract Made In Writing issued on 28th April 2014.)

- The Act applies equally to the Government of Malaysia as well as the Private Sector. However, pursuant to the Construction Industry Payment and Adjudication (Exemption) Order 2014, two categories of Government construction contracts are exempted. The first category of Government construction contracts are contained in the First Schedule of the Exemption order namely a contract for any construction works that involve emergency, unforeseen circumstances and that relate to national security or security related facilities.

The second category of Government construction contracts are contained in the Second Schedule of the Exemption order namely construction contracts with the Government of the contract sum of twenty million ringgit (RM20,000,000) and below. With regards to this second category, the exemption order merely exempts these contracts from the application of subsections 6(3), 7(2), 10(1), 10 (2), 11(1) and 11(2) of CIPAA 2012, and relates to the timeline for submissions and replaced with a set of longer timelines for such submissions. It is also a temporary exemption from 15 April 2014 to 31 December 2015 for this second category. However, the exemption order does not extend to construction contracts to which the Government is not a party.

- CIPAA does not apply to an individual owner i.e. resident, who erects a building not more than four-storeys high which is wholly intended for his own occupation.
- Statutory adjudication is compulsory in that any party to a construction contract who is neither excluded nor exempted under the Act has the right to resort to adjudication. No contracting out of the Act is permitted so as to defeat the application of its provisions and/or the objectives of the Act.

PROCESS FLOW

What Are The Main Steps Involved In Adjudication?

The adjudication process can be summarised as follows:

Step 1:

Making & Responding to a Payment Claim

The unpaid party must serve a Payment Claim on the non-paying party. The non-paying party may then respond within 10 working days by serving a Payment Response admitting to the whole or part of the claim and making payment thereof, or disputing the entire claim. If there is a failure to respond within the prescribed 10 working days period, it is deemed that the entire payment claim is disputed. Either party may then refer the dispute to adjudication.

Step 2:

Initiation of Adjudication

A reference to adjudication may be initiated by serving a written Notice of Adjudication on the other party. The referring party is called the Claimant, and the party served with the notice is called the Respondent.

Pursuant to Rule 2 of the AIAC Adjudication Rules & Procedure, the Claimant shall no later than 7 days after serving a Notice of Adjudication register the adjudication matter at the AIAC by serving a notice on the Director of AIAC containing the particulars and documents

prescribed therein. The notice must be accompanied with a non-refundable registration fee to the AIAC in the amount as prescribed in Schedule III to the AIAC Adjudication Rules & Procedure.

Step 3: Nomination of Adjudicator

Appointment of adjudicator should only take place after, and not before, a valid Notice of Adjudication has been effectively served on the Respondent by the Claimant. The parties may agree to a particular competent and qualified person being appointed as adjudicator within 10 working days from the service of the Notice of Adjudication. If the parties are unable to reach an agreement on an adjudicator, then either or both parties may make a written request to the Director of the AIAC to appoint an adjudicator to adjudicate the dispute. The Director of the AIAC shall have to appoint an adjudicator within 5 working days from the date of receipt of the request, and notify the parties and adjudicator in writing.

Step 4: Appointment of Adjudicator

Upon being notified of the intended appointment, the selected adjudicator is free to either accept or refuse the appointment. If selected adjudicator accepts the appointment, he shall submit a written declaration in writing pursuant to section 24 of CIPAA to the Director of the AIAC, and deliver a copy of his terms of appointment and fees to be paid by the parties.

Pursuant to Rule 9(2) of the AIAC Adjudication Rules & Procedure, the adjudicator must within 14 days of his acceptance of the appointment issue a direction ordering the parties to deposit with the AIAC the following fees and expenses in advance as security:

- a) the reasonable proportion of the adjudicator's fees and expenses, and any taxes as may be imposed by the Government; and
- b) all administrative fee payable to the AIAC as provided in Schedule III of the AIAC Adjudication Rules & Procedure.

Step 5: Adjudication Claim & Response

The Claimant is required to serve an Adjudication Claim together with supporting documents on the Respondent and the adjudicator within 10 working days from the date of receipt of the acceptance of appointment by the adjudicator. Pursuant to Rule 4 of the AIAC Adjudication Rules & Procedure, the Claimant shall within 7 working days after serving the Adjudication Claim deliver a copy of the Adjudication Claim to the AIAC. Unless otherwise directed by the AIAC, the Claimant is not required to deliver the supporting documents to the AIAC.

Upon being served with the Adjudication Claim, Respondent is required to serve on the Claimant and the adjudicator a Adjudication Response within 10 working days answering the Adjudication Claim together with any supporting documents. Pursuant to Rule 5 of the AIAC Adjudication Rules & Procedure, the Respondent shall within 7 working days after serving the Adjudication Response deliver a copy of the Adjudication Response

to the AIAC. Unless otherwise directed by the AIAC, the Claimant is not required to deliver the supporting documents to the AIAC.

Upon receipt of the Adjudication Response, the Claimant may then serve an Adjudication Reply within 5 working days. Similarly, a copy of the Adjudication Response must be served on the Director of AIAC within 7 working days after serving the Adjudication Reply as required by Rule 6 of the AIAC Adjudication Rules & Procedure.

Step 6: The Conduct of Adjudication Proceedings

An adjudicator has wide powers under CIPAA to conduct adjudication. He may call for meetings, require interrogatories to be answered by the parties, call for clarifications and further documents, if necessary to help him with his task. In doing so, the adjudicator has to abide by the rules of “natural justice” and the relevant provisions of CIPAA as well as the Adjudicator’s Code of Conduct under the AIAC Adjudication Rules & Procedure.

Step 7: Adjudication Decision

The Adjudicator is required to decide on the dispute and deliver his decision to the parties and the AIAC no later than 45 working days from the service of the Adjudication Response or Adjudication Reply, whichever is later, or 45 working days from the expiry of the period prescribed for the service of the Adjudication Response (if no Adjudication Response is received), or the extended period agreed by the parties. An adjudication decision which is not made within the specified period is void.

The decision must be in writing. It must also be reasoned decision unless otherwise agreed by the parties. The adjudicator must state in his decision the adjudicated amount, and the time and manner it is payable, and order the costs to follow the event. In relation to costs, he must fix the quantum to be paid. The costs should include, amongst others, the fees and expenses to the adjudicator, and the administrative fees paid to the AIAC.

The adjudicator ought to ensure that payment of the fees and expenses have been deposited with the Director of AIAC prior to the release of the adjudication decision to the parties.

FREQUENTLY ASKED QUESTIONS ON ADJUDICATION

Who Can Start The Adjudication?

- Either party to a construction contract can start the process of adjudication provided the right to do so under CIPAA has accrued.
- This can be done by serving a notice of adjudication on the opposing party. The claimant must register the adjudication matter with the AIAC and pay the prescribed non-refundable registration fee.

How Do I Choose An Adjudicator?

- Parties are entitled to choose their own adjudicator by mutual agreement as specified by CIPAA.
- If the parties are unable to so choose, a request in writing can be made to the Director of the Asian International Arbitration Centre (AIAC) to appoint an adjudicator. A request for appointment must be submitted together with a payment of RM400 being the Adjudicator appointment fee.
- It is important that the adjudicator selected must satisfy the competency and eligibility criteria as set by CIPAA and the Regulations, and is qualified and experienced to deal with the particular dispute and to handle the adjudication process in a timely and cost effective manner as prescribed by CIPAA.

Do I Need A Lawyer?

- The parties can be represented by any representative of their choice. The representative can be a lawyer, architect, engineer, quantity surveyor, claim consultant or any other person whom the party thinks suitable.
- A lawyer is however necessary for any application for setting aside, or a stay or the enforcement of the adjudicator's decision to the High Court.

What Happens During An Adjudication?

- The adjudicator has wide powers under the CIPAA to conduct the adjudication.
- The procedure is generally informal and relatively flexible; and can be adversarial and/or inquisitorial.
- Generally, the adjudicator invites written submissions and evidence from both parties. There may be a short hearing or meeting where further submissions can be made, witnesses cross examined and the adjudicator may ask questions on matters in issue. An adjudicator may also conduct a site visit if necessary. He is permitted to use his own specialist knowledge subject to the rules of "natural justice" in dealing with the dispute.

What Can Be Done If Payment Is Not Made After The Adjudicator's Decision?

- CIPAA allows, as one of the remedies, for the “winning” party to suspend or reduce the rate of progress of the construction work provided notice is given to the “losing” party. The former is entitled to a fair and reasonable extension of time to complete his obligations under the contract after being paid and to recover any loss and expense incurred thereby.
- CIPAA further permits the “winning” party a right to request for direct payment from the principal of the party owing the monies, and the principal is required to pay the amount in question subject to the particular provisions of the Act.
- In addition, the “winning” party can also apply to the High Court to enforce the adjudicator’s decision as if it is a judgment or order of the High Court.
- CIPAA provides that the “winning” party can exercise any or all of the above rights or remedies concurrently or one after another.

Who Pays For The Cost of Adjudication Proceedings?

- The “loser” of the adjudication will have to pay the costs. As prescribed in CIPAA, the adjudicator is required to ‘costs to follow the event’, which simply means that the loser must pay for the legal and other related costs to the “winner” in the adjudication proceedings.

What Is The Role Of Asian International Arbitration Centre (AIAC)?

AIAC is responsible, *inter alia*, to;

- Set the competency standard and criteria of an adjudicator. This is done by providing the relevant training courses to parties who are interested to become certified adjudicators.
- Certifying qualified adjudicators and listing them on AIAC's panel of adjudicators.
- Determine the standard default terms of appointment of an adjudicator and fees for his services. The AIAC Adjudication Rules & Procedure provides a standard term of appointment and Recommended Fee Schedule which can be adopted by parties during the negotiation of terms with the appointed Adjudicator.
- Provide administrative support for the conduct of adjudication under CIPAA. The AIAC will administer all adjudication cases according to the AIAC Adjudication Rules & Procedure.
- Undertake any other duties and functions as may be required for the efficient conduct of adjudication under this Act.
- Make recommendations to the Minister on any application for exemptions. The application for exemption must comply with the procedure set out in the AIAC Adjudication Rules & Procedure.

AIAC will maintain a copy of each and every adjudication decision undertaken under CIPAA delivered to it pursuant to the Act and the AIAC Adjudication Rules & Procedure.

AIAC will also act as a stakeholder for the deposit of fees and expenses for the adjudication, and for any adjudicated amount ordered by the court to be deposited with AIAC by any party in an application for a “stay” under section 16 of CIPAA.

How Can I Prepare For Adjudication?

- General awareness of CIPAA is necessary.
- A good system of contemporaneous record keeping is essential. It will become vital should a party intend to pursue an adjudication action or to defend a claim.
- The payment terms in the construction contract must be clear and workable. The absence of or the lack of workable payment terms would automatically trigger the operation of the default payment provisions under CIPAA.
- An adjudication under CIPAA can only commence when a ‘payment dispute’ has arisen. An opportunity must be given to the other party to respond to the payment claim before an adjudication should be considered. If the other party denies the claim, disputes the claim or simply fails to respond to the claim within the prescribed period, only then an adjudication can be commenced.

An Alternative to Adjudication

- Statutory adjudication under the CIPAA is temporarily binding in nature. Section 37(3) of CIPAA allows for a dispute in respect of payment to be concurrently referred to arbitration or court without affecting the adjudication process. Hence, parties who are keen to have final and binding process that is also fast and effective may consider an arbitration process under the AIAC Fast Track Arbitration Rules.
- The AIAC Fast Track Arbitration Rules is an expedited arbitration process which allows for summary or documents-only process. The arbitration process involving substantive oral hearings will be completed in 160 days from commencement and a documents only proceeding will be completed within the period of 90 days. The arbitrator's fee and administrative charges related to the arbitration is reasonable and is fixed at a pre-established scale. The costs of the arbitration are capped at 30% and 50% of the total amount of claim for a documents-only and substantive oral hearing, respectively. The rules also allows for consolidation of disputes, thus avoids compelling arbitration in court.
- Parties will be able to achieve a speedy temporary decision through adjudication and also attain prompt decision which is final and binding by undertaking arbitration under the AIAC Fast Track Arbitration Rules simultaneously or subsequent to the adjudication.



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(ESTABLISHED UNDER THE AUSPICES OF THE
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