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A Day Too Late for CIPAA

Skyworld Development Sdn Bhd v Zalam Corp Sdn Bhd^[1]

In an adjudication pursuant to the Construction Industry Payment and Adjudication Act 2012 (CIPAA),^[2] an adjudicator has to deliver his decision within 45 working days from:^[3]

- (i) the expiry of the period prescribed for an adjudication response, if no adjudication response is submitted; or
- (ii) service of either the adjudication response or adjudication reply.

Given that the adjudicator had acknowledged receipt of the adjudication reply at 7.26pm on 21 May, the decision should have been delivered by 25 July, 45 working days after the service of the adjudication reply.

The claimant argued that the adjudicator had rightly delivered the decision on 26 July, as the service of the adjudication reply by email was “after working hours”.

In refusing to enforce the decision, the High Court held that “a day of 24 hours and anything done within any time on that day is considered done on that day”, and made reference to the CIPAA, which defines a “working day” as a “calendar day” but excludes weekends and public holidays applicable at the State or Federal Territory where the project site is located.^[4]

The decision which was not made within the 45-working day period was therefore held to be void and unenforceable.^[5]

As such, it is important for parties in an adjudication to take proactive steps in ensuring that the adjudicator is aware of the specific date by which the decision is to be delivered. Otherwise, the successful party risks having the entire decision set aside.

If you have any queries, please contact team partner [Darshendev Singh](#) (ds@lh-ag.com), who heads the firm's Adjudication Department.

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[\[1\]](#) [2019] MLJU 162 (HC)

[\[2\]](#) [Act 746]

[\[3\]](#) *Ibid*, s 12(2)

[\[4\]](#) *Ibid*, s 4

[\[5\]](#) *Ibid*, s 12(3)