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Dilemma for Parties Choosing to Serve Documents by Registered Post under the Construction Industry Payment and Adjudication Act 2012 (“CIPAA”): Lesser Time to Prepare Documents

The service of notices and documents under CIPAA are to be effected by one out of the four modes of service as set out in **Section 38 CIPAA**¹. Consequently, **Section 38(c) CIPAA** provides for the notice or document to be served “*by registered post*”. The question that arises is when would the notice / document be deemed to have been served?

This is significant, particularly since CIPAA provides for a stringent timeline within which the adjudication papers are to be served, irrespective of the locality of the sender and receiver:

Documents	Period
Acceptance of appointment by the Adjudicator	10 working days
Adjudication Claim	10 working days
Adjudication Response	10 working days
Adjudication Reply	5 working days
Adjudication Decision	45 working days

The AIAC, last month, by its CIPAA Circular No.11 dated 1.4.2022, clarified that where service of a notice / document is effected by

¹ Construction Industry Payment and Adjudication Act 2012, s38

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registered post, the rebuttable presumption is that the delivery is deemed effected; “*when such notice and / or documents would have been delivered in its ordinary course*”.

“*In its ordinary course*” is dependent on the locality and distance between the sender and receiver. The onus is on the sender to ensure that a sufficient period of time is allocated within the timelines under CIPAA to effect service by registered post.

For example, the High Court in **Ruhimin Adzim @ Ruhimin Bin Ajim v Tan Sri Bernard Dompok & Ors**² [2005] 1 MLJ 345 observed, based on the evidence produced in the proceedings, a document delivered by registered post from Kota Kinabalu to Putrajaya would be deemed to have been “*delivered in its ordinary course*” 4 working days after the date of posting.

As an analogy, a Kota Kinabalu based Claimant would only have 1 working day to prepare and post its Adjudication Reply to a Respondent based in Putrajaya.

As such, considering the risks that may arise from the service of notice / documents by registered post, it is advisable for the parties to:

- i. agree, pursuant to **Section 38(d) CIPAA**, on an instantaneous mode of service such as email; and / or
- ii. where possible, effect delivery by personal service pursuant to **Section 38(a) and (b) CIPAA**.

As it may not always be the case that delivery of notices / documents can be practically effected by personal service, or that parties can agree on an instantaneous mode of service, it may be worthwhile for amendments to be introduced to **Section 38 of CIPAA** to include other instantaneous modes of service such as email, courier etc.

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