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Foreword

Greetings, legal enthusiasts, business owners, fellow counsels, and learned friends! Welcome to the March 2024 edition of Empower, your reliable source of Malaysian law updates.

As we bid farewell to an exciting end to the first quarter of 2024, we present to you the latest updates navigating the business landscape in Malaysia and beyond, as seen through the lens of practitioners.

In this issue, we remain steadfast in our mission to keep you well-informed and empowered with invaluable insights and updates from the legal domain. Our dedicated team of experts has meticulously crafted a collection of 9 knowledge-rich articles covering a diverse array of topics, ranging from capital markets and real estate to technology and dispute resolution, plus more!

We understand the importance of staying ahead in today's ever-evolving business environment. Therefore, we strive to provide you with timely and pertinent content that addresses your legal queries and assists you in making well-informed decisions.

Your feedback and suggestions are immensely valuable to us. Please don't hesitate to reach out to us at newsletter@hhq.com.my with any questions or topics you would like us to cover in future editions.

Thank you for your continued support, and we hope you find this newsletter both informative and beneficial.

Warmest regards (literally and figuratively), and Selamat Hari Raya Aidilfitri from all of us at HHQ and HLP!

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Disposal of Real Properties Subject to Income Tax?

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Recently in the case of ***International Naturopathic Bio-Tech (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2024] 2 CLJ 519**, the Court of Appeal ("**CoA**") in considering whether a disposal of assets is subject to income tax or real property gains tax ("**RPGT**"), assessed the factual matrix of the case using the "badges of trade" methodology. In essence, the CoA held that the disposal of the Properties (defined below) is subject to income tax and not RPGT.

Background Facts

1. International Naturopathis Bio-Tech (M) Sdn Bhd ("**the Taxpayer**") was involved in naturopathic medicine, which bought six different shop lot units (3 shoplots in Block A and 3 shoplots in Block B) ("**Properties**").

2. The delivery of vacant possession of the Properties was made in August 2010 and the Taxpayer sold the Properties respectively in June 2011 and August 2011.

3. The Director of Inland Revenue ("**DGIR**") in 2014 raised a notice of assessment in respect of the disposal of the properties amounting to RM543,906 for the year of assessment 2011.

4. The issue in dispute was whether the disposal of the properties was subject to RPGT or income tax.

5. The Special Commissioner of Income Tax ("**SCIT**") and the High Court ("**HC**") held that the disposal of the properties was subject to income tax. Being dissatisfied, the Taxpayer filed the appeal to the CoA.

Decision

6. The CoA confirmed the decision of the SCIT and HC and held that, amongst others, the disposal of the Properties subject to income tax and not RPGT as:

   a) the Properties were sold within a short period of time (i.e. 6 months and 12 months after delivery of vacant possession;

   b) no effort was done to look for a tenant;

   c) disposal of the Properties was not undertaken to help pay for the Taxpayer's medical bills;

   d) the intention of buying the Properties is to trade as (i) the purchase of the Properties was financed by the loans taken by a director and not the Taxpayer; and (ii) the Properties located at a strategic business location area;

   e) the Taxpayer gave no evidence of a change in the 'intention';

   f) the Taxpayer face no difficulty in selling the Properties within such short period of time; and

   g) accounting evidence is not conclusive.

Comments

This is a classic RPGT vs income tax case. For decades, taxpayers have been in tug-of-war with the DGIR in determining whether a disposal of a real property is subject to income tax or RPGT.

In this case, the CoA succinctly laid down the following badges of trade:

i. Intention or the motive of the purchase of the property which is subsequently disposed of;

ii. Subject matter/nature of the asset disposed of;

iii. Interval of time between purchase and sale/Length of period of ownership;

iv. Number or frequency of transactions;

v. Changes made to the asset would make it more saleable;

vi. The circumstances responsible for the realisation of the property;

vii. Method of finance for the purchase of the property;

viii. Existence of similar trading transactions or interests; and

ix. The way the sale or disposal was carried out.

Notably, CoA also made the following key observations on the application of the badges of trade:

a) these badges are merely a guide which assists the deliberation as to whether a set of facts and circumstances would constitute a trade or an adventure in the nature of trade;

b) no one single badge of trade is usually conclusive or determinative;

c) it is also not uncommon that the application of one badge may lead to one answer but that of another results in another, potentially contradictory conclusion;

d) deliberation involves the interplay of the combination of the various badges of trade, and the weight attached to each badge of trade will depend on the precise circumstances of the case; and

e) it is also fair to say that the more badges of trade can be fastened on a transaction making it more likely that the transaction will be construed as a trade and thus subject to income tax.

This case serves as good guidance in applying the badges of trade and understanding the interaction between these badges. Remember, no one single badge of trade is conclusive and accounting evidence itself is not conclusive.

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Credit Reporting Agencies Are Not Authorised to Formulate Their Own Credit Score

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On 7.3.2024, the Kuala Lumpur High Court in the case of **Suriati Binti Mohd Yusof v CTOS Data Systems Sdn Bhd *(Civil Suit No. WA-23NCvC-8-01/2020)*** ruled that credit reporting agencies are not empowered to formulate a credit score or create their own criteria/ percentage to formulate a credit score.

The High Court found that the credit reporting agency in this case provided inaccurate/ false credit information and awarded a sum of RM200,000 as general damages to the person whom the credit information was related to.

Background Facts

The Plaintiff, Suriati Binti Mohd Yusof, is the director and shareholder of a resort situated in Terengganu.

The Defendant, CTOS Data Systems Sdn Bhd, is a credit reporting agency registered under the Credit Reporting Agencies Act 2010 (Act 710) ("**CRAA 2010**"). The Defendant is responsible for collating credit reports from various sources for the purpose of disseminating the information to its subscribers.

On or around May 2019, the Plaintiff discovered that her loan application for a car was rejected due to a negative report from the Defendant. The Plaintiff further discovered that the data collated and kept by the Defendant was inaccurate and false, which led to her negative credit rating.

The Defendant also gave the Plaintiff a low credit score leading to loss of confidence from financial institutions.

The Plaintiff filed a civil suit in the High Court against the Defendant to claim for damages suffered as a result of the Defendant's negligence and breach of fiduciary duty in misrepresenting her credit rating leading to a loss of reputation, personal losses as well as business losses.

The Plaintiff contended that as a result of the inaccurate information and wrong credit score provided by the Defendant, the Plaintiff was considered as not creditworthy and suffered losses.

The Defendant contended that the Defendant's role was merely to collate the information and it was not the duty of the Defendant to verify the accuracy of the information.

Grounds of Judgment of the High Court

1. Accuracy of Credit Information

The High Court observed that pursuant to the CRAA 2010, the Defendant as a credit reporting agency is tasked with the main role of collecting, recording, holding and storing credit information. The Defendant is also empowered to disseminate the information to its subscribers, which includes financial institutions.

The High Court ruled that Section 29 of the CRAA 2010 imposes a duty upon the Defendant to verify and to ensure the accuracy of the credit information/ credit report.

Further, CRAA 2010 was enacted to empower credit agencies such as the Defendant to provide accurate information to financial institutions in approving and disbursing financial aid to applicants. Therefore, the Defendant had a duty of care to provide accurate credit information to financial institutions and the persons concerned against whom the information was related to. The Defendant owed a duty of care towards the Plaintiff in providing accurate credit information.

The evidence in this case showed that the Plaintiff alerted the Defendant that the information against her was inaccurate. However, the Defendant ignored the communication from the Plaintiff and continued to

maintain the inaccurate information. The High Court was of the view that the Defendant could have suspended the information pending verification or notify subscribers that the information was pending verification.

The High Court ruled that the Defendant breached the duty of care owed towards the Plaintiff as the Defendant was indifferent even after being alerted by the Plaintiff.

2. Credit Score Formulated by Credit Reporting Agencies

The Defendant formulated a credit score based on certain criteria which include payment history, amount owed, credit history length, credit mix and new credit. Using this criteria, the Defendant classified the Plaintiff as a serious delinquent.

The High Court held that there is no provision in the CRAA 2010 which empowered the Defendant to formulate a credit score or create its own criteria/ percentage to formulate a credit score. The Defendant is just supposed to be a repository of the credit information to which its subscribers have access to.

By formulating a credit score, the Defendant has gone beyond its statutory functions. The Plaintiff suffered losses as a result of being labeled as a delinquent by the Defendant when the Defendant did not have the right to do so.

3. Compensation Awarded by the High Court

The High Court held that the Defendant had (i) breached the duty of care owed to the Plaintiff; and (ii) overstepped the functions they were registered for under the CRAA 2010.

The High Court ruled that the Plaintiff suffered personal losses. The Plaintiff's reputation and relationship with her spouse had broken down as a result of the Defendant's negligence and breach of fiduciary duties.

The High Court awarded the sum of RM200,000 as general damages and costs of RM50,000 to the Plaintiff.

Note: The Defendant has filed an appeal against the decision of the High Court to the Court of Appeal. This matter will be heard before the Court of Appeal.

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Private Hospitals to pay for their Doctor's Negligence

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In the recent case of **Siow Ching Yee v Columbia Asia Sdn Bhd [2024] 3 MLRA 208**, the Federal Court held that private hospital owes a non-delegable duty of care to patients. The court rejected the hospital's defence of independent contractor and increased the quantum to RM4.5 million to be paid by the hospital.

Non-delegable duty of care

1. The claim in this case is based on the tort of negligence. The law of tort is based on a fault-based system where it imposes liability on the wrongdoer, also known as the tortfeasor. Ordinarily, the law does not hold one accountable for the actions or inactions of another.

2. Conversely, a non-delegable duty of care is where the usual principle is displaced under certain circumstances. While a party can generally assign its responsibilities to an independent third-party contractor, the principle of non-delegable duty of care arises in situations where such duty cannot be delegated away, even if the duty is performed by an independent contractor.

Brief facts

3. The Appellant patient underwent a series of medical procedures including tonsillectomy, palatal stiffening and endoscopic sinus surgery at the Subang Jaya Medical Centre ('SJMC') on 10.3.2010. At about 3.30 a.m. on 22.3.2010, the Appellant experienced bleeding at the operation site and was brought to the emergency department of Columbia Asia Hospital (Puchong), the Respondent.

4. He was attended to by a medical officer and later by a Consultant Ear, Nose, and Throat surgeon ("**Dr. M**"), and a Consultant Aaesthetist ("**Dr. N**").

5. Complications arose before the surgery began. In the airlock area outside the operating theatre, the Appellant started vomiting copious amount of blood and there was profuse bleeding leading to the Appellant's collapse and the subsequent emergency resuscitation.

6. The intended surgery was performed. Unfortunately, the Appellant suffered hypoxic brain damage. After surgery, the Appellant was admitted to the intensive care unit of the Respondent for continued post-surgical care and management, and was later transferred out to SJMC on 28.3.2010.

7. The Appellant is now permanently mentally and physically disabled due to massive cerebral hypoxia. Through his wife, the Appellant initiated a suit against Dr. M, Dr. N and the Respondent hospital at the High Court for negligence and breach of duties under the Private Healthcare Facilities and Services Act 1998 ('Act').

8. The Appellant alleged that the Respondent is vicariously liable for the negligence of Dr. M and Dr. N, and is also directly liable for breach of its non-delegable duty of care.

9. In response, the Respondent asserted that its responsibility was merely to ensure the provision of facilities and medical equipment, including nursing staff. The 2 medical practitioners carried out their respective medical practice at the Respondent hospital as independent contractors under contracts for services. As such, all diagnosis, medical advice including material risks and known complications, medical treatments, operations and referrals are the doctors' own responsibilities.

High Court and Court of Appeal

10. Both the High Court and Court of Appeal found that only Dr. N was liable for negligence due to her conduct falling below the standard of skill and care expected from an ordinary competent doctor professing the relevant specialist skills based on which she was entrusted to treat the Appellant.

11. On the issue of vicarious liability and direct non-delegable duty of care, the court found that Dr. M and Dr. N were carrying out their practice at all material times in the hospital not as employees, servants or agents of the Respondent but as independent contractors. Hence, the Respondent is not liable for the negligence of Dr. N.

12. The High Court awarded damages of approximately RM1.9 million to the Appellant. The Court of Appeal later increased the damages to approximately RM2.1million to the Appellant.

13. Both the Appellant and Dr. N appealed. The Court of Appeal dismissed the appeal against the Respondent hospital. Dr. N's appeal was also dismissed.

Analysis and findings of the Federal Court

14. The appeal filed by the Appellant at the Federal Court is only in respect of the Respondent only.

15. A total of 7 questions were posed to the court and as summarised by the majority of the Federal Court Judges, the focus of the appeal was whether the hospital owes an independent duty of care which is non-delegable, regardless of whom it may have delegated that duty to, irrespective of who may have performed the act or omission complained of, whether under a contract for service or due to the patient's own choice.

16. It was emphasised by the court that the principle of non-delegable duty of care becomes relevant only if presence of negligence is shown in the first place. Here, the High Court and the Court of Appeal had held Dr. N to be negligent.

17. In affirming that the principle of non-delegable duty of care applies to the present appeal, the Federal Court adopted and refined the five features laid down by Lord Sumption in the English case of ***Woodland v Swimming Teachers Association & Others* [2014] AC 537**. The court held:-

    a. Firstly, the Appellant is in a **vulnerable position** and is totally **reliant** on the Respondent for its care and treatment, more so when the Appellant was admitted to its emergency services.

    b. Secondly, the **existence of an antecedent relationship** is affirmed by the assumption of positive duties by the Respondent in ensuring that reasonable care is taken to persons who knock on its door and seek treatment and care.

        i. Echoing its judgment in ***Dr Kok Choong Seng & Anor v Soo Cheng Lin & Another Appeal* [2018] 1 MLJ 685**, the court emphasised Act and the related regulations clearly envisage that private hospital is and remains responsible for not just the efficacy of premises or facilities, but also for the treatment and care of patients, regardless of how and who the responsibility may have been delegated to. Furthermore, the hospital held itself out as a one-stop-centre for all treatments and procedures on its website.

        ii. Unlike the English case of ***Woodlands*** which applied a further consideration as to 'whether it is fair, just and reasonable to impose the non-delegable duty of care' in addition to the five features, our Federal Court held that such elements of fair, just and reasonable had already been considered and embedded in the Act and its related regulations. Hence, there is no need for a separate exercise of consideration.

    c. Fourthly, the Appellant had no control over how the Respondent was to perform its function rendering emergency care and treatment.

    d. Fifthly, Dr. N was undeniably negligent in the performance of the very function of rendering proper emergency care and treatment of the Appellant that was assumed by the Respondent but which was delegated by the Respondent to her.

18. In short, the Federal Court held that private hospitals cannot put the blame on its doctors in the name of contracts. They have a duty of care which cannot be delegated. The Federal Court allowed the Appellant's appeal against the Respondent, and increased the damages to RM4.5million.

CONCLUSION

The Federal Court ruling would have an impact on the private hospitals and doctors in Malaysia in the following ways:-

a. The indemnity clause within consultant agreements between private hospitals and their doctors may now seem to be redundant.

b. Private hospitals would now be the ultimate paymaster for their consultants' negligence.

c. It is essential for private hospitals to reassess their insurance coverage and implement systems and procedures to prevent medical errors.

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Security Issues in the Secondary Market

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What is Secondary Market
The secondary market refers to a financial market where investors trade previously issued financial instruments and securities after a company has made an initial public offering of its securities on the primary market. It is a market where securities that were previously sold in the primary market are traded among investors rather than being sold directly by the issuing company.

The secondary market facilitates liquidity for investors, allowing them to sell their securities readily and expeditiously should the need arise to access funds.

As such, the terms 'secondary market' and 'stock market' or 'stock exchange' are used interchangeably.

Capital Raising Securities
Upon successfully floating its securities through a primary market transaction and securing a listing of its securities on Bursa Malaysia, a diverse array of alternative capital-raising opportunities emerges. These avenues allow the company's shareholders and the market at large to be approached for additional issuances of equity and debt securities.

Modes of Issuing Securities
Listed companies have at their disposal a range of methods to issue additional securities. While some of these issues may be aimed at raising equity capital to facilitate business expansion or diversification, others serve different purposes. The following are brief discussions of some of these modes of issuing securities on the secondary market.

Public Issue
A public issue represents the issuance of new shares available for public sale at a price agreed by the issuer and its Principal Adviser.

Rights Issue
The issuance of new shares to existing shareholders for cash, typically at an advantageous price (discounted from the current pre-announcement market price), constitutes a right issue.

It is a requirement that a rights issue is renounceable, allowing shareholders to either subscribe to the new shares or sell their rights, in whole or in part, to a third party on Bursa Malaysia. Additionally, any rights issues without irrevocable written undertakings from shareholders to subscribe to their full entitlement must be underwritten.

Private Placement
A private placement involves the issuance of securities that are not available to the general public but are instead offered to independent parties who are not under the control or influence of the issuer's directors or substantial shareholders.

The pricing of these securities is typically based on the weighted average market price of the shares over the preceding five days before the placement takes place.

Issues for Acquisitions, Take-overs, Mergers
The issuance of shares for acquisitions, take-overs, mergers of another company involves offering shares to acquire assets or capital from the other entity. This process may lead to dilution of existing shareholders' holdings, prompting the listed issuer to negotiate for the highest possible value for their shares to mitigate the dilution impact.

Issue of Shares from Conversion of Warrants and Convertibles
This is an additional issue of shares to holders of other classes of securities (such as warrants and convertible securities) upon exercise or conversion of securities held. When they are issued, warrants are usually bundled together with debt securities (particularly bonds).

The holder of a warrant has the right to purchase a proportional quantity of shares from the issuing company at a pre-established price during a specified timeframe.

Convertible securities, on the other hand, are a form of deferred equity. The company can secure funds upon issuance, while the holder of convertible loans has the option to convert them into company shares at a predetermined price within a specified timeframe.

Warrants and convertible securities are commonly issued by companies undertaking projects with extended development periods. The issuance is strategically timed so that the expiration of warrants or convertible securities, which results in the issuance of additional company shares, aligns with the period when potential earnings from the projects begin to materialize. As a result, the subsequent issuance of shares is anticipated to be strengthened by the increased earnings of the company.

Issue of shares from ESOS
Certain companies offer Employee Share Option Scheme (ESOS) to their staff, aiming to, amongst other things, foster allegiance and loyalty to the organization. This

grants employees the opportunity to acquire a specified quantity of company shares within a timeframe, up to a maximum of 10 years, at a predetermined exercise price.

Bonus Issue

This is an offer given to the existing shareholders of the company to subscribe for additional shares at zero cost in specified proportion of shares that they already held.

Bonus issue does not involve any cash outflow, rather only book entries in the accounts of the company for the transfer of the company's retained profits or reserves available to the share capital account to pay up the bonus shares which are to be distributed to the shareholders. Thus, there are no changes to the worth of the company.

Legal dimensions, their Objectives, and Safeguarding Investors

The legal dimensions pertaining to securities issuance in the secondary market in Malaysia encompass a diverse array of regulations and factors, all directed towards the objectives of fostering transparency, equity, and safeguarding the interests of investors. Essential legal facets governing this area is discussed below.

Regulatory Framework

Securities issuance within the secondary market is governed by an extensive regulatory framework established by authorities such as the Securities Commission Malaysia (SC) and Bursa Malaysia. These regulations outline the requirements and processes on the issuance, trading and listing of securities on the secondary market.

Chapter 6 of Bursa Malaysia's Listing Requirements sets out the requirements that must be complied with by the company for any new issue of securities.

Companies seeking to issue new securities is required to submit to Bursa Malaysia an application for the listing of and quotation of the new shares to be issued as well as seek its shareholders' approval prior to such issuance of securities and adhere to the specific requirements as set out in Chapter 6 of the Listing Requirements.

Disclosure Obligations

Issuers of securities on the secondary market are typically mandated to furnish exhaustive and precise information to investors. This entails providing, inter alia, financial statements, reports, prospectuses, information memorandums and other pertinent disclosures to enable investors to make informed investment decisions.
Chapter 9 of the Listing Requirements mandates that any proposed issue or offer of securities must make an immediate announcement to Bursa Malaysia and such announcement must contain all information as set out in Part A of Appendix 6A of the Listing Requirements.

Prevention of Insider Trading and Market Manipulation

Legislative and regulatory provisions are in place to prohibit insider trading and market manipulation, safeguarding against the unauthorized exploitation of confidential information or the manipulation of security prices for personal gain. These measures are implemented to maintain market integrity and ensure fair treatment of all investors.

Insider trading happens when an individual holds confidential information that, if disclosed, would significantly impact the price or value of the company's securities, and then engages in trading or transactions involving those securities.

According to the Capital Markets Act 2007, insider trading constitutes a criminal offence. If convicted under sections 188(2) or (3), the perpetrator faces a minimum fine of RM1,000,000 and a maximum prison sentence of 10 years.

Corporate Governance Standards

Malaysia has made significant strides in enhancing corporate governance practices with the aim of promoting transparency, accountability and ethical behavior.

The Malaysian Code on Corporate Governance (MCCG) sets out principles and best practices to guide companies in improving their corporate governance standards. It covers areas such as board composition, responsibilities of the board and management, risk management and disclosure practices.

Regulatory authorities do actively monitor and enforce compliance with such corporate governance regulations with penalties and sanctions in place on companies and individuals found to be in violation of these regulations.

Enforcement Mechanisms and Penalties

Entities such as SC and Bursa Malaysia possess authority to enforce securities laws and regulations, enabling them to investigate and impose penalties for any breaches. Violations may lead to consequences such as fines, sanctions and legal actions to ensure that the integrity of the marketplace and in turn, reflect genuine market supply and demand.

Authorities are equipped with numerous enforcement actions against violations of regulations concerning market misconduct and abusive trading practices. These actions were taken in response to activities that lead to false or misleading appearances of active trading or manipulated the prices or markets for securities and derivatives.

The type of penalties taken is determined on a case-by-case basis depending on considerations such as the severity of the misconduct or breach, its duration and frequency, its impact on the public or market, any ill-gotten gains and whether the actions were intentional or reckless. Violations that significantly impact the market, causing harm and disrupting its orderly operation, are subject to a more severe penalty.

In a Nutshell

The legal framework governing securities issuance in the secondary market is comprehensive and meticulously crafted to address various aspects of market operation and investor protection.

The regulations are designed to instill confidence among investors by setting clear guidelines and standards to provide the necessary assurance their investments are being conducted in a transparent and regulated environment.

Preservation of market integrity is also a key focus of the regulatory framework. Market integrity ensures that transactions are conducted fairly and that prices reflect supply and demand dynamics. Regulations against market manipulation and insider trading help maintain a level playing field for all participants.

The regulatory framework too, aims to facilitate the efficient operation of capital markets. By establishing rules for timely and accurate disclosure of information and standards for corporate governance and market conduct, the framework ensure that capital flows smoothly and efficiently between investors and companies.

Overall, the legal intricacies governing securities issuance in Malaysia's secondary market are essential for fostering investor confidence, preserving market integrity, and ensuring the efficient operation of capital markets. Compliance is crucial for all stakeholders to uphold the integrity of the securities market and contribute to its long-term sustainability.

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Arbitration

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In the recent High Court decision of ***Pembinaan Federal Sdn Bhd v Biaxis (M) Sdn Bhd***, the High Court of Malaysia examined, amongst others, whether a liquidator of a wound-up company is bound by any arbitration agreement which was not entered by the liquidator, but the wound-up company prior to liquidation.

Case Summary:
Pembinaan Federal Sdn Bhd v Biaxis (M) Sdn Bhd
(Case No. BA-12AC-3-07/2023)

Brief Backgrounds Facts
Pembinaan Federal Sdn Bhd, the Appellant, and Biaxis (M) Sdn Bhd, the Respondent, had entered into the following two (2) contracts on a development (phase 2A and 2B) on a piece of land in Mukim Petaling for Messrs Masteron Sdn Bhd:-

i. Piling Contract; and
ii. Pile caps and Basement 2 Slab Contract

(hereinafter referred as "**the Contracts**")

Pursuant to clause 3 of the Contracts, the parties had agreed to enter into a contract based on the Agreement and Conditions of PAM Contract 2006 ("**PAM Contract**").

The Respondent was wound up on 20.4.2022 by the Penang High Court and consequentially, one Dato' Dr. Shanmughanathan a/l Vellanthurai was appointed as the Liquidator ("**Liquidator**").

The Liquidator had discovered that there was a sum of RM703,640.97 which was due and unpaid by the Appellant to the Respondent under the Project ("**Outstanding Sum**"). Therefore on 2.3.2023, the Respondent (the Liquidator initiated an action in the name of the Respondent) commenced a suit against the Appellant at the Sessions Court, claiming for said Outstanding Sum.

On 19.4.2023, the Appellant filed an application for a Stay of Proceedings pursuant to Section 10 of the Arbitration Act 2005, for which the Sessions Court Judge had dismissed the Appellant's application with cost of RM 2,000.00 to be paid by the Appellant to the Respondent.

Being unsatisfied with the decision of the Sessions Court, the Appellant had filed an appeal to the High Court against said decision.

Findings of the High Court
The issues to be considered by the High Court are as below:

i. Whether the Liquidator is a party to the arbitration agreement entered between the parties ("**Arbitration Agreement**");

ii. Whether the Arbitration Agreement is inoperative;

iii. Whether the nature of arbitral proceedings is contrary to the purpose of insolvency law; and

iv. Whether there is any dispute between the parties which warrants an arbitral proceeding to be commenced pursuant to the Contracts.

Whether the Liquidator is a party to the Arbitration Agreement entered between the parties
On this issue, it was held by the High Court that:

i. It is not disputed by the parties that there is an Arbitration Clause in the PAM Contract entered between the Respondent and the Appellant. Therefore, whether there is a valid and enforceable Arbitration Agreement pursuant to Section 9 of the Arbitration Act, the answer is in the affirmative;

ii. As the Respondent has been wound up, the Liquidator appointed steps into the Respondent's shoes in dealing with matters related to the wound-up company. These powers are conferred to the Liquidator pursuant to Section 486 of the Companies Act 2016;

iii. There is no where in the Companies Act 2016 which requires for there to be a separate agreement duly signed by the Liquidator in order for him to be bound to the terms and conditions of the original contract. Therefore, since the cause of action arose from the Contracts, the parties including the Liquidator are subjected to the terms and conditions of the Contracts and the Arbitration Agreement;

iv. It cannot be agreed that the Arbitration Act 2005 is

irrelevant to the Liquidator. Therefore, even if the Liquidator is not directly named in the Arbitration Agreement, by virtue of the Liquidator having stepped into the shoes of the Respondent, he becomes a party to it.

Whether the Arbitration Agreement is inoperative
Section 10 of the Arbitration Act states as follows:

"(1) A court before which proceedings are brought in respect of a matter which is the subject of an arbitration agreement shall, where a party makes an application before taking any other steps in the proceedings, stay those proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed."

The High Court in this case, having adopted the definition of "inoperative" in the case of ***Peace River Hydro Partners v Petrowest Corp* [2022] SCJ No. 41**, held that:

i. the Arbitration Agreement between the Respondent and the Appellant is inoperative because the Respondent has been wound up and as such, is subject to insolvency protection;

ii. since it is found that the Arbitration Agreement is inoperative, it is not necessary to determine whether the Arbitration Agreement is null and void, or whether it is incapable of being performed; and

iii. Therefore, Section 10(1) of the Arbitration Act 2005 cannot be invoked against the Respondent by the Appellant. It can also be concluded that the Plaintiff is subjected to the relevant insolvency proceedings having established that the Arbitration Agreement is inoperative against the Respondent.

Whether the nature of arbitral proceedings is contrary to the purpose of insolvency law/ Whether there is any dispute between the parties which warrants an arbitral proceeding to be commenced pursuant to the Contracts

On whether the nature of arbitral proceedings is contrary to the purpose of insolvency law, it was held by the High Court that:

i. Arbitration proceedings generally involve higher cost and delay in time;

ii. Considering the Liquidator's primary function is to manage the wound-up company's assets and liabilities, an increase in cost and delay would certainly be detrimental to the interest of the creditors and the shareholder of the wound-up company.

On whether there is any dispute between the parties which warrants an arbitral proceeding to be commenced pursuant to the Contracts, it was held by the High Court that based on the given facts, the Respondent's claim sum is based on an undisputed sum which had been certified. In the absence of any dispute, the arbitration clause cannot be invoked and as such, the Respondent had the power to commence a court action against the Appellant pursuant to Section 486 of the Companies Act 2016.

Based on the reasons above, the High Court had dismissed the Appellant's Appeal.

COMMENT

It is interesting to note that whilst the High Court has decided that the Liquidator is essentially a party to the Arbitration Agreement entered between the parties, the Arbitration Agreement is nonetheless inoperative in view that one of the parties in the Arbitration Agreement has been wound up. This raises the question of whether all ongoing arbitration proceedings will automatically be deemed as "inoperative" the moment any of the parties in the arbitration proceeding is wound up. As at the date of this article, we understand that the Appellant, being unsatisfied with the decision of the High Court, had filed an appeal to the Court of Appeal.

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Stranded in Strata: How Unpaid Maintenance Fees Impact Tenants under the Strata Management Act 2013 (SMA)

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Housing affordability has been a main concern in Malaysia especially in cities in Kuala Lumpur and Selangor. Given the pressure and the financial limitations of owning a house, it is much more economical for the younger generations nowadays to rent when they first start working in the cities, or for newly-formed families deciding to build a new life before settling down. As a result, there is a growing trend of renting in high-rise buildings such as condominiums that offers many facilities and amenities.

However, issues may arise when landlords neglect to pay the required maintenance fees for these properties when they begin renting out their units to tenants.

What is Maintenance fees and Sinking fund?

Under the Strata Management Act 2013 (SMA), the management body of a condominium needs to provide proper maintenance and management for the buildings and common property, as well as other related matters. To achieve this, each condominium unit owner will need to pay fees to these management bodies.

Section 25 (1) of the Strata Management Act 2013 states that: "Each purchaser shall pay the Charges, and contribution to the sinking fund, in respect of his parcel to the joint management body for the maintenance and management of the buildings or lands intended for subdivisions into parcels and the common property in a development area."

Service charges are the monthly payments of ongoing maintenance fee for keeping the common facilities and common property. It includes swimming pools, services lifts, lighting, air conditioning, cleaning and landscaping services, security services and etc.

Meanwhile, sinking fund is maintained in a separate account from maintenance fees. Typically, it is calculated as 10% of the maintenance fee and is allocated for anticipated future expenses, such as extensive repairs or significant improvements to the property. These funds serve as a reserve for emergencies as well as for major works like repainting the exterior of the building or repairing the damage caused by flood.

What are the consequences if the owners fail to make any payment charged by the Management Body including the Charges and Contribution to Sinking Fund?

Failure to settle the outstanding sum due and payable to the management body after 14 days from the date of receiving the notice requesting said outstanding sum from the management body will give the management body the right:-

i. to charge an interest on outstanding sum;
ii. to include the owner's name, parcel and total outstanding amount in a defaulters' list and display the said list on the notice board;
iii. to deactivate any electromagnetic access card, tag or transponder;
iv. to stop you and/or your occupiers)/visitors) from using any common facilities or common services; and
v. to take action against you before the court or Strata Management Tribunal

But the one who defaulted is my landlord. I'm just the tenant. Will I also be affected?

The Third Schedule of Strata Management (Maintenance and Management) Regulations 2015, specifically regulation 6, outlines the definition of a defaulter and the potential consequences that may ensue.

a. a defaulter is a proprietor who has not fully paid the Charges or contribution to the sinking fund in respect of his parcel or any other money imposed by or due and payable to the management corporation under the Act at the expiry of the period of fourteen days of receiving a notice from the management corporation; and

b. any restriction or action imposed against a defaulter ***shall include his family or any chargee, assignee, successor-in-title, lessee, tenant or occupier of his parcel***.

Regulation 6 clearly specifies that the defaulter may be

subject to restrictions or legal action, including 'his family, charge, assignee, successor-in-title, lessee, tenant or occupier of his parcel'.

Therefore, it is clear that if your landlord fails to pay the maintenance costs, the management body may take specific measures against you as a tenant. Nevertheless, even though they have the right to deactivate your access card, as tenant, y**ou cannot be prevented from entering your unit**.

CONCLUSION

In conclusion, residing (be it owning or renting) in a strata property such as condominium entails being part of a community. It comes with its own set of rights and responsibilities that every landlords and tenants should understand. The payment of maintenance fees is crucial to maintaining harmony and ensuring the upkeep of the property.

As a tenant, it's imperative to remain vigilant and inquire about the tenancy agreement and determining whether your landlord has fulfilled their obligation to pay these fees, thereby avoiding potential hassles down the line.

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Land Reference Proceedings: Written Opinions of Assessors Must Be Made Available to the Parties

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The Federal Court in the case of ***Tegas Sejati Sdn Bhd v Pentadbir Tanah dan Daerah Hulu Langat & Anor* [2024] MLJU 416; [2024] CLJU 330; (Civil Appeal No.01(f)-46-11/2022(B))** held that the written opinions of assessors that assist the High Court Judge during land reference proceedings must be provided to the parties involved in the proceedings.

The Federal Court in this case found that there was non-compliance of Section 40C of the Land Acquisition Act 1960 (Act 486) ("**LAA 1960**") as the written opinions of the assessors were never made available to the parties. The Federal Court ruled the non-compliance to be serious warranting appellate intervention and ordered the matter to be remitted to the High Court for a rehearing.

Background Facts

In 1987, the Appellant, Tegas Sejati Sdn Bhd ("**TSSB**") entered into a joint venture agreement with Perbadanan Setiausaha Kerajaan Selangor ("**PSKS**") to develop several lots of land located at Section 15, Daerah Hulu Langat in the State of Selangor. PSKS is the registered proprietor of the lands. Pursuant to the joint venture agreement, PSKS relinquished its rights to the land to TSSB.

Several lots of the land were acquired by the State Government for the purpose of the project known as "*Projek Lebuhraya Bertingkat Sungai Besi – Ulu Kelang*" (SUKE Expressway). The 2nd Respondent, Lembaga Lebuhraya Malaysia ("**LLM**") was the paymaster for this acquisition.

After the enquiry held on 16.5.2027, the 1st Respondent, the Land Administrator handed down an award for compensation on 16.5.2017. The award was objected by both LLM and TSSB.

Land Reference Proceedings (High Court)

Both LLM and TSSB filed their objections via Form N, culminating in two land reference proceedings before the High Court. Both land reference proceedings were consolidated and heard together.

On 22.9.2020, TSSB applied to strike out the LLM's land reference proceedings. TSSB's application was heard together with the merits of the land reference proceedings with the assistance of two assessors.

On 14.2.2020, the High Court dismissed TSSB's striking out application. The High Court also dismissed TSSB's land reference and allowed LLM's land reference.

TSSB appealed against the decision of the High Court to the Court of Appeal. On 4.10.2022, the Court of Appeal dismissed TSSB's appeal and allowed LLM's cross-appeal.

Questions/ Issues Before The Federal Court

TSSB appealed to the Federal Court. The Federal Court heard submissions from the parties on 18.8.2023. However, the proceedings were adjourned to ascertain whether there was compliance of Section 40C of the LAA 1960.

Section 40C the LAA 1960 provides that:

> *"40C. Opinion of assessors*
>
> *The opinion of each assessor on the various heads of compensation claimed by all persons interested shall be given in writing and shall be recorded by the Judge."*

The Federal Court registry requested from the registry of the High Court for a sight of the written opinion of the assessors involved in the land reference proceedings in the High Court. Upon obtaining the written opinions, the Federal Court registry sent them to the parties.

One of the main issues before the Federal Court in this case is whether the written opinions of the assessors which are to be recorded by the judge hearing a land reference, necessarily for the eyes of the judges of the High Court, Court of Appeal and Federal Court only, and not the parties?

Grounds Of Judgment Of The Federal Court

1. ***Role of Assessors in Land Reference Proceedings***

   Section 40A (2) of LAA 1960 provides that for land reference proceedings concerning an objection over the adequacy of compensation, the Court shall

appoint two assessors for the purpose of aiding the Court in determining the objection and in arriving at a fair and reasonable amount of compensation. The two assessors will sit with the High Court Judge in hearing the objections over the amount of compensation.

The written opinions of the assessors are intended to assist the Court in arriving at a decision on the amount of compensation. These written opinions form and must be part of the records of the land reference proceedings.

2. Adequacy of Compensation

Article 13(2) of the Federal Constitution provides that "*no law shall provide for compulsory acquisition or use of property without adequate compensation*". In the interpretation and construction of Section 40C of LAA 1960, the Courts must give real meaning and adopt a construction which preserves the rights enshrined under Article 13(2) of the Federal Constitution.

Although Section 40C does not explain in detail how the written opinions of the two assessors are to be handled, it cannot be denied that the written opinions form part of the proceedings. The High Court in assessing the complaint of adequacy of compensation is bound to balance competing interests of TSSB, the landowner and LLM, the acquiring authority or paying master. Therefore, it is necessary that all relevant material is placed before the Court for that assessment and determination.

If these written opinions of the assessors are not made available, the question of adequacy of compensation cannot be properly addressed, which would be contrary to the right enshrined in Article 13(2) of the Federal Constitution.

3. Availability of the Written Opinions

The question of adequacy of compensation can only be properly determined if all the parties concerned have had the opportunity to address the reasons, factors or circumstances which are relevant and necessary when computing or calculating that compensation.

Therefore, the written opinions of the assessors who assisted the High Court Judge in determining there is adequate compensation must be made known to the landowners and those affected by the compulsory acquisition. The obligation to make known the reasons or factors extends to everyone who has any role to play in that decision, be it the judge or the assessors.

Land reference proceedings are open Court proceedings and it is integral to the rule of law that there is transparency and fairness not just in the conduct of those proceedings but in the manner any evidence, including opinion evidence is received and treated by the Court. Once available, the written opinions of the assessors must be provided to the parties.

The Federal Court found that there was non-compliance of Section 40C in this case as the written opinions of the assessors were never made available to the parties or even called for by the Court of Appeal. The Federal Court set aside the orders of the High Court and Court of Appeal and ordered the matter to be remitted to the High Court for a rehearing before another judge.

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(Section 35 of CIPAA 2012) Overview of Authorities on Conditional Payment

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The Construction Industry Payment and Adjudication Act 2012 ("**CIPAA 2012**") was passed by the Malaysian Parliament in 2012 and CIPAA 2012 came into force on 15.4.2014. CIPAA 2012 was introduced to facilitate regular and timely payment in respect of construction contracts and to provide for speedy dispute resolution through adjudication.

The primary objective of CIPAA 2012 is to address critical cash flow issues in the construction industry and to facilitate payments for those down the chain of construction contracts for work done or services rendered.

Section 35 of CIPAA 2012 – Prohibition of Conditional Payment

CIPAA 2012 introduced Section 35 which prohibits the practice of conditional payment terms that inhibit cash flow:

> *"35 Prohibition of conditional payment*
>
> *1) Any conditional payment provision in a construction contract in relation to payment under the construction contract is void.*
>
> *2) For the purposes of this section, it is a conditional payment provision when-*
>
> *a) the obligation of one party to make payment is conditional upon that party having received payment from a third party; or*
>
> *b) the obligation of one party to make payment is conditional upon the availability of funds or drawdown of financing facilities of that party."*

What constitutes a "*conditional payment provision/ clause/ term*"?

The High Court in the case of ***Econpile (M) Sdn Bhd v IRDK Ventures Sdn Bhd and another case*** **[2017] 7 MLJ 732; [2016] 5 CLJ 882** enunciated that Parliament had left it to the Courts to determine on a case by case basis as to whether conditional payment provisions in a construction contract would defeat the intent and purpose of CIPAA 2012.

The High Court in the case of ***Terminal Perintis Sdn Bhd v. Tan Ngee Hong Construction Sdn Bhd [2017] MLJU 242; [2017] CLJU 177; [2017] 1 LNS 177*** ruled that the question of whether a payment term in a construction contract constitutes a conditional payment clause under Section 35 of CIPAA 2012 is a mix finding of fact and law and the Courts would not interfere in the adjudicator's interpretation.

Overview of Cases/ Authorities

A) "*Pay When Paid*"/ "*Pay If Paid*"/ "*Back to Back*"

CIPAA 2012 expressly prohibits "*pay when paid*"/ "*pay if paid*" clauses which makes the obligation of the main contractor to pay a subcontractor conditional upon the main contractor having received payment from the principal. Such contractual clauses are void and unenforceable pursuant to Section 35 of CIPAA 2012.

The High Court in the case of ***Khairi Consult Sdn Bhd v GJ Runding Sdn Bhd*** **[2021] MLJU 694; [2021] CLJU 571; [2021] 1 LNS 57** held that a contractual provision which provided for the payment to be on "*back to back*" basis is void under Section 35 of CIPAA 2012.

The Defendant in this case was the main consultant for a construction project. By way of a contract/ letter, the Defendant appointed the Plaintiff as a consultant to provide engineering consultancy services for the project.

Clause 9 of the contract provides that:

> *"Payment shall be on a back to back basis i.e you [Plaintiff] shall be paid within 7 days upon [the Defendant's] received [sic] payment from the client."*

The High Court held that:

- Clause 9 is void as it is a "*conditional payment provision*" within the meaning of Section 35 of CIPAA 2012.

- This is because the Defendant's payment to the Plaintiff is on a "**back to back**" basis *i.e.* the Defendant is only required to pay the Plaintiff when the Defendant has received payment from a third party (the employer/ client).

The High Court in the case of ***KS Swee Construction Sdn Bhd v BHF Multibina (M) Sdn Bhd*** **[2019] MLJU 1508; [2019] CLJU 1849; [2019] 1 LNS 1849** held that a contractual provision which stipulated that payment to the subcontractor is "back to back" to the payment from the main contractor is a conditional payment under Section 35 of CIPAA 2012.

The Plaintiff in this case was engaged by the Defendant to carry out construction works. Clause 7 of the contract provides that:

> *"Bayaran kemajuan kerja kepada Sub Kontraktor adalah secara timbal balik (back to back) dengan bayaran kemajuan daripada Kontraktor Utama"*

Therefore, the Plaintiff will only be paid on a "back to back" basis i.e. the Plaintiff's payment becomes due only when the Defendant receives payment from the main contractor.

The High Court held that Clause 7 is a conditional payment within the confines of Section 35 of CIPAA 2012.

The High Court in the case of ***Sinwira Bina Sdn Bhd v Puteri Nusantara Sdn Bhd*** **[2017] MLJU 1836; [2017] CLJU 1819; [2017] 1 LNS 1819** held that a "back to back" clause is a "conditional payment provision" provided under Section 35 of CIPAA 2012.

The subcontract entered between the Plaintiff and Defendant in this case contained the following clause:

> *"The Sub-Contract Sum shall be paid to the Sub-Contractor on the basis of back-to-back payment, as and when received by the Contractor from the Client. Unless a special arrangement is made, the Employer shall not be liable to pay the Sub-Contractor in the event that no corresponding payment is paid by the Client."*

The High Court found the said clause to be a "conditional payment provision" as provided in Section 35 of CIPAA 2012 and is therefore void.

(B) Termination and Final Accounts

In the case of ***Maju Holdings Sdn Bhd v Spring Energy Sdn Bhd and other cases*** **[2021] MLJU 541; [2021] CLJU 367; [2021] 1 LNS 367** the High Court held that the contractual clause in the subcontract which provided that, payment to the subcontractor shall be withheld upon the termination of the subcontract until the final accounts have been determined, is a conditional payment provision which runs afoul of Section 35 of CIPAA 2012.

The High Court in the case of ***Econpile (M) Sdn Bhd v IRDK Ventures Sdn Bhd and another case*** **[2017] 7 MLJ 732; [2016] 5 CLJ 882** held that Clause 25.4(d) of the industry-based standard form PAM Contract 2006 is a conditional payment provision which is prohibited under Section 35 of CIPAA 2012.

Clause 25.4(d) of the PAM Contract 2006 provides as follows:

> *"25.4(d) the Contractor shall allow or pay to the Employer all cost incurred to complete the Works including all loss and/or expense suffered by the Employer. Until after the completion of the Works under Clause 25.4(a), the Employer shall not be bound by any provision in the Contract to make any further payment to the Contractor, including payments which have been certified but not yet paid when the employment of the Contractor was determined. Upon completion of the Works, an account taking into consideration the value of works carried out by the Contractor and all cost incurred by the Employer to complete the Works including loss and/or expense suffered by the Employer shall be incorporated in a final account prepared in accordance with Clause 25.6."*

The High Court held that Clause 25.4(d) has the effect, upon the termination of the contract, of postponing payment due until the final accounts are concluded and the works completed. This clause defeats the purpose of the CIPAA 2012 and is thus void and unenforceable.

(C) "Pay If Certified"

The Court of Appeal in the case of ***Lion Pacific Sdn Bhd v Pestech Technology Sdn Bhd and another appeal*** **[2022] 6 MLJ 967; [2022] 9 CLJ 488** clarified and ruled that "*pay-if-certified*" provisions cannot be construed as a conditional payment clause under Section 35 of CIPAA.

In 2013, the Government of Malaysia accepted a tender submitted by a consortium for a construction project. The appellant was appointed as a subcontractor for the system works package parcel for the project.

The appellant then appointed the respondent as a subcontractor by way of a subcontract. The subcontract in this case contained a clause whereby certification by the Ministry of Transportation ("**MOT**") is required prior to any payment to the respondent. Particularly, Clause 4.1 of the subcontract provides that:

> "Verification and approval by ICC-MOT 15th - 24th every month. Payment to Sub-Contractor 40 days after certification by MOT"

The Court of Appeal held that:

- The "*pay-if-certified*" provision in Clause 4.1 of the subcontract cannot be construed as a conditional payment clause under Section 35 of CIPAA 2012, as the mutual agreement of the parties was that the appellant's obligation to make payment would only arise upon certification of the works done by the MOT, failing which the works cannot be considered as having been carried out.

- Notwithstanding the objective of CIPAA 2012 to facilitate prompt payment, the contractual obligations of the parties expressly agreed upon cannot be disregarded.

- Whilst CIPAA 2012 was intended to alleviate cash flow problems of contractors and prohibited conditional payments, it was clearly not intended to replace the certification or valuation to assess the progress of works carried out by the relevant authority for payment to be affected.

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Updated Financial Technology Regulatory Sandbox Framework Enhancements Introduced to Increase Accessibility

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Bank Negara Malaysia ("**BNM**") has on 29 February 2024 issued a new Policy Document ("**PD**") on Financial Technology Regulatory Sandbox Framework (the "**Framework**") to replace the earlier version that was issued back in 2016.

The new PD came into force on the date of its issuance, and it seeks to enhance the Framework so as to ensure proportionate regulatory facilitation and improving the operational efficiency of the existing sandbox procedures. This article attempts to provide a brief outline of the Framework and the enhancements introduced by the PD.

Financial Technology Regulatory Sandbox
As most would no doubt agree, the financial services industry is one of the most regulated industries anywhere in the world. This is hardly surprising given the importance of stability in the money market.

That being said, it is also equally important for the financial services industry to keep pace with the development of technology to ensure innovation and service improvement. Due to its disruptive nature, financial technology ("**Fintech**") providers often find themselves facing difficulties in the deployment of their solutions, owing to potential archaic or non-accommodative regulatory framework. The Fintech regulatory sandbox ("**Sandbox**") established under the Framework is an attempt by BNM to address this pain point.

The purpose of the Sandbox is essentially to allow Fintech solutions providers to have temporary rights to deploy and operate their solutions in a live environment, with more "relaxed" regulatory treatment. Participants in the Sandbox would have identified a series of regulatory requirements that they are unable to meet due to the nature of their solutions or business model, and exemptions would be granted to them for a limited duration from having to comply with these regulatory impediments. Upon the expiry of the "playtime", BNM will then make an assessment as to whether a Sandbox participant should be allowed continued operation of its solution.

Enhancements to the Fintech Regulatory Sandbox Framework
The PD introduces two (2) enhancements to the Framework:

i. A fast-track application and Fintech solutions testing approval process called the "Green Lane"; and
ii. A simplified process to assess the eligibility of an applicant to participate in the "Standard Sandbox".

We will provide a summary of each of the enhancements in turn below.

1. Green Lane
   The Green Lane is a fast-track approval process set up especially for financial institutions ("**FIs**") only. FIs with proven track records in strong risk management, compliance and governance, can utilise the Green Lane to shorten the time required to obtain approval to test their Fintech solutions in the Sandbox.

   Interested and eligible FIs can make an application to participate in the Sandbox through the Green Lane by demonstrating their past records in risk management, compliance and governance. Once the BNM is satisfied of an FI's track record in risk management, compliance and governance, a Green Lane approval will be issued. Thereafter, the FI will only have to register its Fintech solutions with BNM for testing in the Sandbox, at least 15 days prior to the intended testing commencement date. FI with Green Lane qualification can register multiple Fintech solutions for testing over the subsistence of its Green

Lane qualification, and there is no need for the FI to make fresh Green Lane application each time.

Overall, the Green Lane is a new path to Fintech solution testing in the Sandbox that is much simpler than the Standard Sandbox process (which we will get to in the next section). The Green Lane affords FIs a faster process to test their Fintech solutions in the Sandbox, subject to the FIs first proving their eligibility to be in the Green Lane. Notwithstanding the easier access to the Sandbox however, the FIs in the Green Lane will still have to adhere to certain parameters and safeguards prescribed under the PD, primarily for customer protections, and BNM still reserves the right to revoke an FI's Green Lane qualification or reject the registration of Fintech solutions to be tested, particularly where adverse developments have been observed during the testing of Fintech solutions.

Fintech companies or non-FIs can make use of the Green Lane by collaborating with FIs (e.g., outsourcing of Fintech solutions to FIs, equity participation, joint venture, etc.), subject however to the discretion of BNM.

2. Simplified Eligibility Assessment for the Standard Sandbox
   The Standard Sandbox entails a 2-tiered assessment process. In the first stage, applicants are first assessed on whether they are eligible to take part in the Standard Sandbox. Once the first stage has been passed, the applicants are then assessed on their readiness or preparedness in satisfying BNM's considerations to test the Fintech solutions.

   Under the new PD, the stage 1 assessment is simplified to the extent that an applicant will only have to demonstrate (amongst others) its ability to identify and mitigate risks associated with the Fintech solution testing, and a semi-functional prototype of the Fintech solution within 3 months from the date of application for participation in the Standard Sandbox. This is a much-welcomed change from the regulator's past approach of requiring applicant to have a ready product before making any application to participate in the Sandbox. Now, an applicant will only be required to come up with a fully functional prototype during the second stage of the assessment process, allowing greater flexibility to the applicant.

The effort of BNM in ensuring the regulatory framework keeps pace with technology evolution certainly deserves applause. The enhancements to the Framework brought by the new PD effectively make the Sandbox more accessible to innovators and Fintech solutions providers. This should drive innovations and hopefully boost investment into the Fintech sector in Malaysia, giving Malaysians better financial services experience enhanced by technology, as well as extending the reach of financial services to the financially underserved.

If you wish to know more about the Financial Technology Regulatory Sandbox Framework or need assistance in your application to take part in the Sandbox, you may reach out to our partners below.

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Inside Out

Behind-the-scenes view of our People-Powered-Performance

HHQ named Malaysia's Fintech Law Firm of the Year

We are proud to announce that Halim Hong & Quek, was honoured with the "Fintech Law Firm of the Year" title at the Asian Legal Business Malaysia Law Awards 2024 held on March 1, 2024.

Our heartfelt gratitude to our clients in the fintech space who have placed their trust in HHQ's Technology Practice Group led by our Ong Johnson and Lo Khai Yi.

A huge thank you to Asian Legal Business for this recognition and congratulations to all the finalists and winners present at the awards ceremony.

"Investing in Malaysia Manufacturing – The Legal and Tax Aspects" book launch was held for the first time in Ningbo, China

We are pleased to announce that the book "Investing in Malaysia Manufacturing – The Legal and Tax Aspects" was successfully released on March 26 in Ningbo, Zhejiang, China. The launch event was hosted by the Halim Hong & Quek, marking the first release of the book in China, in conjunction with the forum “Move to Malaysia – Cross-border Production and Supply Chain Development and Opportunities” organised by China Construction Bank.

Legal forum on Navigating the Future: Integrating ESG Principles in Johor's Sustainable Development Journey

A legal forum specially conducted for our clients in Johor Bahru, covering relevant topics such as construction claims, legal and tax considerations in promoting industrial parks, and ESG to prepare our clients who are embarking on their sustainable development journey.

BIM – AIAC Summit on Appropriate Dispute Resolution

Balai Ikhtisas Malaysia (BIM), in partnership with AIAC, recently on 15.3.2024 hosted the "BIM – AIAC Summit on Appropriate Dispute Resolution" drawing professionals from various sectors to discuss pertinent themes in each session.

Moderated by Ms. Chan Jia Ying (HLP), the second session tackled disputes in the medical, healthcare, and science industries, featuring insights from speakers like Dr. Saravanan Santhirarajan (Malaysian Medical Association) and Ms. Hemalatha Ramulu (Skrine).

Mr. Lim Ren Wei (HLP) moderated the third session, exploring ADR advancements in engineering, construction, and property, with contributions from industry experts such as Sr. Dr. See Lian Ong (Turner & Townsend Malaysia) and Ar. Menaha Ramanath (Pertubuhan Arkitek Malaysia).

In the fourth session, moderated by Ms. Jessica Wong Yi Sing (HLP), discussions centered on emerging disputes in accounting, business, and commerce, featuring speakers like Prof. Dr. Harald Sippel (Skrine) and Mr. Razman Radzi (MIHRM) which addressed issues such as foreign worker disputes and the integration of Artificial Intelligence to streamline Human Resources work.

"Lawyers on a mission - to empower everybody with law."

Empower Legal Workshop for UEM Sunrise

Our Ankit Sanghvi and Chew Jin Heng shed light on the latest Malaysian Federal Court ruling on vacant possession and the impact on developers.

We would like to thank UEM Sunrise Berhad's vibrant group of 190 participants for the opportunity to share our insights. We received plenty of brilliant questions during the session, which made the workshop lively and extremely engaging.

Drawing from our experience representing developers in disputes related to vacant possession, we delved into the complexities of the law in this domain.

Legal Knowledge Sharing Session with MCKILP

A legal knowledge sharing session with MCKILP covering Tax Law, Land Law, and Employment Law. The session was led by our lawyers Desmond Liew, Goh Li Fei, and Chau Yen Shen.

Our heartfelt appreciation goes to the wonderful MCKILP team for hosting this educational and empowering session.

HSBC Go Webinar: Navigate Malaysia's Labour Laws and Compliance

Specially crafted for Singaporean SME business owners, our partner Lum Man Chan alongside Phing Phing Lim from Vialto Partners was invited by HSBC to share on employment law in Malaysia, overcoming challenges with reform in the immigration space, employment tax reporting requirements and workforce regulatory developments.

LIVE WEBINAR

HSBC Business Go
Go International

Navigate Malaysia's Labour Laws and Compliance

20th March, 2024 (Wednesday)

16:00 - 17:00 HKT

Lim Phing Phing
Partner
Vialto Partners Malaysia Sdn. Bhd.

Lum Man Chan
Partner
Halim Hong & Quek

Co-hosts: HSBC VIALTO PARTNERS HHQ

Investment & Business Opprtunities in Malaysia

On 14 March 2024, EcoWorld organized an enlightening discussion delving into the investment and business prospects within Malaysia. Our esteemed Partner, Desmond Liew, shared on Malaysia's business and investment landscape, and the distinctions between conducting business in Malaysia and China, alongside representatives from Zhonghua Accounting Firm during this engaging session. We extend our sincere gratitude to EcoWorld for curating this enlightening event. We trust that the attendees gain invaluable insights during the session.

AIAC APAC Pre-Moot Sponsorship

The AIAC APAC Pre-Moot has concluded, with NALSAR University of Law, Hyderabad, being announced as the champion of the competition. Our Partner, Ankit Sanghvi, who also served as an arbitrator in the pre-moot, presented the Halim Hong & Quek Award for the "Best Memorandum on behalf of Respondent" category.

Our heartfelt congratulations go to Federal University of Rio Grande Do Suk for securing this prestigious award. Congratulations to all the winners of the AIAC APAC Pre-Moot. We extend our best wishes to each of you for continued success in your budding legal careers!

KLSCCCI Networking Dinner

On March 15, 2024, The Chinese Chamber of Commerce & Industry of Kuala Lumpur & Selangor (KLSCCCI) organized a Networking Night for SMEs at Mercure Hotel, Kuala Lumpur.

HHQ has always been a proponent for serving small, medium enterprises, and we are grateful for the opportunity to support the Chinese Chamber of Commerce as a sponsor for the event.

Malaysian Bar Annual Dinner

In keeping with tradition, the Malaysian Bar hosted its annual dinner on March 2, 2024, themed as an Enchanted Masquerade Ball. Our colleague, Hee Sue Ann, was awarded the runner-up for the best-dressed attendee.

Furthermore, our fortunate lawyers were among the top three winners of the lucky draw.

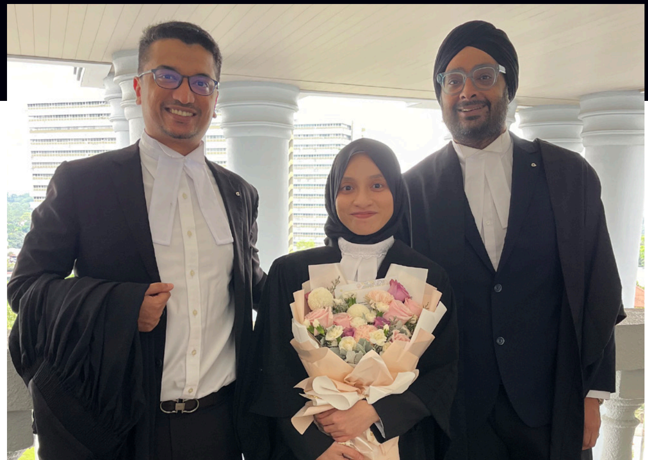
Perhaps luck does favour the bold! Long live the Bar!

Nine-Long-Months, Two Long Calls

Ms. Damia Amani Binti Shaiful Bahri from HLP and Ms. Nur Anis Amani binti Mohd Razali from HHQ has been called to the bar and admitted as an Advocate and Solicitor of the High Court of Malaya in March 2024.

Our heartfelt congratulations on this exciting milestone, marking a new chapter in their legal career!

We are so proud of you!



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