

Malaysia

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Notice by email

More parties are opting to include service of notices in agreements by way of email because it is expeditious and convenient. However, there are implications of using email as a method of service that may not be obvious.

The Electronic Commerce Act 2006 (the EC Act) came into force in 2006 with the stated aim of providing legal recognition of electronic messages in commercial transactions, the use of electronic messages to fulfil legal requirements and to facilitate



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commercial transactions through the use of electronic means. The EC Act appears to provide legislative guidance with regards to the time and place of dispatch and the time and place of receipt of an electronic message. Notice by way of email has not been fully tested in the courts of Malaysia but common problems highlighted in other jurisdictions include: uncertainty as to the time the notice was sent and received; the validity and appropriateness of the email address; and, more importantly, whether legislation recognises notice by electronic means.

Having said that, in 2015 a judicial commissioner in *Odin Oilfield Services* was of the view that the provisions of the EC Act do not apply to emails. He said that the provisions of the EC Act are irrelevant as the transaction was not a commercial transaction which was conducted through electronic means. Separately, in 2014 the Federal Court held in *Yam Kong Seng and Anor* that a short message service (SMS) was sufficient pursuant to Section 8 of the EC Act to fulfil the Limitation Act 1953 where the information must be made in writing and signed.

Currently it is not clear if the provisions of the EC Act apply only to electronic commercial transactions but also include electronic messages for all commercial transactions. Until the law develops further or parliament amends the EC Act, it would be prudent for parties to clearly set out in agreements:

- that notices (save for notices in relation to certain court proceedings) may be given by email;
- when a notice by email is deemed to be sent and received, including the various circumstances in which it may not be received by the recipient but shall be deemed received (such as where the email is in the spam folder or was received outside office hours); and
- that the other party must be notified in the event the recipient email address is no longer valid.

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