



CLIMBING THE RESOLUTION LADDER:

A YEAR OF ADJUDICATION CASES 22ND JUNE 2023





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I. DIRECTOR'S MESSAGE

It is my distinct pleasure to present to you the AIAC's exclusive statistical report on statutory adjudication under the Construction Industry Payment & Adjudication Act 2012 ("CIPAA").

On 15th April 2023, we celebrated the ninth year since the entry into force of CIPAA. Such an auspicious happening incentivises us to look at the impact that this Act has left on the Malaysian legal environment. Additionally, there is a growing need for a detailed report on CIPAA related cases that the AIAC is administering. Thus, sprung the need for the "AIAC CIPAA Statistics Report 2023".

This need to put CIPAA in retrospect is one of the main vectors behind the AIAC organising the AIAC CIPAA Conference 2023 ("CIPAA Conference 2023") as a separate event detached from the annual AIAC's Asia ADR Week. In the CIPAA Conference 2023, I shall showcase vital data that is instrumental to the analysis and study of the efficacity of CIPAA. As the AIAC remains dedicated to construction adjudication as a mode of resolving disputes in the construction industry, we are conscious of the voices call for its amendments.

I believe that the stakeholders, as the AIAC, will benefit immensely from the informative statistics provided hereafter. This edition of the "AIAC CIPAA Statistics Report 2023" will cover all CIPAA activities from April 2021 until April 2023. During this period of 2 years, the CIPAA-related casework has witnessed stagnation from 519 cases during the first year to 523 cases during the second. Moreover, the AIAC had received only 105 requests for empanelment as Adjudicators. This marks a significant drop in interest in the adjudication process, which is due to many factors, most of which will be discussed during the CIPAA Conference 2023.

Ultimately, the "AIAC CIPAA Statistics Report 2023" will serve as a guideline to gauge, on a larger scale, the application of CIPAA provisions, the outcome of the cases, the profile of the Claimant and Respondent, and many other parameters.

I am confident that the "AIAC CIPAA Statistics Report 2023" will be of exceptional use to the construction adjudication community, with its practitioners, adjudicators, and specialists.

I would like to seize this propitious opportunity to thank all the actors and contributors to the CIPAA process for their trust, support, and commitment to the AIAC and its mission.

Thank you.

Yours sincerely,

Datuk Sundra Rajoo Director

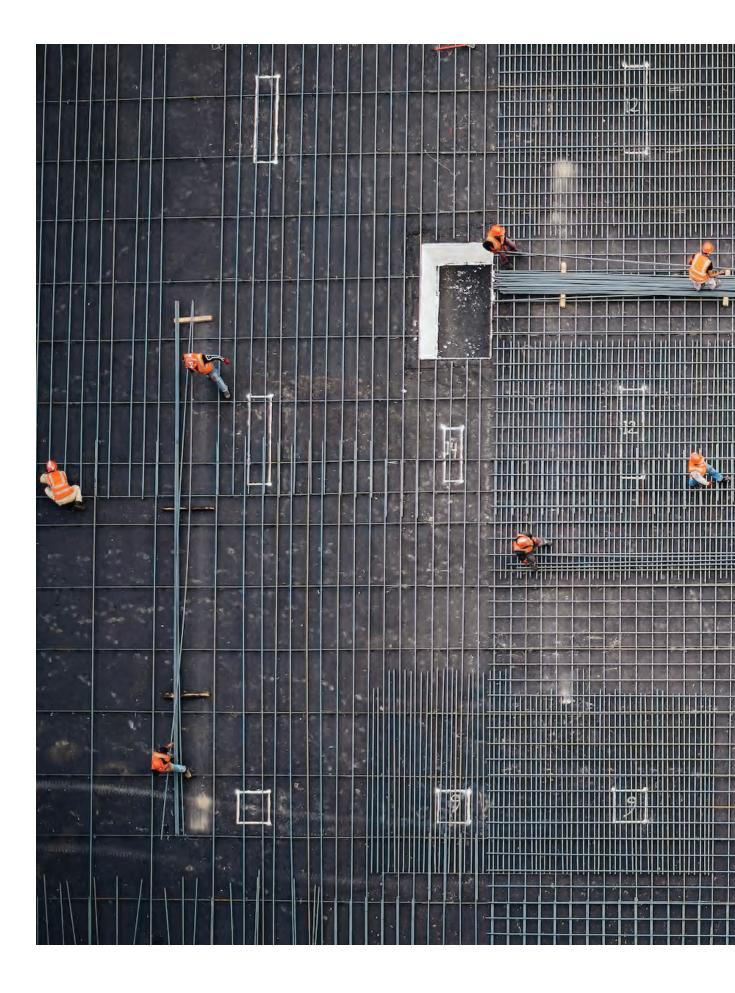
II. ABOUT AIAC

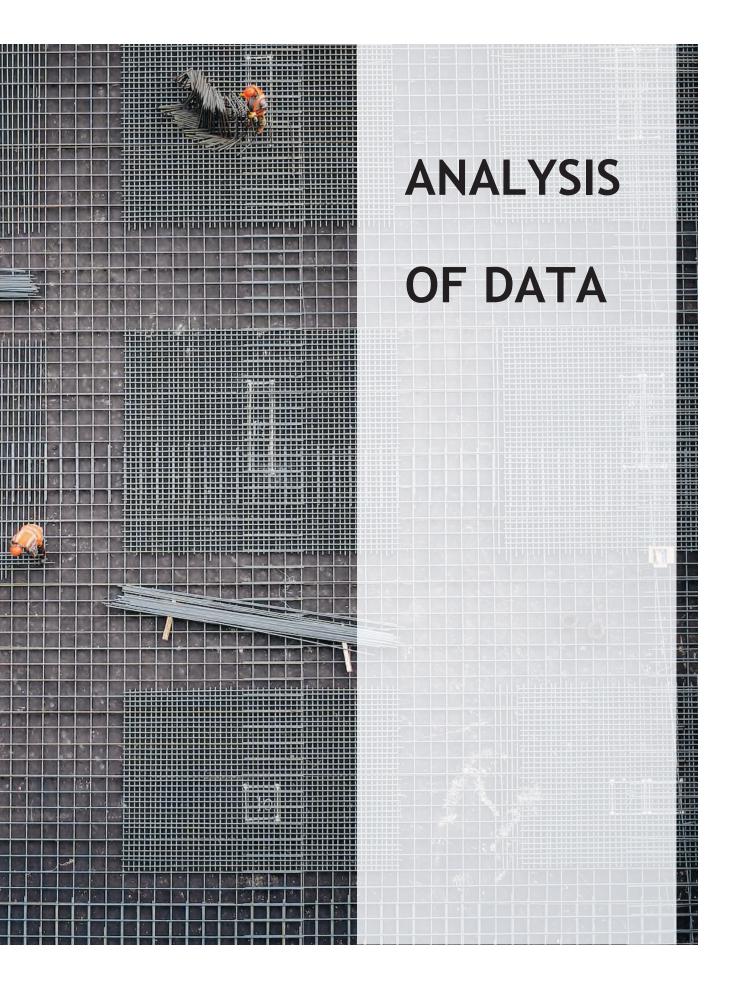
The Asian International Arbitration Centre ("AIAC"), was established in 1978 pursuant to a Host Country Agreement between the Asian-African Legal Consultative Organization ("AALCO") and the Government of Malaysia, signed by Tun Hussein Onn, the third Prime Minister of Malaysia. In conjunction with its 40th Anniversary, the Centre undertook an official name change in 2018, from Kuala Lumpur Regional Centre for Arbitration ("KLRCA") to the Asian International Arbitration Centre ("AIAC"). The name change was part of a holistic rebranding for the Centre, celebrating its impressive milestones along the years and signifying its now global outreach.

The AIAC is privileged to be situated in one of Malaysia's most iconic colonial buildings, recognised as a heritage treasure, Bangunan Sulaiman. Completed in 2014, the AIAC's Pavilion was built to complement the existing facilities and complete its unparalleled hearing facilities. As one of the largest hearing venues internationally, the AIAC is always available to host large hearings, including ad hoc matters and matters administered by its partner institutions. The building is fully modernised to include the latest in IT technology for the ease of its visiting users.

The Centre focuses on its relationship with its stakeholders by engaging in various initiatives such as conferences, talks and pledges, aimed at promoting equality and diversity in ADR. The Centre also aims to organise many educational and informational programmes catering to the needs of the ADR community such as workshops, lectures, and certifications.

The AIAC is presently led by its Director, Datuk Sundra Rajoo who was appointed to once again lead the Centre on 16th March 2023.





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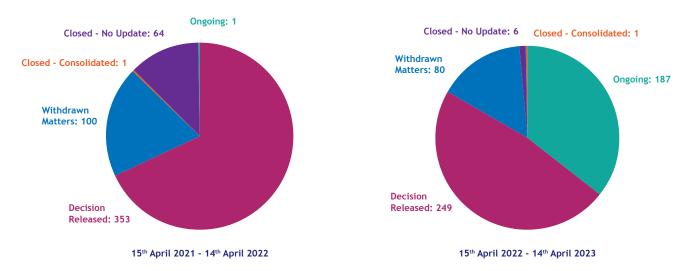
II. ANALYSIS OF DATA

1. Adjudication Applications Statistics

1.1 Type of Matters by Fiscal Year



1.2 Type of Registered Matters by Fiscal Year



Analysis

A total of 523 cases were registered in the fiscal year 2022 - 2023. For the fiscal year 2021 - 2022, the highest number of registrations at 519 indicated an average of 521 cases recorded between both fiscal years. In terms of the total number of decisions released, the cases were recorded at 249 in the fiscal year 2022 - 2023 showing a 29% decrease from decisions released in the fiscal year 2021 - 2022 which was at 353. This is heavily attributed to the number of ongoing cases from the fiscal year 2022 - 2023 which was recorded at 187 showing the total number of decisions due in the upcoming fiscal year. On the other hand, the number of withdrawn cases decreased by 20% in the fiscal year 2022 - 2023 with a total of 80 cases recorded.

2. Registered Matters

2.1 Registered Matters by Month

5	15/4/2014 - 14/4/2015	15/4/2015 - 14/4/2016	15/4/2016 - 14/4/2017	15/4/2017 - 14/4/2018	15/4/2018 - 14/4/2019
April	4	23	46	66	36
May	0	12	34	90	57
June	1	7	29	60	34
July	2	15	40	49	80
August	3	9	42	77	71
September	3	10	33	73	57
October	7	25	48	62	71
November	4	31	75	58	61
December	9	16	54	70	77
January	12	13	28	80	61
February	11	19	48	40	57
March	28	27	70	88	74
TOTAL	84	207	547	813	736
	15/4/2019 - 14/4/2020	15/4/2020 - 14/4/2021	15/4/2021 - 14/4/2022	15/4/2022 - 14/4/2023	Total Registered Matters
April					Total Registered Matters 346
April May	14/4/2020	14/4/2021	14/4/2022	14/4/2023	Matters
	14/4/2020	14/4/2021	14/4/2022 45	14/4/2023 66	Matters 346
May	14/4/2020 44 57	14/4/2021 16 28	14/4/2022 45 47	14/4/2023 66 36	Matters 346 361
May June	14/4/2020 44 57 62	14/4/2021 16 28 66	14/4/2022 45 47 6	14/4/2023 66 36 36	Matters 346 361 301
May June July	14/4/2020 44 57 62 86	14/4/2021 16 28 66 51	14/4/2022 45 47 6 20	14/4/2023 66 36 36 47	Matters 346 361 301 390
May June July August	14/4/2020 44 57 62 86 92	14/4/2021 16 28 66 51 54	14/4/2022 45 47 6 20 45	14/4/2023 66 36 36 47 59	Matters 346 361 301 390 452
May June July August September	14/4/2020 44 57 62 86 92 70	14/4/2021 16 28 66 51 51 54 44	14/4/2022 45 47 6 20 45 45	14/4/2023 66 36 36 47 59 63	Matters 346 361 301 390 452 427
May June July August September October	14/4/2020 44 57 62 86 92 70 60	14/4/2021 16 28 66 51 54 44 30	14/4/2022 45 47 6 20 45 74 74	14/4/2023 66 36 36 47 59 63 63 34	Matters 346 361 301 390 452 427 383
May June July August September October November	14/4/2020 44 57 62 86 92 70 60 76	14/4/2021 16 28 66 51 54 44 30 33	14/4/2022 45 47 6 20 45 74 46 56	14/4/2023 66 36 36 47 59 63 63 34 49	Matters 346 361 301 390 452 427 383 443
May June July August September October November December	14/4/2020 44 57 62 86 92 70 60 76 52	14/4/2021 16 28 66 51 54 44 30 33 75	14/4/2022 45 47 6 20 45 74 56 39	14/4/2023 66 36 36 47 59 63 63 34 49 3	Matters 346 361 301 390 452 427 383 443 395
May June July August September October November December January	14/4/2020 44 57 62 86 92 70 60 76 52 50	14/4/2021 16 28 66 51 54 44 30 33 75 28	14/4/2022 45 47 6 20 45 74 46 56 39 45	14/4/2023 66 36 36 47 59 63 63 34 49 33 30 0	Matters 346 361 301 390 452 427 383 443 395 317

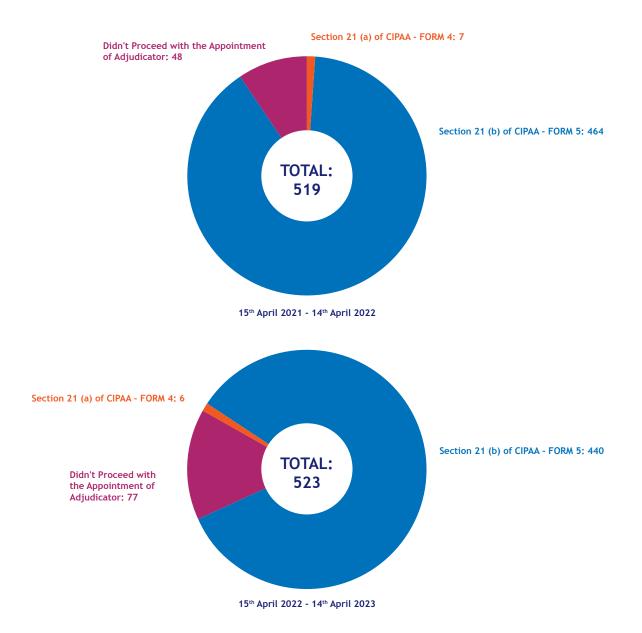
Analysis

A total of 523 cases were registered in the fiscal year 2022 - 2023, with the highest number of registrations was recorded in the month of March 2023, with 130 cases in total. The second highest number of registrations throughout all fiscal years were recorded in the month of August 2019, with 92 cases in total. The month of May 2017 recorded the third highest number of registrations, with 90 cases in total.

The fiscal year 2017 - 2018 recorded the highest total number of registrations, with 813 cases in total. Despite the number of registered matters decrease gradually thereafter, the number of registered matters remained with an average of 44 cases per month in the fiscal year 2020 - 2021 to the fiscal year 2022 - 2023.

3. Appointment of Adjudicator under CIPAA

3.1 Type of Appointment made under Section 21 of CIPAA

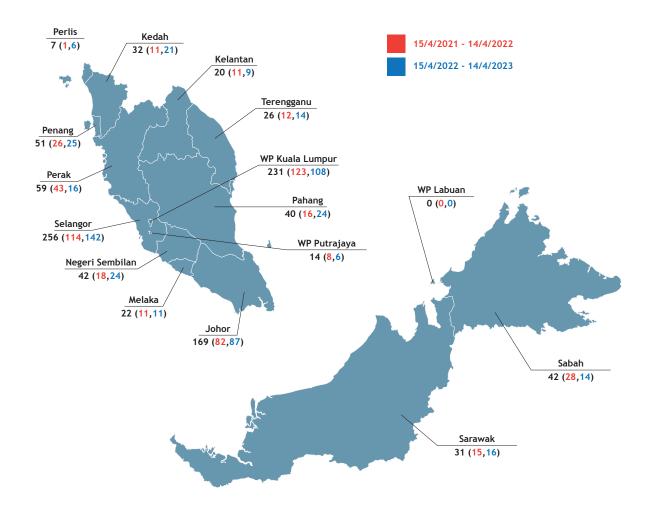


Analysis

89% of all appointments for the fiscal year 2021 - 2022 were made by the Director of the AIAC pursuant to Section 21 (b) of CIPAA. 1% of the appointments for the fiscal year 2021 - 2022 were based on parties' agreements pursuant to Section 21(a) of CIPAA. For the fiscal year 2022 - 2023, a total of 84% of cases were appointed by the Director of the AIAC pursuant to Section 21 (b) of CIPAA, whilst appointments based on parties' agreement were made in a total of 1% from the total of cases registered for the fiscal year. There were no apparent trends in comparison of both fiscal years to the appointments made. Meanwhile, there were 9% of registered matters for the fiscal year 2021 - 2022 did not proceed with any appointment requests. In comparison, the year 2022 - 2023 saw a total of 15% registered adjudication matters that did not proceed with the appointment of adjudicators.

In the 2 recent years of the administration of CIPAA disputes, the Director of the AIAC has made 904 appointments of adjudicators, and this constitutes over 87% of the overall appointments. Throughout the 2 years of the administration of CIPAA disputes, the AIAC has observed 1,042 cases registered with the AIAC, with 917 cases proceeded with the appointment of adjudicators.

4. Analysis of Registered Matters

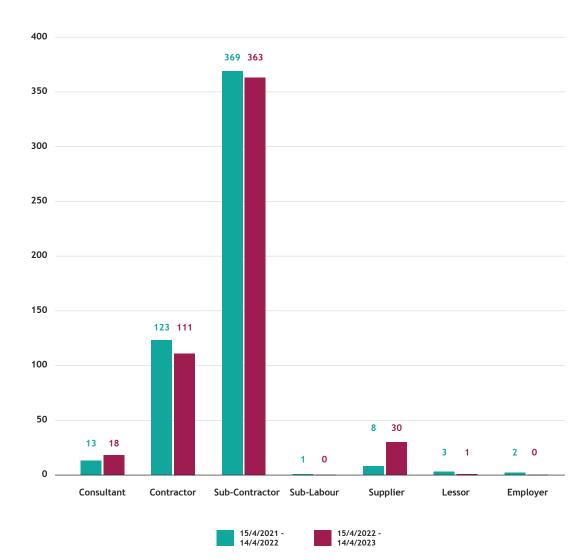


4.1 Analysis of Registered Matters by State

Analysis

The highest number of cases registered for the fiscal year 2021 - 2022 are from the states of Kuala Lumpur (24%) and Selangor (22%). Collectively, a total of 47% of all cases registered in this fiscal year originate from the Klang Valley. However, the number of cases from Kuala Lumpur registered for the fiscal year 2022 - 2023 decreases slightly to make up only 21% of all cases registered in this period. On the contrary, the number of cases registered from the state of Selangor jumps to about 27%. Outside the Klang Valley, the state of Johor takes the lead on the highest number of cases registered for both fiscal years at 16% and 17% respectively.

5. Claimant Statistics

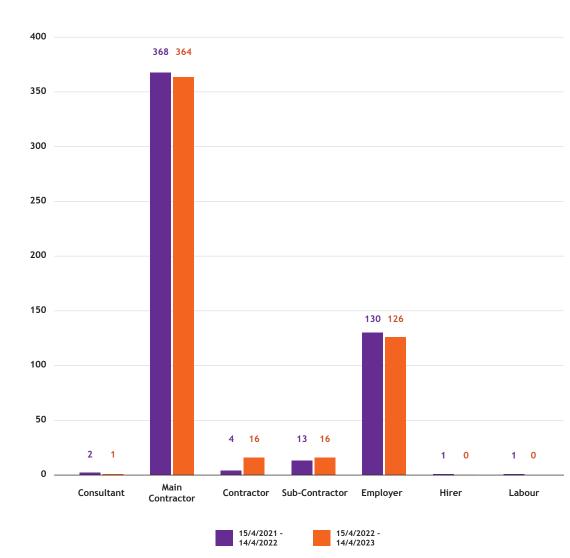


5.1 Claimant Statistics by Claimant's Profile

Analysis

For both fiscal years, a majority of the Claimants are Sub-Contractors with the percentage of 71% and 69% respectively. This is followed closely by Contractors constituting 24% in the fiscal year of 2021 - 2022 and 21% in fiscal year 2022 - 2023. The same trend can be observed since the implementation of CIPAA in 2014. The fiscal year 2022 - 2023 also sees an increase in the number of Consultants and Suppliers referring their disputes to adjudication. Interestingly, both fiscal years also see a number of Sub-Labour, Lessors and Employers filing their claims under CIPAA.

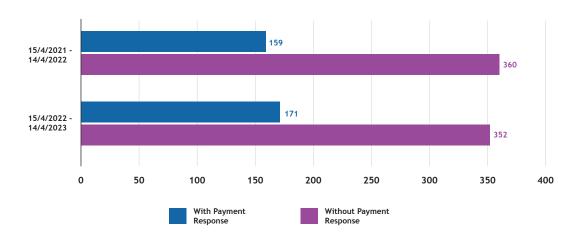
6. Respondent Statistics



6.1 Respondent Statistics by Respondent's Profile

Analysis

The Employers and Main Contractors top the charts being the majority of Respondents in CIPAA cases. From 15th April 2022 to 14th April 2023, the fiscal year has seen a staggering 70% of the Respondents being Main Contractors followed by Employers at 24%. The period has also seen the numbers of Contractors and Sub-Contractors acting as Respondents increasing steadily from the previous years.



6.2 Matters with Payment Response Filed

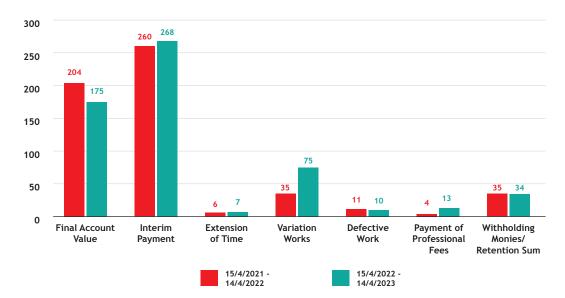
Analysis

For both years, majority of the Respondents did not file a Payment Response. For the fiscal year 2021 - 2022, 31% of disputes referred to Adjudication came with a Payment Response, while 69% came without the Payment Response. On the other hand, over 67% of disputes did not have a Payment Response for the fiscal year 2022 - 2023.

7. Adjudication Disputes

7.1 Type of Adjudication Disputes*

* Kindly note that each adjudication matter may contain more than one adjudication disputes as captured in the chart below. Majority of the nature of disputes were extracted from the Payment Claim and Adjudication Claim submitted by the Claimant.

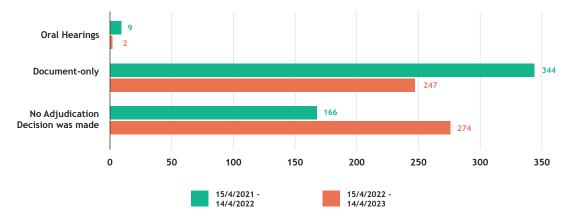


Analysis

The two categories of interim payment and final account value have always featured prominently since the implementation of CIPAA. The fiscal year of 2022 - 2023 saw a significant increase in the number of disputes which arose from the category of Variation Works. In the fiscal year 2022 - 2023, 46% of the disputes arose from the category of Interim Payment, followed by Final Account Value (30%) and Variation Works (13%).

8. Type of Proceedings

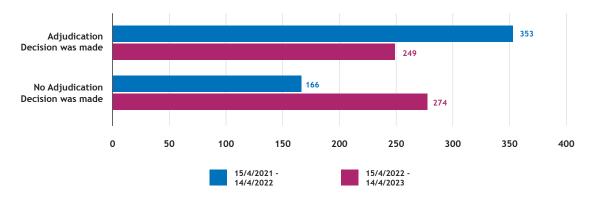




Analysis

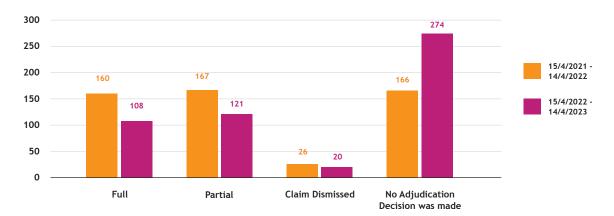
Most of the cases are conducted on a document-only basis, based on AIAC's records. In terms of percentage, 66% of the proceedings were conducted on a document-only basis in the fiscal year 2021 - 2022. Meanwhile, in the fiscal year 2022 - 2023, there was a decrease of 47% in the number of proceedings conducted on a document-only basis. Parties and/or adjudicators commonly opt for oral hearings upon consideration of the circumstances, complexity and the amount in dispute of the cases.

9. Decisions Released

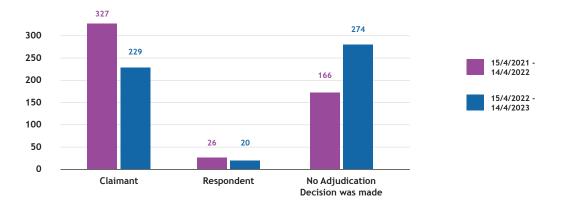


9.1 Decisions Released by Year

9.2 Types of Adjudicated Amounts (based on Decisions Released)

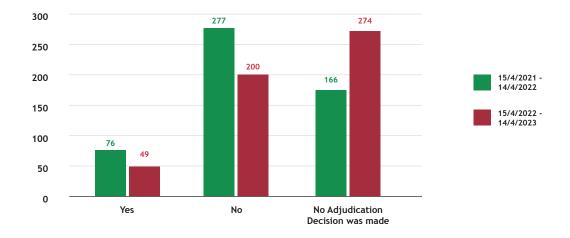


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9.3 Decision Released in Favour of Claimant and Respondent

9.4 Jurisdictional Objections Raised

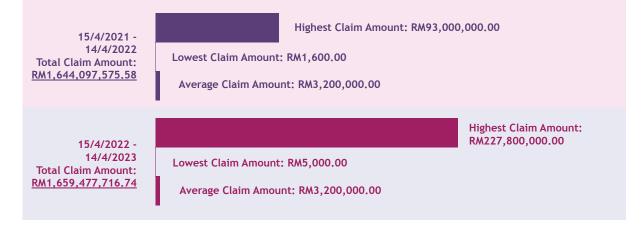


Analysis

Based on the decisions released, 45% of Claimants secured their full payment as claimed in the Payment Claim in the fiscal year 2021 - 2022, while 43% of the Claimants of the fiscal year 2022 - 2023 achieved this. There was a minimal increase in dismissed claims between both fiscal years, with 7% of the claims being dismissed during the fiscal year 2021 - 2022 and 8% during the fiscal year 2022 - 2023. Both fiscal years saw 93% to 92% of the released decisions in favour of the Claimants. Jurisdictional challenges were addressed in 21% of the fiscal year 2021 - 2022 and 20% of the fiscal year 2022 - 2023.

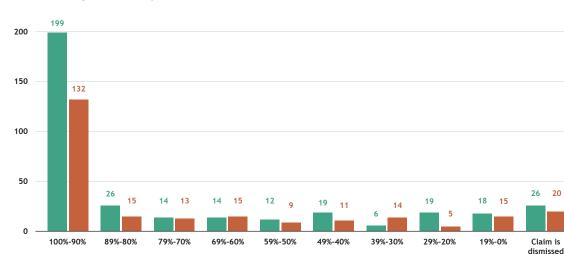
10. Claimed Amount Statistics

10.1 Claimed Amount Statistics



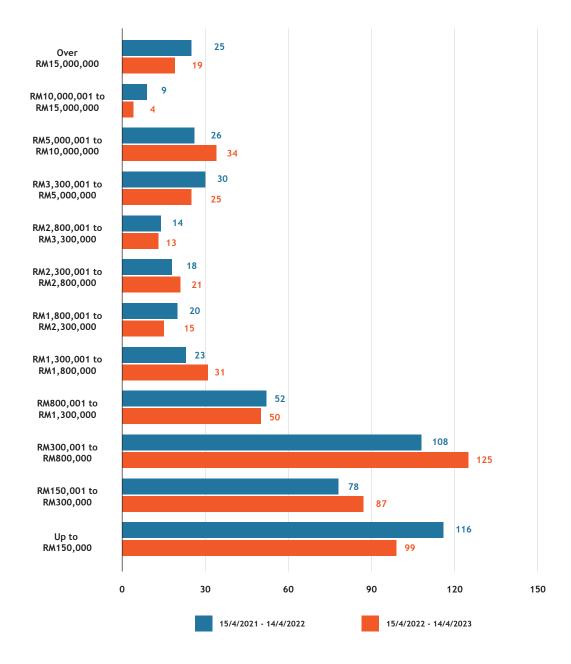
10.2 Adjudicated Amount Statistics





10.3 Percentage (%) of Adjudicated Amounts awarded out of claimed amounts

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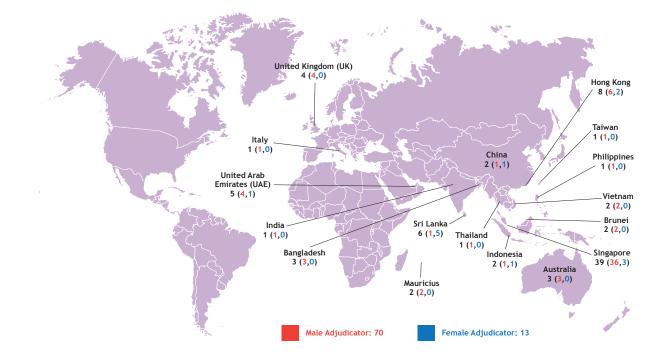
10.4 Number of Claims by Amount in Dispute

Analysis

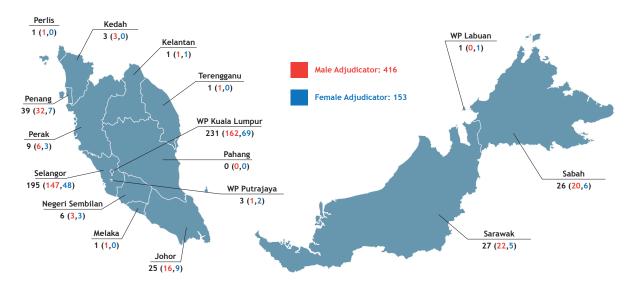
The total claimed amount of all disputes registered thus far for the fiscal year 2021 - 2022 stands at RM1,644,097,575.58 while the fiscal year 2022 - 2023 stands at RM1,659,477,716.74. The highest claim amount for the fiscal year 2021 - 2022 is RM93,000,000.00 This claim also stands as the highest adjudicated amount of RM93,000,000.00. For both fiscal years, the average claim amount stands at RM3,200,000.00 while the average adjudicated amount is recorded at an average amount of RM2,500,000.00. For both fiscal years, an average of 61% of the cases have received in the range of 90% to 100% of the claimed amount as the adjudicated amount. For the fiscal year 2022 - 2023, our record shows that 125 cases were filed with payment claims with amount in dispute in the range of RM300,001 to RM800,000.

11. Number of Adjudicators Empanelled with the AIAC

11.1 Number of International Adjudicators Empanelled by Country

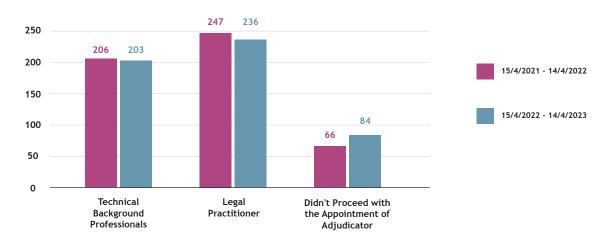


11.1 Number of Domestic Adjudicators Empanelled by State



Analysis

The total number of adjudicators empanelled with the AIAC has increased from 363 as at 15th April 2016 to 652 as at 14th April 2023. This marks an increase of almost two-fold in the number of empanelled adjudicators. The empanelment of domestic adjudicators has also increased by 87%, where a majority of the domestic adjudicators are centered in the Klang Valley, among which 40% of the adjudicators are from WP Kuala Lumpur and 34% are from Selangor respectively. Pahang is the only state with no adjudicator empanelled with the AIAC.



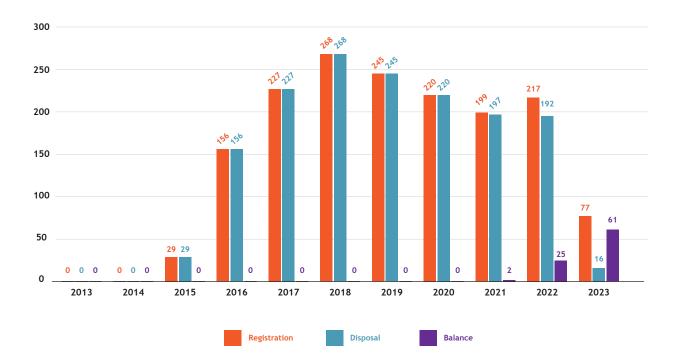
11.2 Appointed Adjudicator (Technical Background / Legal Practitioner)

Analysis

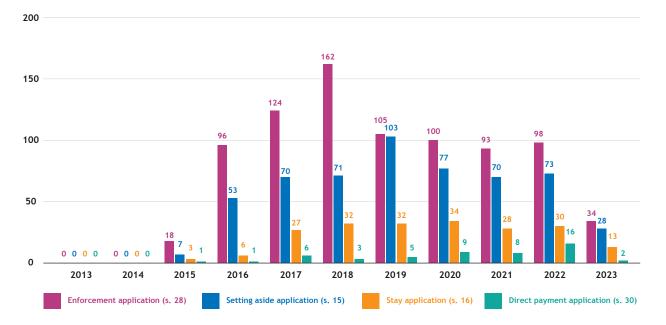
Among the 519 appointed adjudicators, 40% of whom possess technical background, whilst 48% are legal practitioners. The remaining 12% of the registered adjudication matters, however, did not proceed with the appointment of an adjudicator.

12. Registration and Disposal of Cases under Section 28, Section 15, Section 16 and Section 30 of CIPAA as Provided by the Kuala Lumpur High Court

12.1 Registration and Disposal of Cases under CIPAA from 2013 to 2023 (Up to 31st May 2023) (Kuala Lumpur High Court)

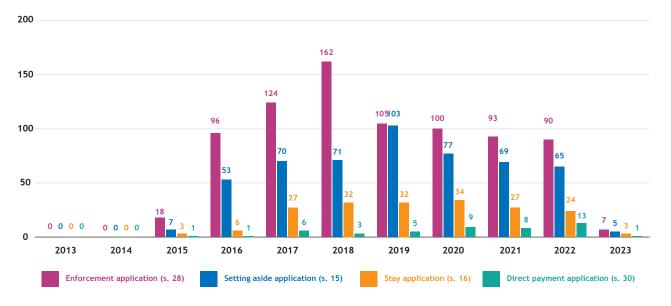


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12.2 Registration of Cases Under CIPAA (Applications under S. 28, S. 15, S. 16, S. 30 and Other Applications) from 2013 - 2023 (Up to 31st May 2023) (Kuala Lumpur High Court)

12.3 Disposal of Cases Under CIPAA (Applications under S. 28, S. 15, S. 16, S. 30 and Other Applications) from 2013 - 2023 (Up to 31st May 2023) (Kuala Lumpur High Court)



Special Remarks

The charts in Section 12 are contributed by the Kuala Lumpur High Court.

The AIAC records our special appreciation to the Malaysian judiciary for allowing the AIAC to share the statistics with the public with the aim to improve the public awareness on the current status of CIPAA.

IV. CONCLUSION

In conclusion, the AIAC CIPAA Statistics Report 2023 provides valuable insight into the continued growth and effectiveness of the CIPAA mechanism in Malaysia, aligned with the theme of this year's CIPAA report "Climbing the Resolution Ladder: A Year of Adjudication Cases". The upward trajectory observed in the utilisation of CIPAA is evident, as reflected in the increase in registered cases in the fiscal year 2022 - 2023.

While the number of decisions released decreased slightly, this can be attributed to the significant number of ongoing cases that will be resolved in the upcoming third fiscal year. The decline in withdrawn cases and adjudications closed due to prolonged inactivity is a positive indicator of the trend towards resolving disputes through the adjudication process.

The Director of the AIAC played a crucial role in appointing adjudicators, with the majority of appointments made during both fiscal years. However, the report also highlights a growing number of appointments based on parties' agreements, although the percentage remained relatively low. The rise in the number of empanelled adjudicators further demonstrates the growing demand for the adjudication services.

Geographically, the Klang Valley, particularly Kuala Lumpur and Selangor, remained the hub of registered cases. Notably, there was a significant increase in Selangor's percentage, suggesting a shift in the distribution. Sub-Contractors continued to be the largest group of claimants, followed by contractors, while there was a notable rise in the participation of consultants, suppliers, sub-labour, lessors, and employers filing claims under CIPAA.

Employers and main contractors were the primary respondents in CIPAA cases, with main contractors comprising the majority. The steady increase in the number of contractors and sub-contractors acting as respondents signifies their active involvement in dispute resolution.

The report highlights that a significant percentage of respondents did not file a payment response, possibly indicating the impact of the Federal Court's decision on *View Esteem Sdn Bhd v Bina Puri Holdings Bhd* [2017] 1 LNS 1378. This ruling clarified that the adjudicator is not prohibited from considering disputes not found in the Payment Response.

The shift from document-only proceedings to more oral hearings demonstrate a preference for a thorough examination of cases, taking into account their complexity and financial implications.

In summary, the CIPAA report presents a compelling picture of an adjudication system on an upward trajectory, witnessing a surge in cases and establishing itself as an effective means of resolving payment disputes. As the industry continues to embrace this mechanism, the findings of this report serve as a testament to the progress made and provide guidance for future endeavours to further enhance accessibility, efficiency, and effectiveness within the realm of adjudication in Malaysia.

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