



Steven SY Tee
Projects & Construction
T: +603 6208 5853
E: syt@lh-ag.com

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CIPAA Applies to Both Interim and Final Payments

Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd and Another Appeal^[1]

The Federal Court has recently put to rest, *inter alia*, any uncertainty on the applicability of CIPAA^[2] to final payment claims. Prior to *Martego*, the Court of Appeal^[3] had suggested that final payment claims did not come within the ambit of CIPAA.^[4]

Martego originated with an adjudication proceeding which was initiated by an architectural firm against the employer for a development project in pursuit of its professional fees for work done prior to termination of its services. The employer subsequently challenged the adjudicator's decision in favour of the firm by applying to the High Court to set aside the award. The High Court upheld the adjudicator's decision and the High Court's decision was affirmed by the Court of Appeal.

The Federal Court, in upholding the decision of the Court of Appeal, held that:

- (i) CIPAA can apply notwithstanding termination of the construction contract as the parties' past rights and obligations are not discharged due to termination;
- (ii) there is no distinction between an interim or final payment claim, and as long as such payment claim relates to a construction contract as defined in s 4 of CIPAA, CIPAA would apply; and
- (iii) an adjudication proceeding under CIPAA operates independently on a separate track and can run in parallel with other dispute resolution mechanisms, including arbitration as required under the Architects Act 1967.^[5]

The Federal Court reiterated that the mischief that CIPAA intends to alleviate is the uncertainty or disruption of cash flow in the construction industry. Claimants will now not be discouraged from commencing adjudication proceedings over final payments by the risk of a successful challenge to an adjudication decision on the ground that final payment claims are beyond the jurisdiction of CIPAA.

Joyce Ong Kar Yee (oky@lh-ag.com)

If you have any queries, please contact the author or her team partner
[Steven SY Tee](mailto:syt@lh-ag.com) (syt@lh-ag.com).

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

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[1]

[2019] 5 AMR 516

[2]

Construction Industry Payment and Adjudication Act 2012

[3]

View Esteem Sdn Bhd v Bina Puri Holdings Bhd [2016] 6 MLJ 717

[4]

Ibid., at [32]

[5]

This suggests that the decision of the Federal Court in *Arkitek Tenggara Sdn Bhd v Mid Valley City Sdn Bhd* [2007] 5 MLJ 697 may no longer be considered good law