

# Analysis Of The Kinu Sdn Bhd Case & Its Impact On Section 30 Of The CIPAA

9 July 2025

For more information, please contact:

**Datuk D P Naban**  
naban@rdslawpartners.com

**Austen Emmanuel Pereira**  
austen@rdslawpartners.com

**Bahari Yeow Tien Hong**  
bahari@rdslawpartners.com

**Farah Shuhadah Razali**  
farah@rdslawpartners.com

**Kenny Lam Kian Yip**  
kenny@rdslawpartners.com

**Lim Zhi Jian**  
jian@rdslawpartners.com

**Rosli Dahlan**  
rosli@rdslawpartners.com

**Steven Perian KC**  
speriankc@rdslawpartners.com

**Vinayak Sri Ram**  
vinayak@rdslawpartners.com

Section 30 of the Construction Industry Payment and Adjudication Act 2012 (CIPAA) provides a statutory mechanism for a successful party in an adjudication (usually a subcontractor) to request direct payment of the adjudicated sum from the principal, in the event the unsuccessful party (usually a main contractor) failed to pay.

The successful party must establish the following elements to successfully invoke Section 30:

- an adjudication decision has been obtained in its favour;
- the unsuccessful party has failed to pay the adjudicated sum; and
- There is money “due or payable” from the principal to the unsuccessful party at the time the successful party made the request for direct payment.

*In Kinu Sdn Bhd v Kerajaan Malaysia (Jabatan Kerja Raya Malaysia)* [2025] MLJU 1708, the Court of Appeal examined whether a principal’s alleged disputes with the main contractor, including set-offs and contractual breaches, could prevent the operation of Section 30 of the CIPAA.

## Background

In the *Kinu Sdn Bhd* case, the parties involved were:

- |                            |   |
|----------------------------|---|
| • Kinu Sdn Bhd             | the subcontractorthe subcontractor and successful party in the adjudication |
| • Nukima Sdn Bhd           | the main contractor and losing party in the adjudication                    |
| • Jabatan Kerja Raya (JKR) | the principal/employer  |

---

Following Nukima's failure to comply with an adjudication decision delivered in favour of Kinu, on 11 September 2023, Kinu issued a written request for direct payment to JKR pursuant to Section 30(1). At the time the request was issued, Kinu had already obtained enforcement of the adjudication decision under Section 28 of the CIPAA.

JKR refused, citing the absence of privity between itself and Kinu and claimed that all disputes should be resolved between Kinu and Nukima. More significantly, JKR maintained that Nukima was in breach of contract and that the performance guarantee sum—retained under the contract between JKR and Nukima—would be forfeited.

In fact, 14 months before Kinu made the request for direct payment, on 14 July 2022, JKR had issued a notice of termination to Nukima and expressly reminded Nukima that it would be liable for the additional costs of completing the project. This was repeated in JKR's letter dated 9 October 2023 to Nukima, which issued after receipt of Kinu's request for direct payment.

JKR's refusal to make payment prompted Kinu to file a formal Section 30 application at the High Court.

### **Decision Of The High Court**

The High Court dismissed Kinu's application, holding that due to the ongoing disputes between JKR and Nukima, it could not be said that there was any money "due or payable" by JKR to Nukima under Section 30(5) of the CIPAA.

### **Decision Of The Court Of Appeal**

The Court of Appeal reversed the High Court's decision on the premise that JKR had failed to substantiate its claims against Nukima with sufficient evidence. Although the termination occurred 14 months prior to Kinu's request for direct payment, JKR had not produced any certificate of termination costs and neither did JKR disclose a list of defects or evidence of actual rectification costs.

The court highlighted that the performance guarantee sum of RM6.2 million remained in JKR's hands, whereas the value of outstanding works at the time of termination was only RM4.6 million. Furthermore, JKR had already imposed LAD totalling RM2.3 million up to the date of termination. There was no explanation by JKR as to the utilisation of RM6.2 million, which was retained.

While the Court of Appeal accepted that JKR was contractually entitled to forfeit the performance guarantee sum, it was held that such forfeiture must be properly accounted for when challenged. Kinu was only required to show, on a balance of probabilities, that there was money "due or payable" from JKR to Nukima. Once that threshold was met, the evidential burden shifted to JKR. As the party with actual knowledge of its financial dealings with Nukima, JKR bore the burden of substantiating its claim that nothing was due to Nukima.

It must be noted that after receiving the request for direct payment from Kinu, JKR did not serve a notice under Section 30(2) of the CIPAA on Nukima. The Court of Appeal held that had JKR served the notice on Nukima and had Nukima disputed the sum claimed by JKR, then depending on the quality of the evidence adduced, it may be said that there was a bona fide dispute between the principal and the main contractor, thereby entitling the principal to forfeit the performance guarantee sum.

However, the court found that JKR failed to discharge this burden. In the absence of cogent evidence to show the sum was claimable as a result of Nukima's breach, the court drew an adverse inference against JKR and concluded that the performance guarantee sum of RM6.2 million (remaining with JKR) was payable to Nukima at the time Kinu made the request for direct payment.

The court reaffirmed that under the CIPAA, the phrase "due or payable" was distinct from "due and payable" and reflected a broader statutory threshold. Funds retained by a principal may still be considered "payable" for Section 30 purposes, even if contingent upon future accounting or conditional events.

### Commentary

This decision affirms the protective function of Section 30 of the CIPAA. Subcontractors who have been successful in an adjudication ought not to be deprived of their remedy due to ambiguous set-offs or non-specific claims by the principal.

In this regard, the key points from the decision of the Court of Appeal can be summarised as follows:

1. Disputes between the principal and main contractor are not a bar to a Section 30 claim unless substantiated by credible evidence. The principal must demonstrate that no sums are "due or payable" at the time the request is made by the successful party in an adjudication.
2. Forfeiture of retention sums must be supported by documentation. A mere assertion of breach or intention to claim is insufficient to negate the statutory presumption that the funds are otherwise payable.
3. Serving a written notice under Section 30(2) to the main contractor remains crucial. Failure to do so may result in an adverse inference being drawn against the principal.
4. Further, consent from the principal for the subcontractor's appointment is irrelevant to the operation of Section 30. For instance, JKR's contention that it had never consented for Nukima to appoint Kinu as a subcontractor would not bar the operation of Section 30 CIPAA against JKR.

---

Where a principal intends to rely on a dispute or forfeiture to resist a Section 30 claim, it must adduce documentary evidence—not mere assertions. Otherwise, the courts are likely to draw adverse inference against the principal and order direct payment in favour of the successful subcontractor in an adjudication.

[www.rdslawpartners.com](http://www.rdslawpartners.com)

This publication is for educational and informational purposes only and is not intended and should not be construed as legal advice.

**KUALA LUMPUR**

Level 16, Menara 1 Dutamas No. 1, Jalan Dutamas  
1, Solaris Dutamas, 50480 Kuala Lumpur  
T: +603 6209 5400  
F: +603 6209 5411  
[enquiry@rdslawpartners.com](mailto:enquiry@rdslawpartners.com)

**PENANG**

Suite S-21E & F21st Floor, Menara Northam No.  
55, Jalan Sultan Ahmad Shah, 10050 Penang  
T: +607 585 6414  
F: +607 509 7614  
[generalpg@rdslawpartners.com](mailto:generalpg@rdslawpartners.com)

**JOHOR BAHRU**

8-35, Menara Delima Satu, Jalan Forest City 1,  
Pulau Satu, 81550 Gelang Patah, Johor Bahru  
T: +607 585 6414  
F: +607 509 7614  
[generaljb@rdslawpartners.com](mailto:generaljb@rdslawpartners.com)