
COMPARATIVE ANALYSIS ON CONSTRUCTION ADJUDICATION SYSTEMS TOWARDS EFFECTIVE IMPLEMENTATION OF STATUTORY ADJUDICATION IN MALAYSIA

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Abstract: The dynamic nature of the construction industry makes it almost impossible to maintain a project without any disputes. Of all the addressed disputes in the construction industry, payment disputes are seen to be the most critical issue to be apprehended; as there is no doubt that consistent cashflow is important to distinguish the project's development and achievements. Adjudication is one of the remedies to assist in arresting these problems, and the way to make an impact to the implementation of adjudication is by having it an enforceable statute. Along the years, fourteen adjudication Acts have been introduced within the Commonwealth countries. As the Construction Industry Payment and Adjudication Act 2012 is a hybrid of few adjudication systems in the world, a comparative study on three adjudication Acts: the Housing Grants, Construction and Regeneration Act 1996 of the UK – the first statutory adjudication implemented, Building and Construction Industry Security of Payment Act 1999 of Australia – consists of a unique set of judicial systems that needs to be considered separately and Building and Construction Industry Security of Payment Act 2004 of Singapore – one of the latest implemented statutory adjudication before CIPAA; were looked into, and possible matters affecting their effective implementation were emphasized. This review aims to assist in identifying the possible issues that might be faced by the Construction Industry Payment and Adjudication Act 2012 (CIPAA) as a newly legislated Act in Malaysia and possible corrective measures that could be undertaken to enhance its effectiveness.

Keywords: *Payment disputes, payment methods, construction dispute, statutory adjudication, alternative dispute resolution.*

Article history:
Received 7 April 2017
Received in revised form 8 January 2018
Accepted 1 April 2018
Published online 30 June 2018

1.0 Introduction

The construction industry has been known to be of a dynamic nature, and although the progression of the construction industry has seen a steep growth with the introduction of technology based on research, development and innovation, the main issue for

construction disputes remain the same. Disputes in the construction industry is inevitable and without proper controlling, it could escalate into an unmanageable mass (Lee *et al.*, 2016; Treacy *et al.*, 2016).

The term adjudication is very much associated with the construction industry as one of the options in alternative dispute resolution to manage conflicts and disputes (Lee *et al.*, 2016). The introduction of statutory adjudication is reported to be implemented due to the published Latham Report in the year 1994 (Gaitskell, 2007). The informal use of adjudication in the construction industry has been found even in 1980s in the cases of contractual adjudication (Gaitskell, 2007). However, resistances from paymasters; namely the main contractor or employers as they have the higher power and negotiating strength, are making adjudication in contracts' clause of little importance.

The only way to make sure that there is a real impact in implementing adjudication is by having a legislation that makes it a compulsory entity to be complied by all parties in the construction industry. The first statutory adjudication being implemented was the Housing Grants, Regeneration and Construction Act 1996 (HGRCA) that came into effect in the year 1998 by the Parliament of the United Kingdom (Ameer Ali and Wilkinson, 2009). The purpose of this paper is to identifying the possible issues that might be faced by the Construction Industry Payment and Adjudication Act 2012 (CIPAA) as a newly legislated Act in Malaysia and possible corrective measures that could be undertaken to enhance its effectiveness.

2.0 Materials and Methods

2.1 Overview of Statutory Adjudication

The *Constructing the Team* report or better known as the Latham Report 1994 addressed Sir Michael Latham's findings on the issues within the construction industry (Cahill and Puybaraud, 2003). It was initially reported as Sir Michael's 'personal report of a friendly observer', but the end of the research concluded with a report outlining 30 key recommendations for a clearer framework that would led to more efficient construction practices. Cahill and Puybaraud (2003) in his report further elaborated that one of the recommendations was the proposal for introducing adjudication within all standard forms of contracts; which needed to be properly legislated. It was also stressed out that adjudication should be a common method of dispute resolution for any construction project.

The writer acknowledged that Sir Michael's report was the start for the awareness on the importance of implementing adjudication in the construction industry. It was seen then (and still is) that adjudication by proper legislation is one method for alternative dispute resolution that could assist in getting more efficient construction practices while at the

same time mitigating problems relating to cashflow; which is aligned with the primary objectives of HGRCA (Ameer Ali and Wilkinson, 2009).

2.2 Issues Pertaining Construction Adjudication Systems

Having the main intent addressed, a series of objectives with the stated timeline were proposed and listed down for actions, among which was a proposal for an expansion of UK's construction regulation which was targeted to be completed and taken into action by July 1995 (Cahill and Puybaraud, 2003). Although it was slightly beyond the programmed timeline, direct involvement by the government has led to the enactment of the Housing Grants, Construction and Regeneration Act 1996 (HGCRA). This Act that took into effect in the year 1998 was designed to address issues of late payments as well as a statutorily enabled dispute resolution method in a construction project (Ameer Ali and Wilkinson, 2009). This was further substantiated in the first construction case of *Macob Civil Engineering Ltd v Morrison Construction Ltd (1999)*¹. In the case, Lord Dyson J stated that: “*The intention of Parliament in enacting the Act was plain. It was to introduce a speedy mechanism for settling disputes in construction contracts on a provisional interim basis, and requiring the decisions of adjudicators to be enforced pending the final determination of disputes by arbitration, litigation or agreement.*”

Referring to Part II of HGCRA, the main concerns addressed were the issues pertaining to payment and adjudication (Ameer Ali and Wilkinson, 2009). It dealt with two main concerns of subcontractors (among other things); which were (1) the mechanism for periodic payment and (2) the omission of the ‘pay-when-paid’ clauses in contracts (Gaitskell, 2007). The enactment of HGCRA in the UK has led to many other Commonwealth jurisdictions to follow suit in determining their own legislative measures for payment and dispute resolution in a construction project. To date, there are 13 Acts of Parliament within the Commonwealth jurisdictions that enacted statutory adjudication of construction disputes (Ameer Ali and Wilkinson, 2009).

The first Australian jurisdiction following the footsteps of HGRCA from the UK is the Building and Construction Industry Security of Payment Act 1999 (the NSW Act) implemented in New South Wales on 26 March 2000 (Brand & Uher, 2010; Department of Finance & Services Australia, 2012; Ross, 2013). Inquire into matters related to the Australian building and construction industry was initiated in August 2001 (Brand & Davenport, 2015). The appointed commissioner, better known as ‘the Cole Royal Commission’, was the first national review of the Australian construction industry’s practices and conducts (Brand *et al.*, 2010), where it concluded that the security of payment problem is one of national relevance.

¹ Macob Civil Engineering Ltd v Morrison Construction Ltd [1999] All ED (D) 143.

In the case of Building and Construction Industry Security Payment Act, 'security of payment' is the entitlement of person in a contract to receive payment due from another person at a higher level of the chain, whilst 'security of payment problems' mean consistent failure in ensuring payment being made when its due, based on contractual terms (Department of Finance & Services Australia, 2012). By the end of 2009, all Australian States and Territories had agreed into the implementation of Acts to secure payments in construction projects. Although these were separated into eight different legislations, varying due to different interpretations on the adjudication processes; clear similarities to all is the importance to securing payment when its due (Brand *et al.*, 2015; Ross, 2013).

Proven from the enlisted examples, uniform legal frameworks and statutory Acts related to the construction projects' provisions are important to be established, implemented and maintained in ensuring consistent payments based on contractual agreements. Using the same principles, Malaysia as a part of the Commonwealth countries had taken the initiative to follow suit to the course of establishing uniform legislative framework for the Malaysian construction industry.

2.3 Implementation of Statutory Adjudication

The listed objectives towards the implementation of statutory adjudication in Malaysia has highlighted major advantages in leading a better financial management for the Malaysian construction industry and other works and services associated with it. One of the most important questions to be looked into is whether this new legislated Act acts as a missing jigsaw in mitigating the current and existing issues of its payment disputes. As the implementation of statutory adjudication in Malaysia is currently only in its early years, analysis on its precedents is hard to be gathered. Nonetheless, as the statutory adjudication under CIPAA is established with close references to HGRCA and most of other legislated adjudication Acts in the Commonwealth countries, it is fair that the similar analysis on the effective implementation of these statutory adjudication is looked upon as part of this research.

This paper will review the effective implementation of three statutory adjudications in the Commonwealth countries: (1) Housing Grants, Regeneration and Construction Act 1996 (HGRCA) of the UK which is the first statutory adjudication being implemented; (2) Building and Construction Industry Security of Payment Act 1999 (NWS Act) of Australia; and (3) Building and Construction Industry Security of Payment Act 2004 (SOP) of Singapore.

3.0 Results and Discussion

3.1 Statutory Adjudication Act in The UK (Housing Grants, Regeneration And Construction Act 1996 (HGRCA))

Statutory adjudication in the United Kingdom was established under Part II of the Housing Grants, Construction and Regeneration Act 1996 (HGRCA) which came into force in 1998 (Akintoye *et al.*, 2014; Gould & Linneman, 2008; Wong, 2015). Along with its objective in implementing rapid dispute resolution² as well as allowing for a better cashflow in the UK construction contracts, HGRCA at the same time allows for the provision of procedures of adjudication in the construction contract (Sinden *et al.*, 2012; Uher & Brand, 2008).

Eight basic principles were aligned within Section 108 of HGRCA which includes: (1) the right to refer disputes to adjudication at any time; (2) the right to give notices; (3) the correct manner of appointing the adjudicator; (4) decision by adjudicator to be made within 28 days unless further time extension is agreed upon by all parties; (5) the adjudicator is required to act impartially; (6) the adjudicator is expected to act inquisitorially, initiative in getting facts; (7) adjudicator's decision is binding and enforceable; and (8) an adjudicator is immune in discharging his function. The decision being made by an adjudicator could not be revised (could be final determined by arbitration, litigation or agreement) but could be revised to the correct clerical or any accidental errors³.

In the case of *Macob Civil Engineering Ltd. v Morrison Construction Ltd. (1999)*¹, the Court is found to be supporting the enactment of this Act which at the same time created an awareness of the enforceability of an adjudicator's decision and its significance in the construction industry (Akintoye *et al.*, 2014; Dancaster, 2008; Gould *et al.*, 2008; Kennedy *et al.*, 2010; Kennedy, 2008). It is also found that although there are disputed agreements on the decided matter, the Court would rule that the decision by an adjudicator as a decision from expert determination, as long as the right questions have been asked and subsequently answered. Thus, it is not surprising that numbers of matters brought to adjudication in the UK have been at a massive number of approximately 2,500 matters each year (Gould & Linneman, 2008) which at the same time reduces yearly volume of construction litigations.

Nonetheless, within the first 10 years of the implementation of HGRCA in the UK, there has been a volume of case law ruling on the enforcement of published adjudication decisions, as well as clarification on provisional and procedural issues (Gould *et al.*, 2008). Furthermore, there were also questions imposed by industry players on the

² Section 108 of Housing Grants, Regeneration and Construction Act 1996.

³ Revision to adjudication decision to correct clerical errors was seen in the case of Bloor Construction (UK) Limited v. Bowmer v. Kirkland (London) Ltd. (2000), as cited by Gould *et al.* (2008).

enforceability of this rapid dispute resolution, gazetted with a timeframe of 28 days for a resolution of the dispute to be determined. These at the same time are alerting the issue whether there is sufficient understanding and awareness on the provision of this Act.

The Department for Communities and Local Government (DCLG) in the year 2008 have concluded that, although HGRCA may have improved the construction industry's cashflow, there are certain criteria that remained ineffective (Akintoye *et al.*, 2014). In response to this phenomenon, the Local Democracy, Economic Development and Construction Act 2009 (LDEDCA) came into force in the year 2011 (Sinden *et al.*, 2012) which contains provisions to amend Part II of HGRCA 1996. In the time of economic pressure, LDEDCA gives a significant impact on financial management and adjudication procedures in the UK construction industry (Akintoye *et al.*, 2012; Akintoye *et al.*, 2014). LDEDCA seeks to further improve the cashflow as well as access to enter into adjudication by construction stakeholders.

With reference to the Construction Industry Training Board (Akintoye *et al.*, 2014), the key object to amendments are to “create a fair system of contracting by improving the cashflow and access to adjudication for companies throughout the entire construction supply chain”. Furthermore, the new enforcement is also due to continuous issues on unclear distinction on the flow of payment along the construction supply chain, the increasing number of litigation challenging the published adjudication decisions, the ‘Tolent effect’⁴, as well as the exclusion of oral contracts.

Through an online survey in the UK (Akintoye *et al.*, 2014), the three most important features of the HGRCA's amendments are: (1) to allow for a swifter dispute resolution; (2) reduce unreasonable payment delays; and (3) more improvement on the cashflow in the UK construction industry. A critical review on the amended Act based on the numbers of document reviews has concluded that the amendments incorporated into LDEDCA falls under two very distinctive characteristics which are changes made to payment procedures and to the statutory adjudication procedures (Akintoye *et al.*, 2012). Sinden *et al.* (2012) have listed down key features of the New Act which are summarised in Table 1 below:

⁴ ‘Tolent effect’ is the manner which the party that refer a matter to adjudication are required to pay for the adjudicator's fee (Sinden *et al.*, 2012).

Table 1: Summary of Key Changes to HGRCA through LDEDCA

Item	Section affected in HGRCA	Summary of Changes
1.	Section 107	Oral Contracts – Repealed of oral contracts under Section 107. LDEDCA stated that only written contracts are allowed to enter into adjudication proceedings and covered by the Act
2.	Section 108 (Introduction of Section 140)	Adjudicator's power to make corrections – An additional subsection (3a) is added which gives the power to the adjudicator to amend his decision, only if the errors are either typographical or clerical; and the adjudicator's decision remains to be enforceable
3.	Section 108A (Introduction of Section 141)	Allocation of Adjudicators costs – Contractual provisions for adjudication costs to be decided either by the adjudicator or made in writing after the issuance of notice of intention
4.	(Introduction of Section 142)	Pay when certified – the effective banning of “pay when certified”
5.	(Introduction of Section 110B)	Payment notice – payment notice could be issued by either the payer or payee; and the payer is expected to pay the amount set in the payment notice unless a ‘counter-notice’ is issued before the final date of payment
6.	Remedy (Suspension of Work)	Suspension of work – the New Act enhances the payee's position in suspending their work, should they have yet to be properly paid

LDEDCA is believed to create huge impacts on the adjudication and payment method in the UK which will effectively reduce unfair payment practices (created by prolonged or inappropriate cash retention) while creating an encouragement to stakeholders to employ adjudication as the chosen dispute resolution method (Akintoye *et al.*, 2012). Prior to its implementation, the UK government has done an impact assessment of the potential changes possibly inflicted by LDEDCA which in summary, an estimated £1.0 million savings from the total cost of adjudication annually and reduction of an approximately £5.8 million of administrative cost for adjudication with more effective procedures (Akintoye *et al.*, 2014). This also shows that with the development of the global market for the construction industry, amendments stated in LDEDCA allow for a probable saving of approximately £1.0 to £1.5 billion which is reflected across the construction sector in Wales and England.

Nevertheless, although these two Acts (HGRCA and LDEDCA) are basing on the same principle to mitigate payment disputes in the UK's construction industry, it could be seen that there are still rooms for improvements in enhancing its effectiveness to obtain its objectives. The level of awareness of the LDEDCA is still low and this somehow created a backflow of Parliament's positive intentions to have the Act amended in good

faith. These amendments are seen to have muddled the situation further and at the same time creating confusion to construction industry's stakeholders (Sinden *et al.*, 2012).

Furthermore, in the case of *Severfield (UK) Ltd v Duro Felguera UK [2015]*⁵, the exclusion of certain industries and activities from being considered as construction contracts such as power generation⁶, has created problems when a portion of the work is excluded while another is included, creating a 'hybrid' contract; forming confusion in justifying works covered by the Act (Preamble, 2016). In the summary judgement, the learned judge stated that:

"Adjudication... is an effective and efficient dispute resolution process. Far from being a 'punishment', it has generally been regarded as a blessing by the construction industry. Furthermore, it is a blessing which needed then – and needs now – to be conferred on all those industries (such as power generation) which are currently exempt. As this case demonstrated only too clearly, they too would benefit from the clarity and certainty brought by the...Act."

Therefore, it could be seen (clearly) that although statutory adjudication in the UK is noted as the start to the rest of statutory adjudication, there are undoubtedly improvements required to uplift and enhance the credibility of adjudication as a part of alternative dispute resolutions in the construction industry.

3.2 Statutory Adjudication Act in Australia (Building and Construction Industry Security of Payment Act 1999 (NSW ACT))

Statutory adjudication in Australia was modelled from the UK Act though interestingly, it was segregated into two distinctive models, known as the 'East Coast Model' and 'West Coast Model' (Yung *et al.*, 2015). Reviews on these legislations has called upon an introduction of a uniform act that merges both into a dual-scheme that addresses all issues (Michael *et al.*, 2015). In the case of the Building and Construction Industry Security Payment Act, 'security of payment' is the entitlement of a person in a contract to receive payment due from another person at a higher level of the chain, whilst 'security of payment problems' means consistent failure in ensuring that the payment is being made when its due, based on contractual terms (Department of Finance & Services Australia, 2012). As the NSW Act is the first adjudication Act imposed for Australian jurisdiction, this paper will focus on establishing the level of effectiveness of this Act as a basis of the study of an Australian statutory adjudication.

There are a number of researches performed to examine the performance of the NSW Act. Analyses of completed adjudication determinations made under the Act and analysis of litigation judgements concerning published adjudication decisions under the

⁵ [2015] EWHC 3352 (TCC).

⁶ Excluded under Section 105(2) of Housing Grants, Regeneration and Construction Act 1996.

Act were looked into. The key success factor to be established for the NSW Act is “whether the legislation assists subcontractors and contractors who carry out construction work (or provide related goods or services) to promptly recover progress payment” which will then establish whether the main objective of the enactment of the Act is achieved or not (Davenport, 2010). A study on claimants’ view to establish the level of effectiveness of NSW Act indicates that time efficiency is rated higher than cost efficiency (Michael *et al.*, 2012).

Based on the literature review done on the implementation of NSW Act, arguments on the effectiveness of its implementation includes:

- a. Argument on procedural justice in terms of addressing reasons for withholding payments could not be addressed in adjudication proceedings, unless it was clearly stated in the payment schedule (Davenport, 2010).
- b. Further argument on NSW Act’s procedural justice was due to the fact that the appointment of adjudicator could only be done by an authorised nominating body⁷ and parties involved has no say in the matter.
- c. Huge chance of having ‘ambush’ claim where the claimant could make an adjudication claim within 12 months⁸ but only ten business days are allowed for the respondents to prepare for the payment schedule⁹.
- d. Difficulties to secure payment (by claimant from the respondents) after the adjudication decision is determined¹⁰.

As the basis of study, the effective implementation of NSW Act is addressed on the fact that whether it provides justice for procedural and substantive law. Substantive law defines the rights and obligations between the people and the state within its jurisdiction. In contrary, procedural law comprises of the rules heard and determined in court for either civil or criminal proceedings. Procedural law deals with the method and means that administer substantive law. Procedural justice deals with fairness and transparency in the processes to resolve conflicts.

It can be seen that statutory adjudication legislated under the NSW Act is lacking in procedural justice as it does not allow for a proper hearing or justifications by parties, unless it is clearly spelled out in the contract. This will definitely question the fairness of the procedure as there are certain information being held from being looked into prior to publishing decisions. Furthermore, the parties in dispute have no say in the appointment of an adjudicator appointed for their hearing, depriving their civil rights, which is defined under substantive law. Therefore, the writer agrees to the conclusion made by

⁷ Section 17 of Building and Construction Industry Security of Payment Act 1999 (NSW).

⁸ Section 13 of Building and Construction Industry Security of Payment Act 1999 (NSW).

⁹ Section 14 of Building and Construction Industry Security of Payment Act 1999 (NSW).

¹⁰ Cited by (Brand *et al.*, 2012) based on report by NSW Government (2010).

Yung *et al.* (2015) in their research that the NSW Act is “lacking in procedural and substantive justice”.

The Building and Construction Industry Security of Payment Amendment Act 2010 (the Amendment Act) commenced on 28 February 2011 after reviewing the discussion paper by the New South Wales Government which was released in 2010 (Michael *et al.*, 2012). The most important criteria addressed in the Amendment Act 2010 is it enables the claimant to ‘freeze’ a presumption amount towards the adjudication claim, pending the final determination by the adjudicator (Michael *et al.*, 2012). This would help to secure the entitled payment towards the claimant after the determination is being made. This is seen as a very good example to enhance the other existing statutory legislations, as this would assist in securing payment based on the adjudicator’s published decisions.

3.3 *Statutory Adjudication Act in Singapore (Building And Construction Industry Security Of Payment Act 2004 (SOP))*

Statutory adjudication in Singapore was officially enacted under the Building and Construction Industry Security of Payment Act 2004 (SOP) on 1st April 2005. Similar to other statutory adjudication around the world, the main issue of concern in SOP is to overcome problems due to cashflow in the Singapore construction industry (Lim, 2014; Teo, 2008) on a ‘provisional interim basis’ pending issuance of final determination via arbitration or litigation. SOP is gazetted and known as an adjudication act that is more prescriptive and rule-based comparing to its peers.

Prescription of timeframes to be complied under SOP is seen to be the shortest timeframe adopted; fourteen days¹¹ for an adjudicator to make his determination for an adjudication matter (Teo, 2008). Another unique feature of SOP is the provision of ‘dispute settlement period’, which is the timeframe allocated to settle dispute based on a natural agreement between the parties. These seven days are given to facilitate early exchange of information between parties and upon the expiry of this dispute settlement period¹², the claimant is entitled to commence adjudication. Similar to CIPAA, a ‘notice of intention’ needs to be issued prior to the commencement of adjudication. SOP empowers Singapore Mediation Centre (SMC) as the authorised nominating body to perform various functions related to statutory adjudication and appointment of adjudicators in Singapore.

Furthermore, SOP also allows for an ‘application of review’ by the aggrieved respondent¹³ after the resolution of dispute by an adjudicator. This application needs to be lodged within seven days after the determination of adjudication decision. Remedies for noncompliance of determined adjudication decisions under SOP includes: requesting

¹¹ Section 12(5) of Building and Construction Industry Security of Payment Act 2004.

¹² Section 17(1)(b) of Building and Construction Industry Security of Payment Act 2004.

¹³ Section 18(2) of Building and Construction Industry Security of Payment Act 2004.

for direct payment from the principal¹⁴ exercising lien on the supplied goods¹⁵, suspension of works or supply of material to site¹⁶, or requesting for enforcement of adjudication decision as judgement¹⁷.

Teo (2008) in his paper outlined possible legal issues that may arise towards the implementation of SOP, thus affecting its effectiveness. As the SOP is modelled after the NSW Act, almost similar trades and nature of provisions are seen in both legislations (Lim, 2014). This includes the possible 'ambush' tactics by the claimant, making an adjudication proceedings commenced at a much later stage and depriving the respondent to provide sufficient responses in time.

4.0 Conclusions

A comparative study on statutory adjudication in these three Commonwealth countries; the United Kingdom, Australia and Singapore is tabulated in Table 2. (Akintoye *et al.*, 2012, 2014; Davenport, 2010; Gould *et al.*, 2008; Sinden *et al.*, 2012; Teo, 2008; Yung *et al.*, 2015)

Further to the earlier literature review, evaluation for the effectiveness level of these three statutory adjudications is concluded into different domains. Whilst there are multiple factors that affect their effectiveness level, these factors are repeatedly addressed between the three Acts. These effectiveness domains are time efficiency, cost efficiency and justice levels of effectiveness of the enacted law which are translated in Table 3.

¹⁴ Section 24 of Building and Construction Industry Security of Payment Act 2004.

¹⁵ Section 25 of Building and Construction Industry Security of Payment Act 2004.

¹⁶ Section 26 of Building and Construction Industry Security of Payment Act 2004.

¹⁷ Section 27 of Building and Construction Industry Security of Payment Act 2004.

Table 2: Comparative study on statutory adjudication in the United Kingdom, Australia and Singapore

ITEM	HGRCA 1996, UK	NSW 1999, Australia	SOP 2004, Singapore
1. Effective date Adjudicators' determination for disputes (duration)	1998 28 days	2000 10 business days (after adjudicator's acceptance)	2005 14 days
2. Amended Act	Inclusion and amendments of HGRCA with the enactment of Local Democracy, Economic Development and Construction Act 2009 (LDEDCA)	The Building and Construction Industry Security of Payment Amendment Act 2010 (the Amendment Act)	NA
3. Amended date	2011	2011	NA
4. Reasons for amendments	a. Numbers of case laws on enforceability, clarification on provisional and procedural issues b. Unclear distinction on the flow of payment along the construction supply chain c. Increasing number of litigation challenging the published adjudication decisions d. 'Tolent effect' e. Exclusion of oral contracts	a. Issue on procedural justice – justification on reasons will only be heard if it is spelt properly in contract b. Issue on procedural justice – parties in dispute have no say in the appointment of an adjudicator c. Possible 'ambush claim' – adjudication claim could be done within 12 months but only ten days allowed for respondents to prepare for payment schedule d. Difficulties to secure payment after adjudication decisions are being determined	Based on a research done by Teo (2008), possible legal issues for SOP includes: a. Interfacing of SOP and other construction contracts – all other construction contracts in Singapore to be worded similar to SOP ¹⁸ b. Jurisdictional challenges towards adjudicators' power and published decisions c. SOP might not be suitable to be used for complex disputes as it might not permit fair judgement due to a very short timeframe
5. Important criteria after amendments	a. Changes to payment procedures (abolition of pay-when-certified clause, suspension of performance, 'counter notice' and 'payment notice') b. Changes to statutory adjudication procedures (inclusion of oral contract, 'slip rule' and cost for adjudication)	a. Enabling claimant to 'freeze' a presumption amount towards the adjudication claim pending the final determination	

¹⁸ All construction contracts to include provision of Section 36 of Building and Construction Industry Security of Payment Act 2004. Although some contracts have been amended, some remained unchanged. Section 36(1) of SOP states that the provisions of the Act will stand even if it is contrary to any other contract. Nevertheless, Section 36(1) and Section 36(4) seems to be contradicting [with S36(1) power to supersede other contracts while S36(4) allows for other contract to take affect] that will likely to be clarified in Court at some stage.

Table 3: Comparative study on the effectiveness level of statutory adjudication in the United Kingdom, Australia and Singapore

ITEM	HGRCA 1996, UK	NSW 1999, Australia	SOP Singapore	2004,
1.	Time Efficiency	28 days	10 business days (after adjudicator's acceptance)	14 days
2.	Cost Efficiency	Low level of adjudicator's fee, slightly above 1% from total amount of dispute (Atkinson and Wright, 2015). Nevertheless, in a case study done by Atkinson and Wright (2015); it was found that the overall containing costs of the adjudication procedure amounted to about one-third of the award.		

As the Malaysian statutory adjudication was gazetted modelling the UK's adjudication legislation and based on the studies done on statutory adjudication in the Commonwealth countries, possible issues done in the above-mentioned countries could act as an indicator on the possible level of effectiveness of adjudication in Malaysia. Looking into these legislations and their amendments, it could be seen that the effectiveness of statutory adjudication in any country could only be reviewed after a certain duration of it being implemented, which in the case of United Kingdom and New South Wales, Australia, are 11 years and 10 years respectively. While the amended legislation is done in different periods of time, the main intention remains the same; to achieve an effective, speedy and cheap dispute resolution, allowing for a better cashflow in the construction industry. Therefore, with respect to the newly implemented Act under CIPAA, it is too early to judge on its implementation to Malaysian construction industry.

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