

CONSTRUCTION DISPUTES: ADJUDICATION LEADING THE WAY

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CONSTRUCTION INDUSTRY: MALAYSIAN PERSPECTIVE

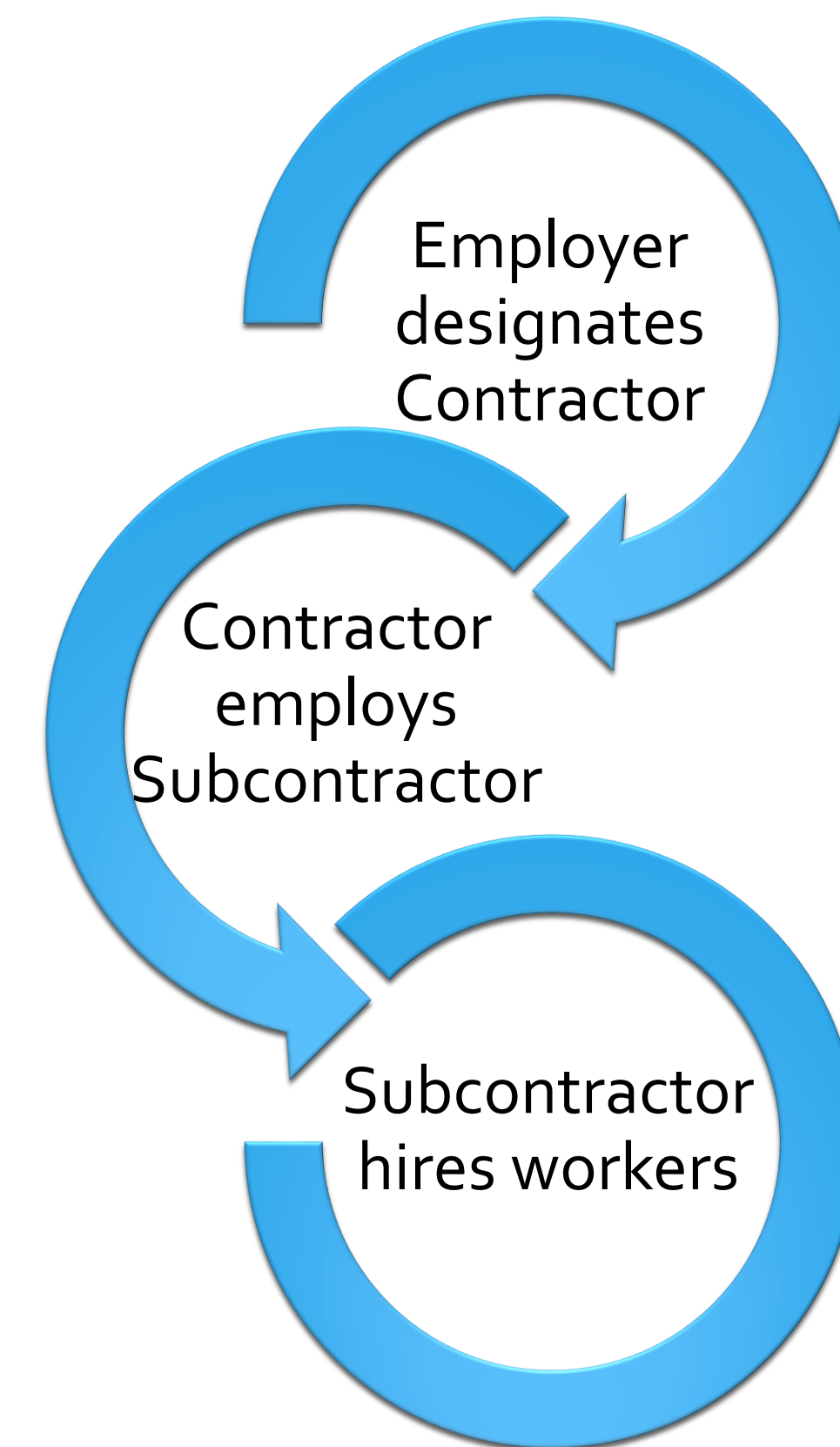
- ❑ As at Q3 2017, GDP value was RM 342.8 billion in current prices
- ❑ 4.6% of the GDP value was attributed to construction industry
- ❑ Construction industry experienced a 7.6% growth in 2017 and expected to grow by another 7.5% in 2018
- ❑ Eleventh Malaysia Plan: involvement of the building industry. One of the heads under the plan - strengthen infrastructure to support economic expansion - certainly require the involvement of the industry
- ❑ The signing of more contracts and/or multiplying of commercial/legal relationships will mean, with the passage of time, that the number of disputes in the field will expand

CONSTRUCTION INDUSTRY: MALAYSIAN PERSPECTIVE

- Globalisation, outsourcing, and the international marketplace
- Positive impact on economy:
 - Ensures money circulation
 - Creates jobs
 - Increase in quality of life

PAYMENT DISPUTES

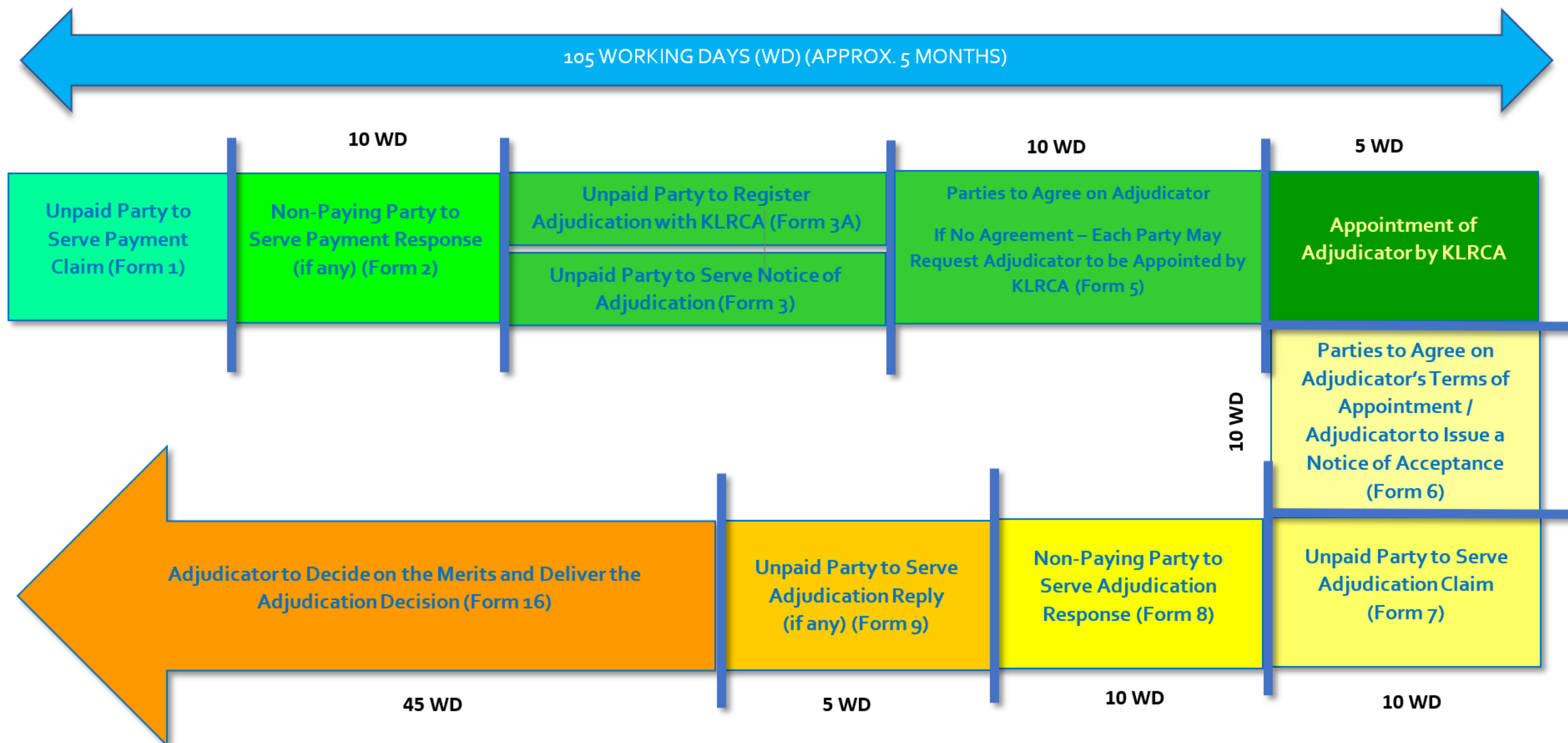
- ❑ Stable cash flow is crucial for the smooth running of a construction site. With no proper cash flow, a construction project is most likely to come to a halt due to the lack of appropriate resources.
- ❑ Any disruption to the cash flow causes a chain reaction with repercussions on the outcome of the project and the output of the industry.
- ❑ However, the industry has not had the best track record, burdened by problems of payments since time immemorial.
- ❑ The factors causing the delay are usually generally attributable to the size and sums involved in construction projects, and the “Paid when Paid” and “Paid if Paid” clauses.



ADJUDICATION AS A PROBLEM SOLVER: CIPAA 2012

- Offers parties cost and time efficient dispute resolution procedure
- Adjudication procedure under CIPAA 2012 can be initiated at anytime whether before or during the construction works or after the completion of the project
- Defines a 'payment': a payment for works done or services rendered under the express terms of a construction contract

GENERAL FLOW CHART OF ADJUDICATION PROCESS UNDER CIPAA



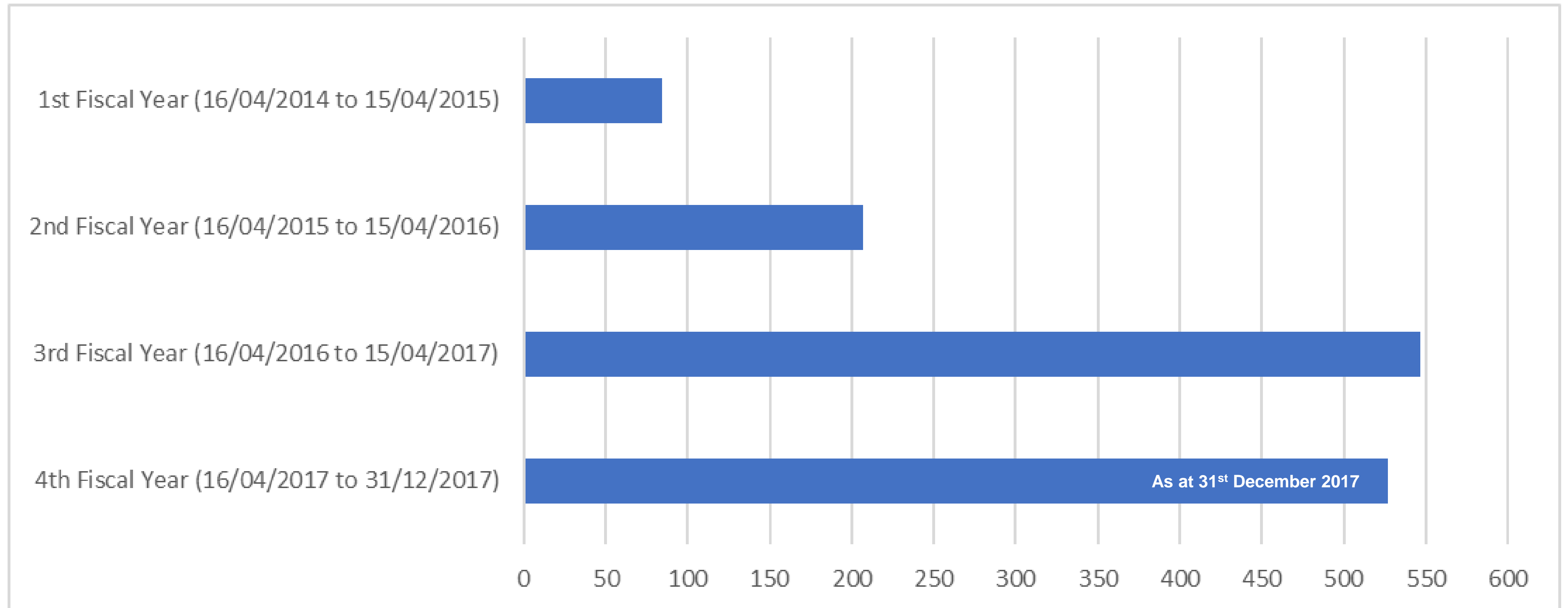
ADJUDICATION PROCESS UNDER CIPAA 2012

- ❑ Both parties are required to equally share the cost of the adjudicator's fees and expenses.
- ❑ The adjudicator is not only obliged to decide the dispute within the time prescribed but also to provide a decision in the time stipulated in CIPAA. The conclusion of the decision and deliverance of the decision are two separate distinct obligations.
- ❑ The powers conferred onto adjudicators are wide.
- ❑ KLRCA is to be the supreme authority when it comes to adjudication, tasked with setting competency standards and criteria when it comes to adjudicators.

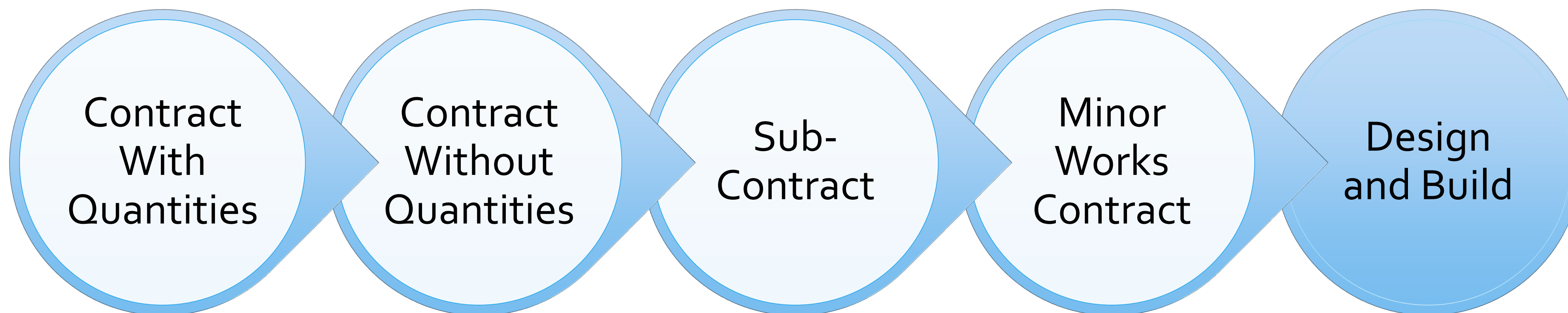
ADJUDICATION PROCESS UNDER CIPAA 2012: COMPARATIVE STUDY

- UK:** All disputes under a construction contract are subject to statutory adjudication - CIPAA is applies to payment disputes only
- NZ & AUS:** Adjudication under written contracts, oral agreements and part oral agreements, whereas CIPAA applies only to written contacts
- SG, UK, NZ, AUS:** Construction contracts for works related to 'gas, oil, and petrochemical' are excluded, whereas CIPAA includes them in the definition of 'construction works'
- NZ & AUS:** The claims can be recovered as a statutory debt in case of non response by the Respondents; there is no such assumption made under CIPAA
- SG, UK, NZ, AUS:** if the Respondent fails to respond, the Claimant is entitled to recover the Payment Claim; CIPAA seeks fairness above all and does not revoke the Respondent's right to defend itself

SUCCESS OF CIPAA – SURGE IN CASE LOAD



FROM DISPUTE RESOLUTION TO DISPUTE AVOIDANCE: KLIRCA'S STANDARD FORM OF BUILDING CONTRACTS



KLIRCA'S STANDARD FORM OF BUILDING CONTRACTS (SFC): KEY FEATURES

- Governs relationships, rights and duties of parties to a building construction project
- KLIRCA's SFC is Malaysia's first ever CIPAA-compliant suite of building contracts
- Customizable and available for free on a dedicated website
- Aimed at filling the gaps between in the existing standard forms
- The hallmark of KLIRCA's SFC is continuity of works and working relationships
- New suite of contracts will be launched in 2018

CONCLUSION

- ❑ CIPAA has a great impact on the industry and on the construction trade
- ❑ A survey based on feedbacks shows that, out of the decisions released, the survey indicated that 98% of the parties were satisfied with the outcome of the adjudication
- ❑ The proficiency of CIPAA in dealing with payment problems in the construction industry opens a doorway to a new era of ADR in this niche area, and is also carving a place for Malaysia in the global scene
- ❑ The construction industry in the Bahamas is gaining momentum and similar to Malaysia is the driving force behind the GDP's growth
- ❑ However, its continuous and further contribution to the country's economy is constrained by cash flow inherent problems arising out of 'paid when paid' and 'paid if paid' clauses
- ❑ Against the CIPAA's success, adoption of statutory adjudication in the Bahamas may tremendously improve that situation, allowing the construction industry to reach its full potential

THANK YOU



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