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Legal Update

Section 30 CIPAA Meets Insolvency Law as Court of Appeal Clarifies Limits of Direct Payment

1. KTCC Mall Sdn Bhd v TCS Construction Sdn Bhd

The Court of Appeal of Malaysia's recent decision in ***KTCC Mall Sdn Bhd v TCS Construction Sdn Bhd and another appeal [2026] MLJU 2526*** provides important clarification on the operation of *Section 30 of the Construction Industry Payment and Adjudication Act 2012* (the "**CIPAA**"), particularly where the main contractor has entered liquidation.

The decision is significant for employers, main contractors and subcontractors in Malaysia because it addresses two recurring questions in construction payment disputes:

a) First, whether a successful adjudication claimant may obtain direct payment from the principal where no money remains due from the principal to the main contractor; and
b) Second, whether section 30 of the CIPAA can operate notwithstanding the insolvency regime under the Companies Act 2016.

The Court of Appeal answered both questions firmly. A section 30 CIPAA direct payment claim cannot succeed unless money is actually due or payable by the principal to the party against whom the adjudication decision was made. Further, section 30 of the CIPAA does not override the statutory insolvency regime, including the principles of *pari passu* distribution and undue preference.

2. KTCC Mall v TCS Construction background

KTCC Mall Sdn Bhd was the employer of the project. It appointed MPM Project Management Sdn Bhd ("**MPM**") to undertake the execution, performance and design of the project. MPM subsequently appointed TCS Construction Sdn Bhd ("**TCS**") as its subcontractor for the main builders' works. KTCC had also issued a letter of undertaking to TCS in September 2018 concerning MPM's outstanding payments.

The project reached practical completion in January 2020. The quantity surveyor subsequently assessed the final contract sum at RM224,053,767.00, which KTCC maintained had been fully paid to MPM. MPM was later wound up on 28 February 2022.

TCS nevertheless pursued adjudication proceedings against MPM. On 13 September 2022, the adjudicator awarded TCS RM6,141,557.77, payable by MPM within 14 days. TCS thereafter issued a request to KTCC under section 30 of the CIPAA seeking direct payment of the adjudicated amount, together with interest and adjudication costs, totalling approximately RM6.92 million.

The High Court allowed TCS's section 30 CIPAA application and dismissed KTCC's separate application seeking a declaration that TCS was not entitled to direct payment.

KTCC appealed the decision.

3. The overriding questions in the case

The key questions are as follows:

a) Whether section 30(5) of the CIPAA constitutes the gateway to direct payment and, if so, whether any monies remained due and payable by MPM?
b) Whether specific insolvency law prevails over the general CIPAA regime? In this regard:
    (i) Can the CIPAA override the *pari passu* principle?
    (ii) The Court's treatment to undue preference under the CIPAA regime where the main contractor is already in liquidation.
    (iii) Does section 30 of the CIPAA create priority or security?

A. Whether section 30(5) CIPAA constitutes the gateway to direct payment and, if so, whether any monies remained due and payable by MPM?

The Court reaffirmed the earlier Court of Appeal decision in ***JDI Builtech (M) Sdn Bhd v Danga Ked Development Malaysia Sdn Bhd [2024] 4 MLJ 29***. Although section 30 of the CIPAA creates an independent statutory direct-payment mechanism, that obligation remains subject to section 30(5) of the act. Unless there is money due or payable by the principal to the main contractor, the remainder of the section cannot be activated.

Section 30 of the CIPAA cannot be invoked where there is no money due and payable by the employer to the contractor. For practitioners, this is an important reminder that obtaining an adjudication decision against a main contractor does not automatically make the employer liable for that adjudicated sum. There remains a separate factual and legal inquiry under section 30(5) of the CIPAA.

[43] *We agree with counsel for the Appellant that in JDI Builtech (M) Sdn Bhd v Danga Ked Development Malaysia Sdn Bhd (previously known as Greenland Danga Bay Sdn Bhd) [2024] 4 MLJ 29 that the Court of Appeal had in its grounds therein observed,*

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[69] *It is true that the Court of Appeal in CT Indah Construction Sdn Bhd v BHL Gemilang Sdn Bhd [2019] MLJU 1215 ; [2020] 1 CLJ* ***75 held that the obligation of the principal to pay the subcontractor is an independent statutory remedy specially provided for under CIPAA but that is still subject to the over-arching provision of s 30(5) of the CIPAA for unless the subcontractor can prove that there is money due or payable by the principal to the main contractor, the other subsections of s 30 could not be engaged and activated. See para [16] of the Court of Appeal's judgment.***

As such, the Court of Appeal identified the principal issue as whether any sums remained "*due and payable*" by KTCC to MPM and, consequently, whether section 30 of the CIPAA could be invoked.

[23] *After duly hearing both the appeals before us, we are of the view that the main issue is "whether there are any sums due and payable by the Appellant' and if so "whether s 30 CIPAA can be invoked'.*

Having considered the documentary evidence, the Court of Appeal was satisfied on a balance of probabilities that no sums remained due or payable by KTCC to MPM.

This finding alone was fatal to the section 30 CIPAA claim.

[32] *After perusal of the aforesaid contemporaneous documentary evidence, we are convinced on a balance of probabilities that the Appellant has proven that there are no sums due and payable to MPM. Our findings are thus similar to the Court of Appeal in the Better One Case.*

B. Whether specific insolvency law prevails over the general CIPAA regime?

The Court went further and addressed the interaction between the two statutory schemes as a matter of statutory interpretation as MPM is insolvent.

It characterised the CIPAA as legislation of general application providing a speedy and cost-effective mechanism for resolving construction payment disputes, whereas the winding-up provisions of the Companies Act 2016 operate specifically in relation to companies that have entered liquidation.

Applying the maxim *generalia specialibus non derogant* the specific prevails over the general. The Court held that, where insolvency law is engaged, the specific winding-up regime under the Companies Act takes precedence over the general payment mechanism under the CIPAA.

The Court accordingly concluded that the insolvency regime "*must overrule CIPAA 2012 and be the operative enactment when it comes to any law on winding up*".

This is arguably the most consequential part of the decision.

[50] *Accordingly, from the proposition in all of the aforesaid cases, it is in our opinion that the statutory safeguards under the insolvency regime must be respected and are not to be displaced without compliance of the law on winding up and due process.*

[58] *Thus, it is our judgment that the insolvency* ***law i.e. the law on winding-up under the Companies Act 2016 must overrule CIPAA 2012 and be the operative enactment when it comes to any law on winding up.*** *Accordingly, CIPAA borrowing the words of Subba Rao J in Commissioner of Income Tax v. Shahzada Nand & Sons AIR 1966 SC 1342, "must be taken to affect only the other parts of the statute to which it may properly apply."*

B.1 Can the CIPAA override the *pari passu* principle?

The Court emphasised that liquidation is fundamentally concerned with the orderly collection and distribution of a company's assets amongst its creditors.

Relying on Federal Court case of *Genisys Intergrated Engineers Pte Ltd v UEM Genisys S/b (In Liquidation) & Ors [2023] 5 CLJ 1*, the Court reiterated that creditors of an insolvent company are ordinarily required to lodge proofs of debt with the liquidator so that the company's assets may be distributed fairly amongst creditors.

The *pari passu* principle was described as a cornerstone of insolvency law. Creditors standing in the same position should generally receive equal treatment in the distribution of an insolvent company's assets.

The Court held that section 30 of the CIPAA does not contain sufficiently clear language to displace this regime. Accordingly, although section 30 of the act creates an independent statutory remedy, it cannot be used to override, circumvent or bypass sections 527 and 528 of the Companies Act 2016.

[51] *Thus, whilst we agree with the statement that the Court of Appeal in* ***CT Indah Construction Sdn Bhd (supra)*** *which held that the obligation of the principal to pay the subcontractor is an independent statutory remedy specially provided for under CIPAA,* ***that in our considered view does not mean that the obligation under section 30 of CIPAA can over-ride, circumvent or by pass the provisions of section 528 and/or section 527 of the Companies Act 2016.***

B.2 The Court's treatment to undue preference under the CIPAA regime where the main contractor is already in liquidation.

The Court also considered the potential for a section 30 CIPAA payment to create an undue preference where the main contractor is already in liquidation.

If KTCC were compelled to pay TCS under section 30 of the CIPAA, KTCC would ordinarily acquire a corresponding right of recovery against MPM pursuant to section 30(4) of the CIPAA. Since MPM was already in liquidation, KTCC would effectively have to join the queue of MPM's creditors to recover that payment. The Court considered that this would place KTCC at a significant disadvantage.

More importantly, the Court considered that direct payment to TCS in those circumstances would improperly give TCS an advantage over MPM's other creditors and would contravene the insolvency regime concerning undue preference.

[44] *The remedy of recovery by the principal / employer from the main contractors i.e. MPM pursuant to Section 30 (4) of CIPAA will in our view not be available to the employer, in our case being the Appellant herein, when MPM is already wound up as the Appellant would have to stand in line with the other creditors of MPM to recover any monies paid in this case from MPM.* ***The Appellant should not be able to circumvent the law on 'undue preference' under Section 528 of the Companies Act 2016 and will as such be put to a real disadvantage in any effort to recover from MPM the monies so paid.***

[45] *In any event, we hold that payment to the Respondent here would also infringe the law on 'undue preference' under Section 528 of the Companies Act 2016 as this would give the Respondent unfair advantage in recovering the Respondent's debts from MPM over and* *above MPM's other creditors. This would automatically contravene Section 528 of the Companies Act 2016.*

B.3 Does section 30 of the CIPAA create priority or security

The Court further held that the existence of the statutory direct-payment mechanism does not convert the successful claimant (in adjudication) into a secured or preferential creditor.

Section 30 of the CIPAA does not expressly confer security, statutory priority over other creditors; or an entitlement to circumvent the Companies Act distribution regime.

Drawing upon the Federal Court's decision in *Dubon Bhd (In Liquidation) v Wisma Cosway Management Corp*, the Court held that settled insolvency principles cannot be displaced in the absence of clear and unambiguous statutory language.

Section 30 of the CIPAA contained no such language.

The Court therefore held that a direct-payment obligation under the CIPAA does not constitute a secured debt or confer priority upon the adjudication claimant in an insolvency situation.

[64] *It is also our decision that the direct payment under s 30 CIPAA,* ***albeit a statutory obligation, does not make the same a secured debt under the Companies Act or give any priority to the party who is obliged to make a payment under s 30 CIPAA,*** *where we respectfully adopt the passage in* ***Dubon Bhd (In Liquidation) (supra),*** *albeit now in the context of section 30 of CIPAA, where the Federal Court stated,*

"[9] We heard this appeal on 5 November 2019, unanimously allowed it, and set aside the decision of the Court of Appeal. We answered the leave question in the negative, meaning that s 77 of the SMA does not accord any form of priority or preference in relation to payments received by a MC from an insolvent parcel proprietor."

4. Practical implications for Malaysia's construction industry

The decision has several important consequences on Malaysia's continuously growing construction industry.

Successful adjudication claimants should investigate the principal-main contractor account before relying upon section 30 of the CIPAA. The adjudication decision alone is insufficient.

The claimant must ultimately establish that money was due or payable by the principal to the unsuccessful adjudication respondent when the section 30 CIPAA request was received.

Final accounts and payment certificates may become critical evidence**.** In this case, the Statement of Final Account and penultimate certificate showing a nil balance played a central role in defeating the section 30 CIPAA claim.

Insolvency changes the landscape considerably. Once the main contractor enters liquidation proceedings in Malaysia, a claimant cannot assume that CIPAA's payment remedies operate independently of insolvency principles.

Section 30 of the CIPAA is not a statutory guarantee by the employer. Although the provision may in appropriate cases transfer the immediate payment obligation to the principal, it only does so where its statutory prerequisites are satisfied.

5. Conclusion

The KTCC Mall case is a significant development in Malaysian construction law. The Court of Appeal of Malaysia has now made clear that there are at least two fundamental limitations on section 30 of the CIPAA.

The statutory condition in section 30(5) of the CIPAA must be satisfied. There must actually be money due or payable by the principal to the party against whom the adjudication decision was made.

Further, section 30 of the CIPAA does not confer upon an adjudication claimant a preferential position capable of overriding the insolvency regime enshrined in the Companies Act 2016.

For subcontractors, the judgment reinforces the need for careful consideration before pursuing direct payment against an employer. For employers, it provides an important defence where the principal-main contractor account has already been fully discharged. And for insolvency practitioners, the decision confirms that the fundamental principles of *pari passu* distribution and statutory priority cannot readily be displaced by the CIPAA.

Ultimately, the decision reinforces the simple but important proposition that CIPAA facilitates payment, but it does not rewrite the law of insolvency.

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Further information

Should you have questions regarding the implications of this decision, or for advice on CIPAA, construction payment disputes and related insolvency issues in Malaysia, please contact the team at TSL Legal:

Chuck Siew Ka Wai
Co-Managing Partner, Malaysia
kwsiew@tsl-legal.com

Cheng Xin Miao
Associate, Malaysia
xmcheng@tsl-legal.com

Saradha Lakshmi Hariharan
Associate, Malaysia
saradha@tsl-legal.com