

**CONSTRUCTION INDUSTRY PAYMENT AND ADJUDICATION ACT 2012:**

**A LEGAL REVIEW**

By

Mohammad Afiq Bin Abdul Rahim (2011877904)

Nurfatin Amirah Binti Mohd Shaari (2011372511)

Siti Noor Fatin Aidillah Binti Shariffudin (2011373441)

W. Nur Izaty Binti W. Mustappa (2011376597)

Zetty Sufina Binti Mohd Zanib (2011366123)

Submitted in Partial Fulfillment of the Requirements  
for the Bachelor in Legal Studies (Hons)

**Universiti Teknologi MARA**

**Faculty of Law**

June 2014

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

## ACKNOWLEDGEMENT

In the name of Allah, the Most Gracious and the Most Merciful. Alhamdulillah, all praises be to Allah for the strengths and His blessings in completing this project paper.

This project paper has been carried out by a team which included Mohammad Afiq Bin Abdul Rahim, Nurfatin Amirah Binti Mohd Shaari, Siti Noor Fatin Aidillah Binti Shariffudin, W. Nur Izaty Binti W. Mustappa and Zetty Sufina Binti Moh Zanib. In the preparation of this project paper, we have accrued a great many debts. It is made possible through the help and supports from everyone including our supervisor, parents, family and friends. Please allow us to dedicate our acknowledgement of gratitude towards the following significant supervisor and contributors.

First and foremost, we would like to take this opportunity to express our profound gratitude and deep regards to Dr. Anida Mahmood for her exemplary guidance, monitoring and constant encouragement throughout the course of this project paper. Grateful thanks are due to her for her comments, suggestions and criticism which have been of tremendous value.

Next, special thanks are due to our friends and family, too numerous to mention here, who have, at single time or other, provided invaluable help in our search for materials. Last but certainly not the least, to our parents, without whose collective inspiration and support throughout the long years of our legal journey this project paper would not have seen the light of day, we offer each one of them our affectionate and everlasting gratitude.

## **ABSTRACT**

This paper is about payment on construction industry in Malaysia. This paper is mainly focusing on the cash flow problem in the Malaysian construction industry where there is delay and non-payment to the subcontractor. Prior 2012, there is no specific Act that statutorily governs the disputes of payment in the construction industry. In this paper, the parties concerned such as the employer, main contractor and the subcontractor will be highlighted. Besides that, this paper will further examine the mode of payment in which from those mechanisms, the disputes of payment had arisen. Not only that, the cash flow problem and the factors that led to it can be seen in this paper.

Hence, this paper will concentrate on the newly-enacted Construction Industry Payment and Adjudication Act 2012. This Act is enacted to facilitate regular and timely payment and to provide remedies for the recovery of payment in the construction industry. This paper is set out to see the effectiveness of this newly-enacted Act in solving the disputes of payment to the subcontractor.

Finally, an analysis will be made as to see whether the problem of delay and non-payment to the subcontractor can be solved in pursuance of the provisions provided in the Construction Industry Payment and Adjudication Act 2012. This paper will also provide some possible recommendations in order to lessen the problem of delay and non-payment to the subcontractor.

## TABLE OF CONTENTS

Acknowledgment	ii
Abstract	iii
Table of Contents	iv
Table of Cases	vii
Table of Tables	viii

### CHAPTER ONE: INTRODUCTION

1.1	Background	1
1.2	Problem Statement	3
1.3	Research Question	8
1.4	Research Objective	8
1.5	Scope and Limitation of the Research	8
	1.5.1 First limitation on the research scope	8
	1.5.2 Second limitation on the research scope	10
1.6	Significance of the Research	10
1.7	Research Methodology	11
1.8	Research Plan	13
1.9	Outline of the Structure of the Paper	14
	1.9.1 Chapter 1	14
	1.9.2 Chapter 2	15
	1.9.3 Chapter 3	16
	1.9.4 Chapter 4	17
	1.9.5 Chapter 5	17

### CHAPTER TWO: CONSTRUCTION INDUSTRY IN MALAYSIA

2.1	Introduction	19
-----	--------------	----

## CHAPTER ONE: INTRODUCTION

### 1.1 Background

The construction sector has a significant contribution in propelling the Malaysian economy as the growth remains robust.<sup>1</sup> This scenario seems to be a positive response towards the vision of having Malaysian construction sector among the top in the world by 2015.<sup>2</sup> Hence, it is important to make certain that construction projects are well-implemented. Problem such as cash flow due to key issues on late, delay and non-payment may adversely affect the development of nation's infrastructure.<sup>3</sup>

Likewise in other sectors, payment issue in the Malaysian construction sector is an issue of main concern.<sup>4</sup> Based on empirical findings conducted by the Malaysian Construction Industry Development Board (CIDB) in collaboration with University of Malaya (UM), there are prevailing problems of timely payments affecting the construction sector.<sup>5</sup> Therefore, the Malaysian construction sector comes out with the

---

<sup>1</sup> See Chapter 3 - Economic Performance and Prospects (the Malaysian Economic Report 2013/2014), available at <[http://www.treasury.gov.my/index.php?option=com\\_content&view=article&id=2588%3Alaporan-ekonomi-20122013&catid=73%3Asenarai-laporan-ekonomi&Itemid=174&lang=en](http://www.treasury.gov.my/index.php?option=com_content&view=article&id=2588%3Alaporan-ekonomi-20122013&catid=73%3Asenarai-laporan-ekonomi&Itemid=174&lang=en)>, accessed on 26 April 2014.

<sup>2</sup> See the Construction Industry Master Plan 2006-2015 published by the Malaysian Construction Industry Development Board (CIDB), available at <<https://www.cidb.gov.my/cidbv3/images/pdf/OHSAS2006v2.pdf>>, accessed on 26 April 2014.

<sup>3</sup> Sundra Rajoo and Harbans Singh KS, *Construction Law in Malaysia* (Kuala Lumpur: Sweet & Maxwell, 2012), 275.

<sup>4</sup> Ng Kee Leen, "CIPAA Press Statement: Security of Payment Needed in the Malaysian Construction Industry", available at <[http://www.mbam.org.my/mbam/index.php?option=com\\_content&task=view&id=1204&Itemid=331](http://www.mbam.org.my/mbam/index.php?option=com_content&task=view&id=1204&Itemid=331)>, accessed on 26 April 2014.

<sup>5</sup> Sr Noushad Ali Naseem Ameer Ali, "A 'Construction Industry Payment and Adjudication Act': Reducing Payment-Default and Increasing Dispute Resolution Efficiency in Construction", available at <<http://www.mbam.org.my/mbam/images/MBJ3Q06%28pdf%29/CsNaseem%28ACTpt1%29.pdf>>, accessed on 26 April 2014.