

CONSTRUCTION LAW

Construction contract – Government construction contract – Whether exempted from the Construction Industry Payment and Adjudication Act 2012 (“the CIPA Act”) – Scope of exemption – Construction Industry Payment and Adjudication (Exemption) Order 2014

Mudajaya Corporation Bhd v Leighton Contractors (M) Sdn Bhd

[2015] 5 CLJ 848, High Court

Facts Tanjung Bin Energy Sdn Bhd had won a bid from the Energy Commission to carry out construction works. A turnkey agreement was made with its subsidiary company, Tanjung Bin Energy Issuer Sdn Bhd (“the subsidiary company”). The subsidiary company had, in turn, appointed a consortium of companies, including the plaintiff, as the contractor. The plaintiff had then appointed the defendant, as a sub-contractor, to carry out the works. A payment dispute arose between the plaintiff and defendant in which the defendant invoked the provisions of the Construction Industry Payment and Adjudication Act 2012 (“the CIPA Act”). The plaintiff, on the other hand, sought a declaratory order that the contract entered into between the parties fell within the terms of the Exemption Order¹ which provides for exemptions of government construction contracts.

Issue The issue was whether the contract in question was exempted from the application of the CIPA Act.

Held In dismissing the plaintiff’s application, the court ruled that the CIPA Act applies to all written construction contracts for construction works which are carried out in Malaysia, regardless of the parties, unless it has been shown that the contracting parties or the construction contracts in question are exempted. Only government construction contracts that (i) are built on urgent or emergency conditions and circumstances, or (ii) relate to national security or security related facilities, are exempted. In the present case, the construction contract was not exempted as it did not fulfil the requirements stipulated in the Exemption Order.

ZUL RAFIQUE & partners
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¹ The Construction Industry Payment and Adjudication (Exemption) Order 2014 exempts government construction contracts specified in the First Schedule from all the provisions of the CIPA Act.