

Half-Day Seminar on “Construction Adjudication Under CIPAA 2012, from Form 1 to Form 16 and Beyond”

DISPUTE AVOIDANCE AND RESOLUTION PRACTICE SUBCOMMITTEE

reported by



Ir. Dr Ooi Teik Aun

A half-day seminar on “Construction Adjudication under CIPAA 2012, from Form 1 to Form 16 and Beyond” was held on 11 February, 2017, in the TUS Lecture Room, Wisma IEM. The seminar was conducted by Ir. Leon Weng Seng with Ir. Dr Ooi Teik Aun as Chairman. About 40 participants attended and there was an active Q&A session at the end.

To illustrate the acceptance and popularity of adjudication, statistics (since its enforcement on 15 April 2014 to November 2016) were provided for cases registered, parties involved (developer, employer, consultant, main contractor, subcontractor, supplier, etc.), types of claims (interim payments, final accounts, professional fee, retention monies, extension of time, variations, defective works etc).

The Claimants had 91% of decisions made in their favour and many decisions were enforced by the courts (S28). The participants were heartened to learn that CIPAA was applicable retrospectively, i.e. for contracts and disputes even if these arose before 15 April, 2014.

Differences were highlighted between ad hoc, contractual and statutory adjudications.

The flow charts were routed through from Payment Claim (Form 1), Payment Response (S6 & Form 2), Notice of Adjudication (S8 & FORM 3), Adjudication Claim (S9 & Form 7), Adjudication Response (S10 & Form 8) and Adjudication Reply (S11 & Form 9). The process takes 45 working days from Notice of Adjudication, with another 45 working days for Adjudication Decision (Form 15 & 16). This made up a total of 90 working days.

CIPAA has made the conditional payments (S36) (i.e. pay when pay, pay if pay, pay only when drawdown, etc.) illegal and this is a welcome statutory provision. The Claimant can now rely on the contractual duration for their certificates to be honoured and, if there is none, the statutory period of 30 days will apply (S36).

An Adjudicator can be appointed by Parties (S22) or by the Director of KLRCA (S23), and the Adjudicator derives his power from S25 of CIPAA, subject to the duties and obligations stated in (S24). The cost of adjudication and the adjudicator’s fees and expenses are governed by CIPAA Regulation 7 & 8 and the adjudicator must award cost to the winning party as he has no discretion (S18).

The Claimants (winner), especially subcontractors, will have remedies such as suspension or reduction of rate of Progress of Performance (S29), direct payment from Principal (S30), enforce the Adjudication decision as court judgement (S28) or to concurrently exercise all these remedies (S31). The Respondent (loser) may apply to the court to set aside the decision (S15) or to stay it (S16).

The Parties are encouraged to keep better records, the Contract Administrator will require to be focused and to issue appropriate certificates on time and the Employer will need to observe the payment schedule promptly and fully.

The overall effects will be better cash flow, smoother execution of quality work and a healthy construction environment. ■



The Seminar in progress