EMPOWER

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Monthly legal insights
by Halim Hong & Quek
and Harold & Lam Partnership

HHQ | HLP

FOREWORD

Greetings from HHQ and HLP!

September brings a wave of change that goes beyond courtrooms and boardrooms. It impacts homeowners, businesses and anyone invested in clear, fair processes. Inside this issue, we break down complex legal shifts into practical takeaways you can use today.

Construction projects and shared developments often spark heated debates over fees and decision-making. We start with the High Court's ruling in Samsung C&T Corporation UEM Construction JV Sdn Bhd v Berkat Honeywell Sdn Bhd (2025) MLJU 2101, which reins in adjudicators who stray from their remit. Learn what this means for your contracts and how to build in checks that keep projects on track.

Moving into strata management, our article Differential Maintenance Charges and Sinking-Fund Contributions unpacks the power dynamics between management corporations and joint management bodies. The article clarifies when different rates can be imposed throughout the three stages of strata roll-out. Readers will gain a roadmap for advising clients on fair charge structures during each transition phase.

Next, we turn to corporate accountability in the Federal Court's decision in Mohd Abdul Karim Abdullah & Ors v Lembaga KWSP (2025) 4 MLJ 878, the article Beyond the Veil reviews how directors can be held personally liable when a company defaults on its Employees Provident Fund obligations. This ruling emphasizes the importance of strict compliance and board-level vigilance to avoid personal exposure.

As companies seek investment opportunities, our piece on Illegal Moneylending Transaction Disguised as an investment agreement warns against circumventing licensed channels. The courts' ability to distinguish genuine investments from unlicensed lending protects both businesses and investors. Our analysis offers practical guidance on documenting transactions correctly to withstand judicial scrutiny.

Global businesses face fresh hurdles when insolvency strikes. The proposed Cross Border Insolvency Bill offers new pathways to recover assets held overseas. We highlight the key features you need to know if you have operations or investment beyond Malaysia's shores.

Data continues to drive value and risk. Our rundown of the Personal Data Protection Public Consultation Paper 4/2025 pulls out ten clear actions to strengthen your privacy practices and stay ahead of the 2013 Act's pending amendments.

Our goals is to turn legal headlines into insights you can act on, whether you are making property decisions, safeguarding your company or protecting personal data. We are always eager to hear your thoughts, so feel free to reach out with feedback or topic suggestions at newsletter@hhq.com.my.

Thank you for your unwavering trust in *Empower.* Together, let's stay informed, stay empowered, and ready to seize new opportunities.

Warm regards,
The HHQ and HLP Team

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Welcoming Malaysia's New Cross-Border Insolvency Framework: Key Aspects and Implications for Corporations

With the recent passage of the Cross-Border Insolvency Bill 2025 through Parliament, Malaysia takes a bold step toward aligning its insolvency framework with international best practices. Upon being gazetted and once the Minister appoints the commencement date, the Cross-Border Insolvency Act will come into force, ushering in a comprehensive regime for dealing with cross-border insolvency. This development promises greater legal certainty for multinational businesses and foreign creditors, more efficient administration of restructuring and liquidation proceedings, and clearer collaboration between Malaysian courts and their overseas counterparts.

The new Act mirrors the UNCITRAL Model Law on Cross-Border Insolvency of 1997, yet tailors its approach to Malaysia's legal landscape. The key aspects:

1. Foreign insolvency office-holders and creditors gain direct standing in the High Court of Malaya or Sabah and Sarawak. They may initiate or participate in Malaysian insolvency proceedings on equal footing with local counterparts, subject only to ranking rules under Malaysian law.

2. A structured application process allows a foreign representative to seek recognition of foreign main or non-main proceedings. Once recognized, relief such as a stay of local actions, stay of execution against property of the debtor and suspension of transfer or charge or disposal of debtor's property shall be automatic pursuant to Section 20 of the Act.

3. From the filing of an application for recognition, the Court may issue provisional relief to safeguard at-risk assets under Section 19 of the Act such as staying any execution against property of the debtor, entrusting administration of property of debtor to the foreign representative to protect or preserve the value of the property.

4. The Act obliges Malaysian courts and insolvency office-holders to cooperate directly with foreign courts and representatives. This encompasses information sharing, joint case management, and coordination of concurrent proceedings to avoid conflicts or unnecessary duplication of effort.

5. Where foreign and Malaysian insolvency proceedings run in parallel, the Act confines local proceedings to assets within Malaysia unless broader cooperation is required. Courts can modify, extend, or set aside relief orders to ensure consistency across jurisdictions.

6. Financial institutions, capital-market entities, certain Labuan entities, and transactions vital to systemic stability are carved out or subject to prior approvals by agencies such as Bank Negara, the Securities Commission, or Labuan Financial Services Authority. A public policy exception allows the Court to refuse recognition or relief if it conflicts with fundamental Malaysian principles.

With the Cross-Border Insolvency Bill 2025 set to become law, corporations operating across multiple jurisdictions must recalibrate their risk, finance and governance strategies to harness the new framework and to guard against unintended exposure.

Mapping Centres of Main Interests and Establishments

Under the new Act, where a debtor's "centre of main interests" (COMI) lies determines whether foreign proceedings qualify as main or non-main. Corporations must therefore document, at entity level, the precise location of their COMI and of each establishment where non-transitory economic activity occurs. This strategy mapping feeds directly into risk registers, restructuring playbooks and international insolvency filings. Without a clear COMI registry, recognition applications risk delays or challenges that could expose assets to creditor action in Malaysia. In the absence of any evidence to the contrary, the debtor's place of registered office is presumed to be its COMI under Section 16(3) of the Act.

Embedding Early Warning Triggers in Finance Agreements

Lenders can now rely on statutory stays once proceedings are recognized as foreign main. From a debtor's perspective, embedding cross-border triggers into loan covenants and bond documentation will help stop enforcement measures before they take root. Automated covenant-monitoring dashboards should flag any foreign main proceeding filings or recognition orders, ensuring treasury teams react promptly with evidence packages and certified translations. In this way, corporations turn the Act's protections into proactive shields rather than reactive crisis-control measures.

Refining Governance and Global Restructuring Teams

The Act empowers foreign office-holders and, under certain carve-outs, even foreign creditors to participate directly in Malaysian insolvency processes. With foreign office-holders , overseas creditors potentially appearing unexpectedly, corporations must therefore recalibrate their internal escalation protocols to assign clear roles in cross-border distress scenarios. For instance, the playbook should specify who coordinates translations and certifications of foreign-court documents and which senior executives or in-house teams are alerted the moment a foreign representative seeks recognition in the Malaysia court to ensure no deadlines slip and no conflicting orders.

Setting up a global restructuring committee by bringing together country legal leads, finance directors and external advisers will further ensure a more seamless response by stress testing these protocols and running mock distress scenarios before any real crisis hits.

Harnessing Provisional and Protective Relief

One of the Act's most powerful features is the availability of provisional relief from the moment an application for recognition is filed. Malaysian courts can stay execution against assets, enjoin transfers and even entrust perishable or high-value assets to foreign office-holders for safekeeping. Corporations must prepare sworn translation, certified COMI statements and asset valuation reports in advance to accelerate interim orders. A well-prepared application containing all necessary supporting documents ready can shield sensitive assets from devaluation or dissipation while the court considers the recognition request.

Navigating Regulatory Exceptions and Carve-Outs

While the Act offers broad cross-border remedies, it expressly excludes certain sectors and transactions. Financial-services affiliates, capital-market entities and specific Labuan vehicles fall outside its scope or require prior approvals from Bank Negara Malaysia, the Securities Commission or the Labuan Financial Services Authority. In practical terms, corporate compliance teams must overlay entity-level risk matrices with regulator-approval checklists. Early engagement with regulator-via pre-application briefs or umbrella notifications reduces the risk of insolvency-relief applications being stalled for want of regulatory sign-off.

Strengthening Stakeholder Communications

Transparency lies at the heart of modern restructuring. The Act mandates that known foreign creditors receive the same notifications as local creditors, including claim-filing deadlines and venues. Corporations should centralize creditor databases, confirm multilingual contact points and craft clear notices that comply with Malaysian procedural requirements. Real-time updates not only fulfil statutory duties but also bolster creditor confidence, reducing the likelihood of surprise objections or parallel filings in other jurisdictions.

Embedding Cross-border Insolvency into Corporate Playbooks

Making the provisions of the Cross-Border Insolvency Act 2025 work in a crisis requires more than ad-hoc responses. Corporations should integrate these new rules into their standard restructuring playbooks: updating governance charters, refining escalation triggers, mapping sector-specific carve-outs, and scheduling regular tabletop exercises. This continuous preparedness transforms the Act's complexity into competitive advantage and allowing value preserving restructuring to proceed smoothly across borders.

Preparing for Concurrent Proceedings

The Act anticipates situations where Malaysian and foreign proceedings run in parallel. Local cases will be confined to assets in Malaysia unless broader coordination is needed. Boards and advisers must therefore maintain dual case-management trackers that align timelines, relief orders and evidence-gathering protocols. A harmonized concurrent proceeding will minimize duplication, avoid conflicting orders and ensure assets in each jurisdiction are administered under a coherent global plan.

As the Act takes effect, every corporation with cross-border footprints should treat these changes as a strategic imperative. Updating internal playbooks, training global restructuring teams and stress-testing processes today will definitely pay off when financial pressures intensify tomorrow. The era of seamless, value-focused cross-border insolvency in Malaysia has arrived and the winners will be those best prepared to navigate its new pathways.

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Dissecting the PDP Public Consultation Paper: 10 Key Takeaways on the Personal Data Protection Regulations 2013 Amendments

This year has undoubtedly been one of the most active, if not the most active, periods in the field of personal data protection in Malaysia. Among legal practitioners, there is a saying that *"when it rains, it pours"*, and in the current personal data protection regulatory climate, nothing could be closer to the truth.

In early August, we saw the release of three significant documents shaping the future of the Data Protection Officer role in Malaysia:

1. Data Protection Officer Competency Guideline;
2. Management of Data Protection Officer Training Service Providers Guideline; and
3. Data Protection Officer Professional Development Pathway & Training Roadmap.

Barely weeks after these guidelines and documents were released, the Department of Personal Data Protection has now issued Public Consultation Paper No. 4/2025 ("**Public Consultation Paper**"), proposing new amendments to the Personal Data Protection Regulations 2013.

In this article, we aim to dissect the Public Consultation Paper by highlighting the top 10 key takeaways proposed in amending the Personal Data Protection Regulations 2013, and for those operating in the personal data protection filed, we hope that this article will equip your team and organization with both legal clarity and foresight as your organization prepare for the changes ahead.

Key Takeaway 1: The Status of the Public Consultation Paper

The Public Consultation Paper was officially released on 22 August 2025 and will remain open for feedback until 8 September 2025.

While the Public Consultation Paper does not specify when the proposed amendments to the Personal Data Protection Regulations 2013 will be officially implemented and come into force, based on our understanding of the regulatory climate and the current momentum in Malaysia's data protection framework, it would be reasonable to anticipate that drafting of the amendments will commence shortly after the public consultation period concludes. Therefore, organisations are advised to monitor these developments closely, as the amendments to the Personal Data Protection Regulations 2013 may potentially come into force in the relatively near future.

Key Takeaway 2: Introducing the Definition of "Personal Data Protection Notice"

A notable proposal in the Consultation Paper is the formal introduction of the term *"Personal Data Protection Notice"* within the Personal Data Protection Regulations 2013.

While most are familiar with the concept of *"Personal Data Protection Notice"*, yet, there has long been confusion in terminology in the industry, as some have referred to it as a *"privacy notice,"* others as a *"personal data protection policy,"* and some even as a *"privacy statement."* Therefore, the proposed standardisation under the term *"Personal Data Protection Notice"* is certainly most welcome, as it provides much-needed clarity and certainty in the use of terminology within the industry.

Key Takeaway 3: Aligning Terminology From "Data User" to "Data Controller"

Another key proposed amendment relates to the proposed alignment of terminology within the Personal Data Protection Regulations 2013 by changing the term *"data user"* to *"data controller."*

This amendment is both expected and necessary, especially following the implementation of the Personal Data Protection (Amendment) Act 2024, which has already changed *"data user"* to *"data controller."* Hence, aligning the terminology of *"data controller"* across the Personal Data Protection Regulations 2013 is truly essential for legal clarity and consistency.

Key Takeaway 4: Clearer Guidance on Obtaining Valid Consent

The Public Consultation Paper proposes an amendment to provide clearer guidance on how to obtain valid consent from data subjects.

While the Public Consultation Paper does not elaborate further on the precise mechanics of obtaining *"valid consent",* and at present, the legal requirement is that consent must be *"recorded and maintained",* yet at the same time, we also recognise that other forms of consent, such as consent by conduct or performance, or even verbal consent, are generally accepted as valid consent as well. We trust that it is possible that the forthcoming amendments will reconcile these varying forms and set out greater clarity on the acceptable forms of consent within the Personal Data Protection Regulations 2013.

Key Takeaway 5: Processing Personal Data Without Consent in Limited Circumstances

Another significant proposal is to formally introduce provisions into the Personal Data Protection Regulations 2013 that recognise personal data may be processed without consent in specific situations, reflecting the exceptions already embedded in the Personal Data Protection Act 2010.

This proposal is both expected and necessary, as while the general rule is that personal data should only be processed with the consent of data subjects, the Personal Data Protection Act 2010 itself sets out a range of exceptions under which data controller may lawfully process personal data and even sensitive personal data without consent. Therefore, aligning the Personal Data Protection Regulations 2013 with the Personal Data Protection Act 2010 will provide legal consistency, reducing uncertainty and ensuring that organisations have a clear and consistent reference point when determining their compliance obligations.

Key Takeaway 6: Verification of Consent for Data Subjects Under 18

The Public Consultation Paper also proposes the introduction of specific provisions to establish requirements for data controllers to take reasonable verification steps when obtaining consent from parents, guardians, or individuals with parental responsibility for data subjects under the age of 18.

This development is particularly welcome, as at present, the law merely requires data controller to obtain such consent before processing the personal data of data subjects under the age of 18, but it does not offers further guidance on how this should be achieved. Therefore, by establishing a framework of reasonable verification steps, the proposed amendment would bring greater clarity and a more complete legal framework for organisations handling the personal data of minors.

Key Takeaway 7: Displaying the Data Protection Officer's Contact Information

The Public Consultation Paper proposes that the business contact information of the appointed Data Protection Officer ("**DPO**") must be displayed within the Personal Data Protection Notice.

This is both necessary and timely, as following the mandatory appointment of a DPO under the Personal Data Protection (Amendment) Act 2024, the Appointment of DPO Guideline also stipulates that the business contact details of the DPO should be included in the Notice. As the DPO serves as a facilitator and point of contact between data subjects and data controllers, this proposed amendment will bring the regulations into alignment with existing guidance.

Key Takeaway 8: Security Policies Must Address Data Breach Management

The Public Consultation Paper further proposes that all security policies should explicitly include procedures for managing data breaches.

This amendment is directly connected to the new personal data breach notification requirements introduced by the Personal Data Protection (Amendment) Act 2024, and it is certainly a welcome step, as it pushes organisations to embed personal data breach response into their compliance architecture. However, we also recognise that some organisations may already maintain an independent Data Breach Management Policy, therefore, it would be useful if the regulation allows flexibility for the security policy to reference such standalone policies, in order to avoid duplication while still ensuring compliance.

Key Takeaway 9: Written Contracts Between Data Controllers and Data Processors

The proposed amendments would make it a requirement for data controllers to enter into a written contract with data processors whenever personal data processing is outsourced to a third party.

This amendment is particularly important in view of the changes introduced by the Personal Data Protection (Amendment) Act 2024, which extended obligations to data processors, requiring them to comply with the Security Principle under the Personal Data Protection Act 2010.

Key Takeaway 10: Direct Liability for Data Processors

Finally, the Public Consultation Paper proposes to introduce a new provision placing direct liability on data processors, making them subject to the same penalties as data controllers in cases of breach of the Security Principle under Personal Data Protection Regulations 2013. Upon conviction, this may include a fine not exceeding RM250,000, imprisonment for a term not exceeding two years, or both.

This proposal ties closely with the ninth key takeaway, reflecting a consistent effort to expand and formalise the obligations and responsibilities of data processors under the personal data protection framework.

Conclusion

The proposed amendments to the Personal Data Protection Regulations 2013 mark a significant step in strengthening Malaysia's data protection framework, bringing greater clarity, consistency, and accountability across the board.

As the consultation period closes and the final amendments are introduced, it will be essential for legal teams and senior management to stay ahead of the curve. Preparing early will not only reduce compliance risk but also build trust with regulators, customers, and stakeholders.

If your organization needs help with further insights and legal guidance on Personal Data Protection (Amendment) Act 2024 or Data Protection Officer outsourcing services, please feel free to reach out to the firm's Technology Practice Group. Lawyers from the Technology Practice Group have a wealth of experience assisting clients with their legal needs, particularly pertaining to compliance with the Personal Data Protection Act 2010, and will certainly be able to assist.

Our Technology Practice continues to be recognised by leading legal directories and industry benchmarks. Recent accolades include FinTech Law Firm of the Year at the ALB Malaysia Law Awards (2024 and 2025), Law Firm of the Year for Technology, Media and Telecommunications by the In-House Community, FinTech Law Firm of the Year by the Asia Business Law Journal, a Band 2 ranking for FinTech by Chambers and Partners, and a Tier 3 ranking by Legal 500.

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Beyond the Veil: The Federal Court Rules on Director Liability for EPF Defaults

What happens when a company fails to meet its Employees Provident Fund ("**EPF**") obligations and yet the directors are sued instead of the company? How far can the law go in holding its directors personally accountable for such defaults and what does this mean for company directors navigating financial distress or corporate collapse? The Federal Court in Mohd Abdul Karim Abdullah & Ors v Lembaga Kumpulan Wang Simpanan Pekerja [2025] 4 MLJ 878 has provided an answer every company director needs to understand, particularly within the context of the Employees Provident Fund Act 1991 ("**EPF Act**").

Background Facts

1. The case began with a writ filed by the respondent, the Employees Provident Fund Board ("**EPF Board**"), in December 2022 against the applicants, who were the directors of Serba Dinamik Group Berhad at the material time, for the company's failure to remit outstanding EPF contributions, totaling over RM3 million, from September 2021 to July 2022.

2. Crucially, the company itself was neither named nor made a party to this suit, with the claim brought directly against the directors in their personal capacities instead.

3. This action was taken amid substantial financial distress for the company. Prior to the respondent's claim, a petition for the winding up of the company had been jointly filed by its banks in April 2022. An interim liquidator was appointed in August 2022, and the company was formally wound up in January 2023, with the interim liquidator continuing in the role of liquidator.

4. Against this backdrop, the appellants thus contended that the outstanding EPF contributions should have been pursued as preferential debts through the appointed liquidator, rather than directly against them as directors. They further claimed that the interim liquidator, who had been appointed, was the party that had allegedly failed to take action to settle the unpaid EPF contributions.

5. They also contended that the company, as the employer, was the primary party liable for the EPF contributions and should have been included as a co-defendant in the suit, which would have required obtaining leave from the court given the company's liquidation status.

6. A core legal issue raised by the appellants was that, under Section 46 of the EPF Act, the respondent could not proceed against the directors alone without also suing the company.

7. The respondent, however, maintained that the writ was filed before the company was formally wound up and, in any event, that the outstanding EPF contributions it claimed were for the period of default where the applicants were the directors of the company.

8. More fundamentally, it asserted that its right to pursue the appellants was valid under Section 46 of the EPF Act 1991, which imposes a separate and independent liability on the directors, making them jointly and severally liable for the unpaid EPF contributions.

9. The High Court, satisfied that there was no triable issue, granted summary judgment in favour of the respondents. The applicants then appealed to the Court of Appeal but failed.

Federal Court's Findings

In dismissing the application for leave to appeal, the Federal Court reinforced the decisions of both the High Court and the Court of Appeal. It held that even if a company is not sued or taken action against together with the directors, the joint and several liability under Section 46 of the EPF Act is effective and capable of being enforced against the directors alone, without having to name the company as a defendant, for the company's failure to remit EPF contributions.

Central to this is the interpretation of Section 46 of the EPF Act, which provides that:

> *"(1) Where any contributions remaining unpaid by a company, a firm or an association of persons, then, notwithstanding anything to the contrary in this Act or any other written law, the directors of such company including any persons who were directors of such company during such period in which contributions were liable to be paid… shall together with the company, firm or association of persons liable to pay the said contributions, be jointly and severally liable for the contributions due and payable to the Fund."*

In arriving at its decision, the Federal Court considered, among others, the following:

- **Interpretation of "shall together with the company"**

  The Federal Court clarified that the phrase does not give rise to a procedural requirement that the company must be sued concurrently with the directors. Rather, it identifies the parties upon whom liability for unpaid EPF contributions is imposed, and the principle of joint and several liability permits the EPF Board to pursue any or all of them at its discretion to recover the whole debt. Accordingly, the respondent was lawfully entitled to initiate proceedings solely against the applicants, a position consistent with established precedent and for which the applicants were unable to furnish any authority to the contrary.

- **Strict statutory liability**

  The Federal Court reaffirmed that a director's liability for unpaid EPF contributions is direct and personal. It operates as a statutory exception to the doctrine of separate legal personality, thereby piercing the corporate veil in cases of non-compliance. This liability is neither secondary nor contingent upon the company's financial condition or its inclusion as a party to the proceedings. It arises immediately upon the company's default, and the directors are held liable simply by virtue of holding office during the period of default.

- **Legislative intent**

  The Federal Court found that the meaning and application of Section 46 of the EPF Act in respect of the proper party and the question of liability are settled law, with no novel points arising in this case, and concluded that further review would not serve the public interest. In line with the objective of the EPF Act enacted as social legislation to protect the welfare of employees, its provisions enabling the recovery of such debt must be given full effect.

Key Takeaways

The Federal Court has definitively ruled that directors cannot hide behind the corporate veil to escape personal liability for unpaid EPF contributions. This pivotal decision marks a significant shift in director accountability, serving as both a clear warning and a call to action for every director.

The notion of a "sleeping director" is no longer tenable. Legal responsibility for timely remittance of the EPF contributions rests not only on the company but extends equally to all directors, irrespective of their level of involvement in day-to-day operations or the company's finances.

Importantly, the Federal Court confirmed that a director's liability under Section 46 of the EPF Act is direct, personal, and enforceable, even where the company is not a party to the proceedings. It further validated the EPF Board's authority to bypass the complexities of corporate liquidation and, instead of waiting in line with other creditors, proceed directly against any or all directors, thereby enabling it to efficiently target the most solvent or reachable directors for the recovery of outstanding EPF contributions.

It remains to be seen whether the same outcome would apply if the writ had been filed after the company was formally wound up. The strong language of the Federal Court, however, suggests that such statutory liability would likely remain unaffected by the timing of the proceedings. Ultimately, this ruling stands as a powerful deterrent, compelling directors to fulfil their duties and rigorously uphold laws designed to safeguard the retirement savings of those they employ.

Stepping into a directorship without proper due diligence now carries an immediate, personal risk. For current directors, it is imperative to take proactive steps to prevent non-compliance. A critical part of this includes putting in place robust internal controls that specifically address EPF compliance. For incoming or acquiring directors, the stakes are equally high. There is a risk of becoming involved with a company that has a history of non-compliance, which, if unresolved, could create new liabilities under their watch.

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Differential Maintenance Charges and Sinking Fund Contributions During the Developer and JMB Periods: Powers under the Strata Management Act 2013

As Malaysia's urban landscape becomes increasingly vertical, the question of how maintenance fees and sinking fund contributions are apportioned among strata owners has gained fresh relevance. The Strata Management Act 2013 ("**SMA 2013**") sets out a phased transition from developer control to resident-led management and within that transition lie varying degrees of discretion over charging formula. Understanding when and how different rates can be imposed while avoiding potential legal challenges ensures transparency end harmony in high-rise communities.

*Whether the developer may impose different rate of charges and sinking fund contributions during the developer management period ("**DMP**") and the preliminary management period ("**PMP**").*

When a strata project is handed over, it enters the DMP, in which the developer alone collects maintenance and sinking contributions calculated according to each parcel's share units. This phase continues until one month after the Joint Management Body ("**JMB**") is registered, as defined under Section 7 of the SMA 2013.

The developer retains similar authority through the PMP, which is the period commencing from the date of delivery of vacant possession until one month after the first annual general meeting of the management corporation ("**MC**") pursuant to Section 46 and 48 of the SMA 2013.

While both the DMP and PMP commences from the date of delivery of vacant possession, they are governed by different statutory provisions under the SMA 2013. However, the developer retains the responsibility of determining the rates payable, which must be proportionate to the allocated share units of each parcel.

Throughout the DMP and PMP, the developer holds near-plenary power over budgeting and rate-setting, absent any statutory prohibition under the SMA 2013. At this stage, the developer may lawfully impose different charges for different types of properties so long as the rates are just and reasonable and reflects the exclusivity of usage, in alignment with the Court of Appeal's decision in ***Aikbee Timbers Sdn Bhd & Anor v Yii Sing Chiu & Anor [2024] 1 MLJ 948 ("Aikbee").***

In the Court of Appeal case of ***Aikbee Timbers Sdn Bhd & Anor v Yii Sing Chiu & Anor [2024] 1 MLJ 948 ("Aikbee")*** that remains relevant and applicable as of today, the facts involved a developer of a mixed-use development, Pearl Suria, who imposed higher maintenance and sinking fund rates on residential parcel owners compared to commercial parcel owners during the PMP, i.e. before the formation of the MC.

The Court of Appeal unanimously allowed the appeals by the Developer and the MC, overturning the High Court's decision. It held that it was lawful for a developer or MC to impose different rates for residential and commercial parcels, provided that the charges were just and reasonable. Since residential parcel owners had exclusive use of certain common facilities such as the swimming pool per se and thereby incurred higher maintenance costs, it was fair for them to be charged more. The Court found that neither the Developer nor the MC acted arbitrarily or abused their powers. A uniform rate, by contrast, would have been unjust to commercial parcel owners who did not benefit from the exclusive use of certain common facilities in a mixed-use development.

Notably, at paragraphs 52 and 53 of the judgment, the Court of Appeal explained:

> *"...Therefore, in order to formulate a rate to represent a **fair and justifiable proportion** of the expenses for maintenance and management of the common property, it is important to look at the type of expenses which are relevant and correspond to the type of parcels where there are more than one type of parcels. If a development has only one type of parcel, namely only residential parcels, then all residential parcels' owners would have common rights. They will have to share the expenses as a whole, and contribute to the expenses based on their proportion to the share units assigned or allocated to them.*
>
> *In a mixed development, like the one before us, **the exclusive common facilities are exclusively for the benefit and enjoyment of the residential parcels' owners.** The expenditure for the maintenance and management of these exclusive*

common facilities which are exclusively for the benefit of the residential parcels' owners ***should not*** *be included in the formula for the chargeable rate for the commercial parcels owners who have no right to enjoy such exclusive common facilities.* ***The rigid imposition of only one chargeable rate for maintenance charges for residential parcels and commercial parcels would not reflect the true construction of a social legislation."***

The Court of Appeal in ***Aikbee*** emphasised that the SMA 2013 is a social legislation "intended to achieve a common goal for the common good of the society" and held that the formula "cannot be applied mechanically without giving due consideration of the peculiar facts in a mixed development".

Justice Choo Kah Sing, JCA added that where common facilities are exclusively for the benefit and enjoyment of the residential parcels' owners, the expenditure for the maintenance and management of these common facilities which are exclusively for the benefit of the residential parcels' owners should not be included in the formula for the chargeable rate for the commercial parcels owners who have no right to enjoy such exclusive common facilities. The rigid imposition of only one chargeable rate for maintenance charges for residential parcels and commercial parcels would not reflect the true construction of a social legislation.

Applying the judgment from ***Aikbee***, it can be implied that the developer can impose different rates of maintenance charges and sinking fund during the DMP, provided such differentiation is justifiable, reasonable, and reflects the actual, expected benefit of common facilities by different parcel types in the mixed development cases.

Whether the Joint Management Body can impose different rate of charges and sinking fund during the JMB period

As soon as the JMB takes over, it must adhere to a single maintenance rate. In the absence of any legislative provision authorising tiered charges, any attempt to segment parcels into rate bands risk an ultra vires challenge, as demonstrated in the Court of Appeal decision of ***Muhamad Nazri bin Muhamad v JMB Menara Rajawali & Denflow Sdn Bhd*** in 2019 ("Rajawali").

In **Rajawali**, the Court of Appeal held that if the words of a statute are unambiguous, plain and clear, they must be given their natural and ordinary meaning. As a creature of statute, the JMB only has the powers granted to it under the SMA 2013. These powers extend no further than what is expressly provided in the Act, or what is necessarily and properly required to carry out its purposes or may reasonably be regarded as incidental to or consequential upon what the legislature has authorised. In other words, the JMB cannot exercise any powers beyond what the law explicitly or implicitly permits.

There is also no provision under the SMA 2013 and the Strata Titles Act 1985 which empowers the JMB to fix different rates for different types of parcels. This power is expressly conferred only on an MC under Section 60(3)(b) of the SMA 2013. Therefore, if Parliament intended for the JMB to have the power to fix different rates of maintenance charges, that intention would have been clearly reflected in the provisions of the SMA 2013; and because there is an absence of such provision, it must have been the Parliament's presumed intention not to confer such power on the JMB.

The Court of Appeal added that the JMB as a corporate body under statute can only determine charges which are granted under the SMA 2013. It will be ultra vires the SMA 2013 for the JMB and the JMC to fix and impose the different rates which are not sanctioned by statute. Further, the JMB does not have the inherent power, nor can it arrogate to itself such power, even if the approval was obtained in a unanimous resolution at the AGM.

Thus, the JMB is only empowered under the SMA 2013 to impose maintenance charges and sinking fund contributions in proportion to the share units of each parcel. Unlike a MC, the JMB has no express or implied authority to fix different rates for different parcel types.

Alternative approaches the developer may consider for imposing additional or different rates of maintenance charges and sinking fund contributions during the JMB period

a. Before the construction stage of development: The developer may adopt a fair and equitable formula that takes into account of the exclusive use of certain common property for certain parcel owners, for determining share units (e.g. in accordance with the First Schedule of the SMA 2013), which enable the developer or the JMB to impose a single uniform rate applicable to all parcel types, during the DMP, PMP and JMB period; or

b. During the sale and purchase stage, a developer may inform purchasers of their exclusive rights to certain parts of the common property and the corresponding obligation to pay additional maintenance charges and sinking fund contributions. These terms should be formalised in a written agreement, such as a Deed of Mutual Covenants, and supported by additional by-laws under the SMA 2013.

Such by-laws are legally binding on all parties including the developer, JMB, MC, parcel owners, tenants, and occupiers as if each had personally signed them. This is affirmed by section 32(4) of the SMA 2013 and Regulation 1 of the Third Schedule of the Strata Management (Maintenance and Management) Regulations 2015. The term “management corporation” under Regulation 2 includes the developer during both the DMP and PMP. Regulation 4 further allows the management body to grant exclusive use of common property to a proprietor through a written agreement, subject to clearly defined terms and conditions. This legal framework enables developers to structure differentiated contributions transparently and enforceably from the outset.

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Paid, But Not Settled: Challenging Adjudication Decisions under CIPAA

A case summary of Samsung C&T Corporation UEM Construction JV Sdn Bhd v Berkat Honeywell Sdn Bhd [2025] MLJU 2101

Introduction

The Construction Industry Payment and Adjudication Act 2012 (CIPAA) was enacted with the aim of safeguarding cash flow in the construction sector through a mechanism of swift and temporary adjudication. The process was designed to give contractors and subcontractors a quick route to resolve payment disputes without the long delays of arbitration or litigation. Over time, however, Malaysian courts have been called upon to draw clear lines on the limits of adjudicators' powers and the scope of judicial intervention.

A recent decision of the High Court in *Samsung C&T Corporation UEM Construction JV Sdn Bhd v Berkat Honeywell Sdn Bhd [2025] MLJU 2101* is a significant milestone in this regard. It reaffirms that adjudicators cannot overlook statutory requirements in payment claims and cannot conduct proceedings in a way that deprives parties of procedural fairness. The Court found that both excess of jurisdiction and denial of natural justice were present, and on that basis, the adjudication decision was set aside. This judgment, which is currently under appeal, is likely to have wide implications for the way payment claims are prepared and how adjudicators manage their proceedings.

Background Facts

The dispute arose from a major development in Kuala Lumpur, one of the largest construction projects in the country (the "**Project**"). In 2015, the project owner appointed Samsung C&T Corporation UEM Construction JV Sdn Bhd as the main contractor for the Project ("**Contractor**"). Two years later, a subcontractor, Berkat Honeywell Sdn Bhd was appointed under a subcontract valued at RM14.85 million to undertake the Building Management System works ("**Subcontractor**").

In July 2024, the Subcontractor issued a Payment Claim for approximately RM12.61 million under CIPAA. The Contractor disputed the claim in its Payment Response. The matter proceeded to adjudication at the Asian International Arbitration Centre (AIAC). The parties exchanged adjudication papers thereafter.

The Contractor took issue with the Adjudication Reply because it raised new arguments and introduced numerous fresh documents. The Contractor requested leave to file a Rejoinder but this was refused by the adjudicator.

Thereafter, the adjudicator issued a decision in favour of the Subcontractor, ordering the Contractor to pay approximately RM2.47 million together with interest and cost ("**Adjudication Decision**"). In compliance with the Adjudication Decision, the Contractor made full payment under protest, and expressly reserved its right to challenge the decision. Ten days later, the Contractor filed an Originating Summons seeking to set aside the Adjudication Decision under Section 15 of CIPAA ("**Setting Aside Application**").

Findings of the High Court

Preliminary Objections by the Subcontractor

The High Court began by addressing a preliminary objection raised by the Subcontractor in the Setting Aside Application. It argued that since the sums awarded had already been paid, there was no adjudication decision left to set aside, or alternatively, that the Contractor lost its right to challenge it. The High Court rejected this contention in strong terms, describing the submission as "absurd." The learned Judge explained that while payment of the adjudicated sum may remove the need for enforcement, it does not take away the respondent's right to apply to set aside the decision. The learned Judge further observed that the Contractor had expressly reserved its rights when making payment, and by accepting the sum,

the Subcontractor was bound by that reservation. To argue otherwise was, in the learned Judge's words, "untenable, and if I may say so, cunning."

Grounds for Setting Aside- The Adjudicator had acted in excess of jurisdiction

The Court then turned to the substantive grounds under section 15 of CIPAA. The Contractor relied on two of them: excess of jurisdiction under section 15(d) and denial of natural justice under section 15(b).

On the question of jurisdiction, four objections were raised, the most significant being that the Payment Claim did not comply with section 5(2) of CIPAA. The Court found that the claim fell short because it failed to identify the specific contractual provisions under which payment was sought and omitted to state the due dates for payment. Instead, it merely referred in general terms to annexures without providing the necessary particulars. In addressing this defect, the Court emphasised, by reference to the Federal Court authorities in ***Anas Construction v JKP and View Esteem v Bina Puri***, that strict compliance with section 5(2) is mandatory. Payment claims, the Court stressed, must be clear and self-contained, and respondents are not expected to "go figure out the details."

The second objection concerned service. The Contractor argued that the Payment Claim was incomplete and that the Notice of Adjudication had been served by email, which is not one of the recognised methods under section 38 of CIPAA. The Court dismissed this objection because the Contractor had received the hardcopies in time and had in fact participated in the proceedings.

The third objection was based on clause 20.6 of the subcontract, which required disputes referred to adjudication to also be referred simultaneously to arbitration. The Court held that this clause governed arbitration rather than adjudication and did not restrict the adjudicator's jurisdiction.

The fourth objection proved more persuasive. The Court noted that the adjudicator had relied on Interim Payment Certificate No. 81 when making his decision, even though the Payment Claim was expressly founded on IPC 74. Referring to the Federal Court's guidance in Anas Construction, the Court held that the adjudicator had gone beyond his jurisdiction by deciding a matter that was never raised in either the Payment Claim or the Payment Response.

Grounds for Setting Aside- Breach of Natural Justice

Apart from finding an excess of jurisdiction, the High Court also held that there had been a denial of natural justice. Three instances were identified. First, the Contractor had raised a set-off for liquidated and ascertained damages (LAD). The adjudicator dismissed it on the basis that he lacked jurisdiction, as the set-off had not been raised prior to the Payment Claim. The High Court found this reasoning flawed and held that the adjudicator ought to have invited submissions on the issue before making a determination on jurisdiction.

Secondly, both parties had submitted expert reports on delay and extension of time. These were central to the dispute, yet the adjudicator's decision was silent on them. The High Court held that this amounted to a denial of natural justice, since an adjudicator must at least deal with the key issues presented.

Thirdly, the Court found that the adjudicator's refusal to allow a Rejoinder was unjust. The Subcontractor's Adjudication Reply had introduced new issues and a large volume of documents, yet the Contractor was denied the chance to respond. The High Court observed that section 12 of CIPAA allows for extensions of time with the parties' consent, and that basic fairness required the respondent to be heard on the new material.

For these reasons, the High Court set aside the adjudication decision and ordered the subcontractor to refund the RM2.47 million received, together with interest, to the contractor.

Comments

This case has several implications for the construction industry and the practice of adjudication under CIPAA.

First, it confirms that strict compliance with section 5(2) is required. Payment claims must be complete, precise, and self-contained. Claimants cannot rely on vague references to documents not attached, nor can they omit due dates. The payment claim is the jurisdictional foundation of the adjudicator's authority, and any defect may render the entire process void.

Secondly, the case clarifies the boundaries of jurisdiction under section 27. Adjudicators must confine themselves to what is contained in the Payment Claim and Payment Response. They cannot decide claims based on documents or arguments introduced later in the process unless both parties' consent. This is consistent with the Federal Court's strict approach in Anas Construction.

Thirdly, the case illustrates the importance of natural justice even in the context of expedited adjudication. While speed is an essential feature of CIPAA, it does not justify ambushing the other side with new evidence at the last stage or refusing reasonable opportunities to respond. Adjudicators must strike a balance between efficiency and fairness, and the courts will intervene where the balance has been lost.

Fourthly, the judgment clarifies that payment under an adjudication decision does not preclude a later challenge if the paying party expressly reserves its rights. This is significant for respondents who wish to avoid enforcement proceedings but also intend to test the validity of the decision in court.

Whether the Court of Appeal affirms this strict approach will determine the trajectory of CIPAA adjudication in Malaysia. For now, the case serves as a cautionary tale: speed is important, but statutory compliance and fairness remain the bedrock of the system.

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Illegal Moneylending Transaction Disguised as an "Investment Agreement"

Introduction

In the recent case of Lua Thiang Poh v Kabir Singh a/l Jagir Singh & Ors [2025] MLJU 2365, the Kuala Lumpur High Court dismissed the Plaintiff's claim for the principal sum of RM2.3 million and monthly "returns" of RM2.78 million said to arise from several transactions and promissory notes, holding that the arrangements constituted unlicensed moneylending, not investments.

Background Facts

The 5th Defendant (D5) was a licensed moneylender. The 1st and 3rd Defendants were directors and shareholders of D5. Between 2013 and 2015, the Plaintiff transferred sums totalling RM2.3 million to D5 by way of 6 transactions. Each transaction was documented by a Promissory Note ("PN") prepared by the Defendants.

Each PN set fixed monthly instalments / payments and was backed by post-dated cheques for the instalments plus undated cheques for the principal as security. The initial PNs were later replaced with new PNs stated which contain a clause stating the PN would be automatically renewed unless the Defendants received a three months' notice from the Plaintiff before the automatic renewal.

On 1.6.2022 and 3.6.2022, the Plaintiff banked in all the principal cheques provided as security. However, none of the cheques cleared. The Plaintiff then filed this suit in the High Court to recover the principal sums totalling RM2.3 million and RM2.78 million in monthly payments.

Plaintiff's Case

The Plaintiff claimed that the PNs were valid and enforceable investment agreements. The monthly payments constituted returns on investment, not interest, and that the renewal clauses contained in several of the notes extended the agreements automatically.

The Plaintiff acknowledged that he is not a licensed moneylender, but merely a senior executive who had chosen to place funds with the Defendants for business growth.

Defendants' Case

The Defendants claimed that the PNs were void for illegality because they contravene the Moneylenders Act 1951. The PNs were not investments but loans disguised as such. The monthly payments are interest payments and the PNs were used to camouflage an illegal moneylending transaction as the Plaintiff was not a licensed moneylender.

Decision of the High Court

Investment or Loan?

The High Court dismissed the Plaintiff's claim in its entirety. The High Court critically examined the evidence and conduct of parties and found that the transaction between the parties was a loan arrangement rather than an investment.

The High Court observed that while the PNs do not explicitly state whether the transaction was an investment or a loan, the PNS contain features characteristic of loan agreements, including fixed monthly payments (akin to interest), security in the form of post-dated cheques, and provisions for the return of the principal sum. The structure of the transaction – advancing a sum of money in return for regular fixed payments and the eventual return of the principal – is consistent with a loan rather than an investment. The regular fixed monthly payments required under the PNs – unrelated to business performance – bear all the hallmarks of interest.

These features are also inconsistent with the very nature of investments. In this case, the Plaintiff was protected from risk since he was assured of steady payments and the safe return of his money. This

arrangement is more consistent with a creditor-debtor relationship in a loan transaction rather than an investment.

Further, the consistent references to "interest" and "principal money return" in correspondence and records showed that both sides understood the arrangement as one of lending, not investing. The parties' own words reflected the true nature of the transaction.

Principal & Interest are not Recoverable

As an unlicensed moneylender, the loan agreement embodied in the PNs was void and unenforceable pursuant to Section 15 of MLA 1951, which stipulates that no moneylending agreement in respect of money lent by an unlicensed moneylender shall be enforceable.

Further, any moneylending agreement by an unlicensed moneylender will be unenforceable due to public policy. The High Court referred to the Federal Court case of Triple Zest Trading & Suppliers & Ors v Applied Business Technologies Sdn Bhd [2023] 10 CLJ 187, which observed that it is in the public interest for unlicensed moneylenders to be deprived of their illegal "principal loan sums", interest and whatever ill-gotten property or benefit enjoyed from their unlawful moneylending business. The Federal Court held that the courts will not assist an unlicensed moneylender to recover either interest or principal.

The High Court ruled that the transaction between the parties was a loan arrangement, not an investment. Therefore, the PNs were a loan arrangement and are void and unenforceable under the MLA 1951. Applying Section 15 MLA 1951 and the Federal Court's reasoning in Triple Zest, the High Court held that, once the transaction is an unlicensed loan, neither interest nor principal is recoverable.

Conclusion

The decision of the High Court reinforces the approach that the Courts will look beyond labels such as "investment" and "dividends" and examine the contents of the documents and the parties' conduct to determine the true relationship between the parties and the type of transaction that they have entered into. The Courts will look at the substance of the transaction, not merely by the labels assigned to it.

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Inside Out

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

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Noelle Low Pui Voon

Rankings

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HHQ Recognised in the Latest IFLR1000 Rankings

We are honoured to share that HHQ has been recognised in the latest IFLR1000 Rankings. This achievement reflects the dedication of our team and the confidence our clients place in us to provide legal advice that drives meaningful outcomes.

We extend our sincere appreciation to our clients, colleagues, and partners for your continued trust and support.

Special congratulations to our ranked partners:

Dato' Quek Ngee Meng – Highly Regarded
Noelle Low Pui Voon – Rising Star Partner

HHQ at the Kuala Lumpur In-House Community Congress 2025

Halim Hong & Quek was delighted to take part in the Kuala Lumpur In-House Community Congress 2025 on 11 September 2025 at the Grand Hyatt Kuala Lumpur. The event brought together over 200 in-house counsel for a full day of timely legal updates, practical insights, and meaningful conversations shaping the legal landscape in Malaysia.

Our Technology Practice Group Partners, Ong Johnson and Lo Khai Yi, led a session titled “A New Era of Data Privacy Compliance: Mandatory DPOs, Breach Reporting & Cross-Border Transfer Challenges Under Malaysia’s PDPA.” They shared perspectives on the latest regulatory changes and offered practical guidance on how organisations can better navigate data privacy compliance in today’s evolving environment.

A big thank you to the In-House Community – inhousecommunity.com team for hosting such a well-organised and impactful event for the legal community.

The Malaysia PDPA Authority Series

We're excited to share our exclusive 3-part podcast series with Prof. Dr. Nazri Kama, the Former Personal Data Protection Commissioner of Malaysia, joined by our Technology Practice Group Partners, Ong Johnson and Lo Khai Yi.

What happens when you sit down with the man who led Malaysia's data protection transformation?

The myths — debunked.
The law — transformed.
The roadmap — revealed.

If you deal with customer or employee data, operate across borders, or build in tech, this is a series you won't want to miss.

Watch Now:

Episode 1: https://youtu.be/OVvDiN1g0Po
Episode 2: https://youtu.be/Jk_e7-bV1WM

Stay tuned — the final episode drops soon.

HHQ + HLP Dispute Resolution Alliance Retreat 2025

On 15 August 2025, our Dispute Resolution teams from HHQ and HLP came together at Tiarasa Escapes, Janda Baik, for a day of team building, brainstorming, and alignment.

From streamlining our practice groups to setting a shared vision for the next five years, the retreat was all about strengthening collaboration, fostering innovation, and building a sustainable future together.

Here's to new synergies, stronger alliances, and continued growth!

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