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Teething problems

The July/August briefing covered the introduction of the Construction Industry Payment and Adjudication Act 2012 (CIPAA) which came into operation on April 15 2014. The purpose of CIPAA is to facilitate regular and timely payment and provide a mechanism for speedy dispute resolution through adjudication. CIPAA is regulated by the Kuala Lumpur Regional Arbitration Centre (KLRCA) and in the first of the KLRCA



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circulars on the administration of CIPAA, it is provided that CIPAA will apply to construction contracts that were entered into before April 15 2014 but the dispute in issue must have arisen after this date.

The intent of this circular is clear: to

ensure CIPAA has an immediate impact on the construction industry. Regretfully, questions have been raised about the validity of this KLRCA circular and it has been suggested by some parties that CIPAA can only apply prospectively to construction contracts that were entered into after April 15 2014. It is being argued in court that this would defeat the very intent of CIPAA. Therefore, it is suggested that even though CIPAA may have an impact on parties' contractual rights, it would still be necessary for CIPAA to apply to contracts that were entered into before April 15 2014.

It is suggested that as a matter of law, even though CIPAA seeks to interfere with contractual relationships, this should not matter. CIPAA was passed as legislation two years ago and the construction industry has had adequate time to prepare their contractual structure to take into account the effect of CIPAA. Therefore, although it may seem, initially, that CIPAA will be interfering with existing contractual rights, a proper analysis of the situation will make it clear that this not the case.

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