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WHEN DOES TIME BEGIN TO RUN?

Early Payment Claims, Deemed Service and Section 11(1)(*a*)

[2026] SAL Prac 25

This article examines an unresolved question under s 11(1)(*a*) of the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed). The question arises where a payment claim is served before the contractual date for service, but the construction contract provides that the time for a payment response runs from the receipt of the claim. A literal reading of the contract may produce a deadline for the payment response that expires before the claim is deemed served under s 10(3)(*a*) of the Act. This article considers the issue, contrasts a literal and a broader interpretive approach, and highlights the practical consequences for adjudication timelines.

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I. Introduction

1 This article considers an unresolved timing issue under s 11(1)(*a*) of the Building and Construction Industry Security of Payment Act 2004[1] ("SOPA"). The issue arises where a payment claim is served before the contractual date for service, but

1 2020 Rev Ed.

the construction contract provides that the period for serving a payment response runs from the respondent's receipt of the claim.

2 The difficulty is that actual receipt and statutory deemed service may point to different dates. On a literal reading of the contract, time for the payment response may begin to run from the date of actual receipt. However, under s 10(3)(*a*) of the SOPA, an early payment claim is deemed to have been served only on the contractual date for service. This can produce the anomalous result that the payment response deadline expires before the payment claim is deemed served for the purposes of the SOPA.

3 This article suggests that the better view is that the statutory deeming mechanism should prevent an early payment claim from accelerating the respondent's payment response deadline. On that approach, the payment response period should not begin earlier than the date on which the payment claim is deemed served under s 10(3)(*a*). That conclusion is more consistent with the purpose of the deeming provision and with the reasoning in *Hiap Seng Building Construction Pte Ltd v Hock Heng Seng Contractor Pte Ltd*[2] ("*Hiap Seng*"), although parties' subsequent conduct may still give rise to estoppel arguments that affect whether an early payment response can later be challenged.

4 The specific question examined here appears not to have been squarely decided by the courts, nor addressed in the commentaries on s 11 so far. *Hiap Seng* was itself a decision under s 11(1)(*b*), where the time for a payment response runs solely from the deemed date of service. The court was not asked to consider a contractual response date, measured from receipt, that falls before that deemed date. That interaction arises only under s 11(1)(*a*), and it remains open.

2 [2024] 4 SLR 940. The construction contract in *Hiap Seng Building Construction Pte Ltd v Hock Heng Seng Contractor Pte Ltd* [2024] 4 SLR 940 did not provide a date for the service of a payment claim. The payment claim was served on 5 July 2023 and thus deemed served on 31 July 2023. The payment response was served on 27 July 2023 before the deemed date of service of the payment claim. The payment response was held to be invalid. This judgment is discussed in detail in Edwin Lee Peng Khoon, "It is About Time" [2024] SAL Prac 19.

II. The literal approach

5 Take the following example. A construction contract provides that progress payment claims must be submitted on the 25th day of each month, and that payment responses must be issued within 21 days after receipt of the payment claim.[3] The claimant serves a payment claim on 2 March 2026. The respondent serves its payment response on 14 March 2026.

6 Because the contract specifies the date for the payment response, s 11(1)(*a*) applies.

7 Section 11(1)(*a*) provides that a respondent must serve a payment response "by the date as specified in or determined in accordance with the terms of the construction contract, or within 21 days after the payment claim is served under section 10, whichever is the earlier". Section 11(1)(*a*) therefore requires two dates to be determined: first, the contractual deadline for the payment response; and second, the deadline for the payment response falling 21 days after service of the claim under s 10 of the SOPA. The earlier of those two dates is the operative deadline.

A. The first limb of section 11(1)(a)

8 On a literal reading of the contract, "receipt" ordinarily refers to the respondent's actual receipt of the payment claim, which is on 2 March 2026. The contractual deadline for the payment response would therefore be 24 March 2026.[4] On that footing, the first limb of s 11(1)(*a*) points to 24 March 2026 as the due date for the payment response.

3 One example of a similar clause is cl 40(3) of the SIA Building Contract 2016 (Without Quantities) stating that: "The Employer shall be entitled to serve a payment response as defined in the Section 11 of the SOP Act within 21 calendar days of receipt of the aforesaid payment claim from the Contractor."

4 Taking into account the one-day public holiday (Hari Raya Puasa) on 21 March 2026.

B. *The second limb of section 11(1)(a)*

9 The second limb – "within 21 days after the payment claim is served under section 10" – requires attention to the statutory date of service under s 10.

10 The relevant provisions are ss 10(2)(*a*)(i) and 10(3)(*a*) of the SOPA. Section 10(2)(*a*)(i) requires a payment claim to be served not later than the contractual date for service, while s 10(3)(*a*) provides that a payment claim served before that date is deemed to have been served on the contractual date.

11 Applying those provisions, the payment claim, although actually served on 2 March 2026, is deemed to have been served on 25 March 2026.[5] On the assumed facts, the second limb therefore produces a deadline of 16 April 2026, being 21 days after 25 March 2026, excluding the relevant public holiday.[6]

C. *The operative deadline*

12 If the contract is read literally for the purposes of the first limb of s 11(1)(*a*), the earlier of the two dates is 24 March 2026. That date would therefore be the operative deadline for the payment response.

13 On that analysis, the dispute settlement period would begin on the following day. The difficulty is that the operative deadline for the payment response would arise before the payment claim is deemed served under s 10(3)(*a*).

D. *Difficulties with the literal approach*

14 That result is difficult to reconcile with both s 10(3)(*a*) and *Hiap Seng*. In *Hiap Seng*, the General Division of the High Court held, in the context of s 11(1)(*b*), that a payment response served before the deemed date of service was invalid because

5 See *Asia Grand Pte Ltd v AI Associates Pte Ltd* [2023] SGHC 175 at [45], where the court endorsed this interpretation of ss 10(2)(*a*)(i) and 10(3)(*a*).
6 The relevant public holiday is Good Friday falling on 3 April 2026.

there could be no response before the payment claim had come into existence for the purposes of the SOPA. A literal approach to s 11(1)(*a*) would, however, produce precisely that anomaly.

15 The root of the difficulty comes from the SOPA. For payment claims, the SOPA supplies both a date for service and a deeming rule: s 10(2)(*a*) fixes the date, and s 10(3)(*a*) deems an early claim to have been served on that date. For payment responses, there is no equivalent in the SOPA or in the Building and Construction Industry Security of Payment Regulations.[7] The timing of a payment response is governed entirely by s 11(1), with no statutory mechanism to move an early response forward to a "deemed" date that corresponds with the deemed date of service of the claim. The literal approach exposes this asymmetry: the deeming rule that protects an early claim has no counterpart that aids an early response.

III. The broader approach

16 A broader approach would construe the contractual phrase "receipt of the payment claim" in a manner that accommodates the deeming mechanism in s 10(3)(*a*). On that approach, where a payment claim is served early, the contractual clock for the payment response would not begin to run until the claim is deemed served under the SOPA.

A. The first limb revisited

17 On this reading, "receipt" in the contract is effectively treated as receipt for the purposes of the SOPA, *ie*, receipt on the deemed date of service under s 10(3)(*a*). The date of "receipt" would therefore be 25 March 2026, and the contractual deadline for the payment response would be 16 April 2026.

7 2006 Rev Ed.

B. The second limb unchanged

18 The second-limb analysis does not change. On the assumed facts, it still yields a deadline of 16 April 2026.

C. The operative deadline

19 On this approach, both limbs converge on the same date: 16 April 2026. This date would be the deadline for providing the payment response.

D. Difficulties with the broader approach

20 The broader approach is not free from difficulty. It requires the contractual language to be read in a way that departs from its ordinary meaning, by treating "receipt of the payment claim" as equivalent to deemed service under s 10(3)(*a*). Whether this is justified will depend on the principles of contractual interpretation.

21 That may be difficult to establish in the context of an adjudication, which is designed to provide a speedy interim determination. Contractual interpretation is a fact-sensitive exercise that turns on the objective intentions of the parties and the relevant context known to them at the time of contracting.[8] An adjudicator may therefore be reluctant, in a summary process and without the benefit of full evidence, to adopt an interpretation that departs from the ordinary meaning of the contractual words.

22 A similar outcome might be reached by implying a term that, where a payment claim is served early, the respondent is not required to serve its payment response any earlier than if the claim had been served on the contractual date (a "no earlier payment response" term).[9]

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8 See *CIFG Special Assets Capital Ltd v Ong Puay Boon* [2018] 1 SLR 170 at [19] for the general principles of contractual interpretation.

9 One example is cl 18.5 of the REDAS Design and Build Conditions of Sub-Contract (2nd Ed).

23 However, terms are implied only in limited circumstances. It is not enough that the proposed term would be reasonable or desirable. Broadly, there must be a true gap in the contract, and the implication must be necessary to make the contract work in a practical and commercial sense.[10]

24 The position is further complicated by estoppel.

25 *Hiap Seng* shows that, even where an early payment response is technically invalid, estoppel may prevent a party from objecting to it.[11]

26 In the present scenario, if the claimant under the broader approach does not object to an early payment response served on the timeline derived from the literal approach, the claimant may later be estopped from challenging its validity. If so, the dispute settlement period will run from the earlier date, with consequential effects on the time of lodgment of an adjudication application.

IV. An alternative approach within Building and Construction Industry Security of Payment Act 2004?

27 Beyond the literal and broader approaches set out above, there is another approach which could be argued, *ie*, that the case falls to the statutory default timelines for a response.

28 Where the contractual date for the response cannot sensibly operate within the SOPA, it might be said that the contract contains no workable provision for the date of service of a payment response to a payment claim deemed served under s 10(3)(*a*), so that the position is governed by s 11(1)(*b*), being 14 days after deemed service of the claim. On the assumed facts, that would produce a deadline of 9 April 2026, applying

10 See *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [101] for the matters that the court will consider for the implication of terms.

11 See *Hiap Seng Building Construction Pte Ltd v Hock Heng Seng Contractor Pte Ltd* [2024] 4 SLR 940 at [39] where the issuer of the payment response was held to be estopped from denying its validity because it had failed to raise an objection when it was in a position to do.

the same public holiday adjustment for Good Friday (3 April 2026) adopted above. The difficulty in this argument is that the contract plainly does contain a provision governing the deadline for the payment response, so the precondition for s 11(1)(*b*), that the contract "does not contain such provision", is not met unless the contractual provision is first taken to be ineffective for this purpose.

29 To resolve this, it might be arguable that the anti-avoidance provision in s 36 of the SOPA voids the payment response provision in the contract. Section 36 renders void any provision under which the operation of the SOPA or any part of the Act is, or is purported to be, excluded, modified, restricted or in any way prejudiced, or that has the effect of excluding, modifying, restricting or prejudicing the operation of the SOPA or any part of the SOPA. If a receipt-based response date would, in operation, require a response before the claim is deemed served, and so would not be a payment response to the payment claim, an argument can be made that the provision may be void to that extent, leaving the statutory timeline to operate (*ie*, 14 days after deemed service to provide the payment response).

V. Estoppel and the consequences of early service

30 The analysis above raises two other distinct questions. The first is whether the early payment claim is valid. The second is whether an early payment response, served on the timeline produced by the literal approach, is valid or may nevertheless be relied upon because of the parties' subsequent conduct.

31 As to the first question, the better view is that an early payment claim is not invalid merely because it was served before the contractual date for service. Section 10(3)(*a*) was introduced to address that very situation by deeming the claim to have been served on the contractual date.[12] The more difficult question is

12 Zaqy Mohamad, Minister of State, Second Reading speech on the Building and Construction Industry Security of Payment (Amendment) Bill (2 October 2018) <https://www1.bca.gov.sg/resources/newsroom/second-reading-speech-by-mos-zaqy-mohamad-on-the-building-

(cont'd on the next page)

therefore not whether the early claim is invalid, but whether the claimant's subsequent conduct may prevent it from relying on the statutory deemed service date.[13]

32 That question should be approached with caution. Estoppel should not be used lightly to defeat the operation of the SOPA, particularly where the statutory provision is designed to regulate the timing of payment claims and payment responses. Whether estoppel can operate in this context may depend on whether the relevant statutory provision is characterised as imposing a mandatory statutory requirement or as conferring a right or privilege that a party may be precluded from asserting by its conduct.[14]

33 Even so, estoppel may have a more limited role in relation to the validity of an early payment response. If the claimant receives an early payment response, does not object to it, and acts on it, *eg*, by commencing dispute settlement negotiations or issuing a tax invoice on the basis of the certified amount – the claimant may face an argument that it is estopped from later challenging the payment response as premature.

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and-construction-industry-security-of-payment-amendment-bill/> (accessed 26 August 2026); Explanatory Statement to the Building and Construction Industry Security of Payment (Amendment) Bill (Bill No 38/2018).

13 It is established law in Singapore that estoppels may operate to defeat statutory rules: see *Cupid Jewels Pte Ltd v Orchard Central Pte Ltd* [2014] 2 SLR 156; *The Enterprise Fund III Ltd v OUE Lippo Healthcare Ltd* [2019] 2 SLR 524; and *Tanoto Sau Ian v USP Group Ltd* [2023] 5 SLR 909.

14 See *Tanoto Sau Ian v USP Group Ltd* [2023] 5 SLR 909 at [41] where the General Division of the High Court opined that:

> If the statutory rule confers a duty on the parties, then an estoppel cannot arise to stop its application because individuals cannot be estopped from performing duties. In contrast, if the statutory rule merely recognises the rights and privileges of the parties in a particular situation, then an estoppel can apply in that case.

Tanoto Sau Ian v USP Group Ltd [2023] 5 SLR 909 concerned the application of s 176(1) of the Companies Act 1967 (2020 Rev Ed). Under this section, only registered members can requisition an extraordinary general meeting. The beneficial owners sought to argue that the other members of the company were estopped from denying that the beneficial owners are "members" for the purposes of s 176(1) of the Companies Act 1967 (2020 Rev Ed).

34 This is analytically different from saying that the early payment claim itself is invalid, or that s 10(3)(*a*) can be contracted out of. The point is narrower: a party's conduct after service of an early response may affect whether that party can later object to the response or to the consequential timeline for the dispute settlement period and adjudication application.

35 The practical consequence is that parties should not assume that the statutory deeming provision and estoppel operate in the same way. The deeming provision addresses when an early payment claim is treated as served under the SOPA. Estoppel, if available, is more likely to arise from the parties' later conduct in response to an early payment response.

VI. Conclusion

36 The difference between the literal, broader, and alternative approaches is not merely theoretical. On the assumed facts, the three approaches produce payment response deadlines that are almost up to a month apart, with corresponding shifts in the dispute settlement period and the adjudication application lodgment window. A mistaken view of the operative timeline may therefore invalidate an adjudication application or expose a payment response to challenge. The competing timelines are summarised below.

Event	**Date (Literal Approach)**	**Date (Broader Approach)**	**Date (Alternative Approach)**
Contractual date for service of payment claim	25 March 2026	25 March 2026	25 March 2026
Actual service of payment claim	2 March 2026	2 March 2026	2 March 2026

Date of service of payment claim	2 March 2026	25 March 2026	25 March 2026
Deadline for payment response	24 March 2026 (excluding Public Holiday on 21 March 2026)	16 April 2026 (excluding Public Holiday on 3 April 2026)	9 April 2026 (excluding Public Holiday on 3 April 2026)
Dispute settlement period[15]	25–31 March 2026	17–23 April 2026	10–16 April 2026
Entitlement to lodge adjudication application first arises[16]	1 April 2026	24 April 2026	17 April 2026
Period for lodgment of adjudication application[17]	2–9 April 2026 (excluding Public Holiday on 3 April 2026)	25 April–1 June 2026	18–25 April 2026

37 Until the point is clarified judicially, parties should avoid treating actual early receipt of a payment claim as automatically accelerating the timelines under the SOPA. The safer course is to align subsequent steps with the statutory deemed service date of the claim, while expressly reserving rights or raising objections if the other party proceeds on a different timeline.

15 Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) s 12(6).
16 Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) s 13(3)(*a*). In *HP Construction & Engineering Pte Ltd v Mega Team Engineering Pte Ltd* [2024] 1 SLR 220, it was confirmed that the claimant's entitlement to make an adjudication application first arises on the day after the last day of the dispute settlement period.
17 Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) s 13(3)(*a*).

38 In practical terms, claimants should avoid serving payment claims early where possible, and should promptly object if an early payment response is served before the deemed service date. A claimant who receives an early payment response and does not object to it should be aware that its silence may give rise to estoppel arguments that could prevent it from later challenging the validity of the response. Respondents should not assume that actual early receipt starts the response clock, and should consider expressly reserving their position on timing if they respond early.

39 At the contract drafting stage, parties can reduce uncertainty by including a "no earlier payment response" clause or stating expressly that the payment response period runs from service or deemed service of the claim under the SOPA. Clear drafting is preferable to leaving the issue to be resolved under compressed adjudication timelines.