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Commercial Litigation

## e-Lelong and Construction Adjudication in the Rules of Court

### Introduction

The Malaysian Courts' Rules Committee have just issued the Rules of Court (Amendment) 2018 amending the Rules of Court 2012 ("**the Amended Rules**"), which contains the rules governing High Court and Subordinate Courts proceedings in Malaysia.

The highlight of the Amended Rules concerns mainly 2 areas, the new web-based platform for Court auctions known as *e-Lelong* and the procedures in respect of applications to set aside, stay and enforce adjudication decisions in respect of the Construction Industry Payment and Adjudication Act 2012 ("**CIPAA**").

### E-Lelong

*What do the Amended Rules say?*

Order 31A Rule 3 of the Amended Rules states, quite simply, "An operation centre for the sales of immovable property to be known as e-Lelong Operation Centre is established".

Order 31A Rule 7 meanwhile states that in any matter relating to immovable property where it appears necessary or expedient that the immovable property should be sold, the Court may order that the sale shall be by way of e-Lelong system.

*What is e-Lelong?*

An online property auction platform for court auctions of immovable properties, e-Lelong was first launched as a pilot project in Kuantan in July 2017, with foreclosure cases registered at the Kuantan High Court being auctioned online.

With the e-Lelong system, bidders will have the ability to participate in auctions via the internet, without the need to physically attend to the Courts to make a bid. For greater ease of use, instead of bank drafts, bidders will have the option of using online banking.

According to the Chief Justice of Malaysia<sup>1</sup>, Tun Raus Sharif, e-Lelong will allow bidders to place bids without facing pressure, as the e-Lelong system will keep the identity of the bidders confidential, and should increase the public's chances of owning fixed assets, especially residential properties at a real value without price manipulation.

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<sup>1</sup> "Raus: *E-Lelong can prevent price manipulation*", Free Malaysia Today, 27 July 2017

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It must be said that as with any online platform, the launch of e-Lelong has not been fully plain sailing – although the Registrar of the High Court of Malaya issued Practice Direction No. 1/2017 on 14 March 2017<sup>2</sup> to the various courts in Peninsular Malaysia, setting out the procedures underpinning e-Lelong, a first launch of the system planned for March 2017 was postponed.

However, in a recent interview with the Star<sup>3</sup>, the Chief Registrar of the Federal Court, Datuk Seri Latifah Mohd Tahar, said that e-Lelong in Kuantan has been gaining traction, with 77 properties being registered on the platform since the introduction of the pilot project.

It now appears that by the middle of 2018, e-Lelong will cover all of the 14 High Courts in Peninsular Malaysia. Sabah and Sarawak have their own separate auction system, but Datuk Seri Latifah has said that the possibility of integrating that system with e-Lelong is being looked into. She has also informed that once the system is fully operational, everything will be done online, with three auctions set to take place in a day at 9am, 11am and 2.30pm.

By taking this step, Malaysia will be one of the few countries in the World to offer an online platform for property auctions, joining a club that includes the likes of China, India and the UAE. The new Order 31A in the Amended Rules is therefore a welcome amendment to the Rules of Court, as they set out in some detail, the Court's various powers in relation to e-Lelong.

## CIPAA

While the new Order 69A of the Rules of Court might not be a game-changer in the same way that the e-Lelong system could be, it nevertheless gives some much-needed clarity and certainty to the process of enforcing and/or contesting adjudication decisions once the CIPAA process is concluded.

Since its coming into operation in April 2014, CIPAA has revolutionized the construction industry, with its “pay first, argue later” ethos. With the main objective of CIPAA being to ease cashflow in the construction sector, main contractors and employers alike are now increasingly having to deal with payment claims from subcontractors for works done.

Under Order 69A, any application to enforce/set aside/stay an adjudication decision shall be made by way of an originating summons with a concise statement of the remedy claimed and any question on which the applicant is seeking the decision of the Court. The application is to be supported by affidavit the written evidence on which the applicant intends to rely in his application.

Worth noting in the Amended Rules is Order 69A Rule 6, which provides that the Court may give permission to serve an application to enforce/set aside/stay a CIPAA adjudication decision out of the jurisdiction.

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<sup>2</sup> Practice Direction No. 1/2017, High Court of Malaya, 14 March 2017

<sup>3</sup> “e-Lelong allows Malaysians to bid for property auctions online”, The Star Online, 11 February 2018

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**Conclusion**

The Amended Rules may have only just come into force, but we can predict with a reasonable degree of confidence that these changes will have implications for both practitioners as well as the public in the coming months. Businesses and organisations should keep themselves abreast of these amendments, as they will shape the timelines and procedures for matters relating to court foreclosures and CIPAA-related court applications respectively.

Please do not hesitate to contact our team should you have any queries.

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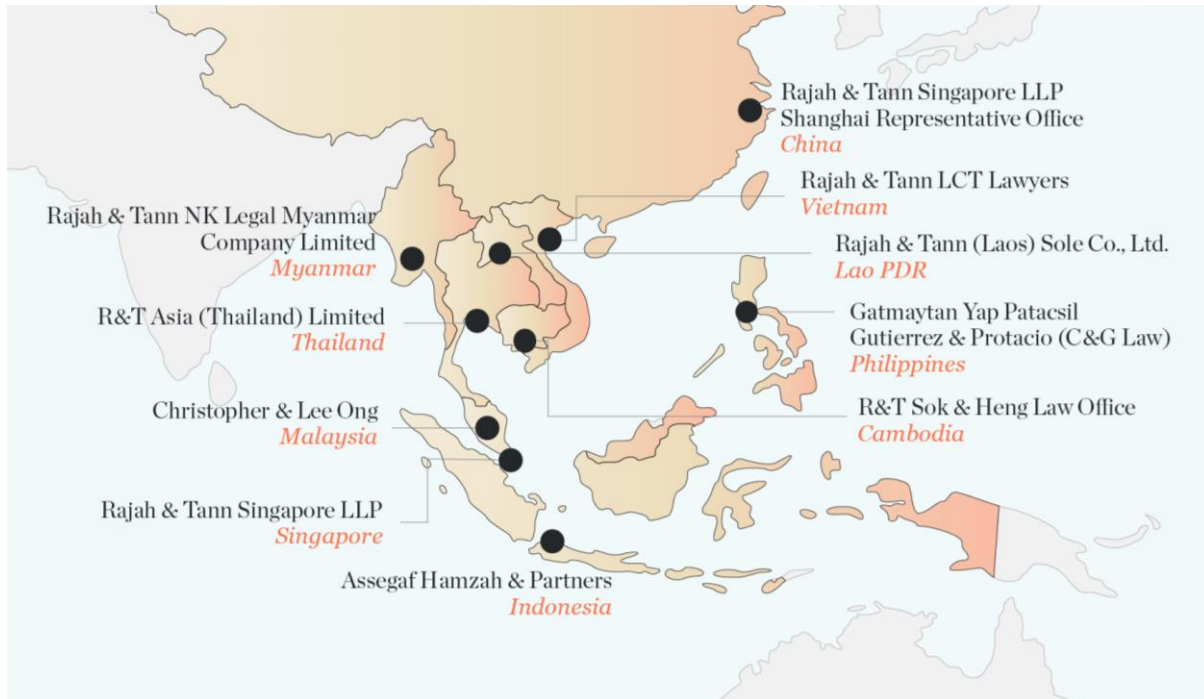
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