EMPOWER

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Monthly legal insights
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FOREWORD

Greetings from HHQ and HLP!

As 2025 comes to a close, the legal and regulatory landscape continues to evolve in ways that directly shape practice, corporate governance and public interest. This month's developments highlight how courts and regulators are recalibrating established doctrines, reinforcing statutory safeguards and laying the groundwork for future frameworks.

The Court of Appeal reaffirmed the sanctity of the doctrine of separate legal personality enshrined in Salomon v Salomon. In Hubline Berhad v Intan Waslin An Wahab & 39 Ors (2025), the Could held that an employee who obtained an Industrial Court award for unfair dismissal against a wound-up company could not enforce that award against the company's sister or parent entities. This decision highlights the enduring principle that corporate boundaries cannot be disregarded, even in employment disputes.

Abroad, the English Commercial Court in V N v K dismissed an attempt to challenge an arbitral award under Sections 67 and 68 of the Arbitration Act 1996. The ruling clarifies the high threshold required to justify judicial intervention on jurisdictional grounds, reinforcing the autonomy of arbitral proceedings.

Just as V N v K highlighted judicial restraint, Malaysian law demonstrates how statutory carve-outs can recalibrate established doctrines. Section 30 of the Construction Industry Payment and Adjudication Act (CIPAA) departs from the traditional principle of privity by empowering subcontractors to demand payment directly from principals for sums due from main contractors. Unlike the reaffirmation of corporate separateness in Hubline Berhad, Section 30 represents a deliberate legislative intervention, creating a statutory exception to conventional boundaries.

The statutory intervention in Section 30 of CIPAA reflects a broader theme in commercial practice: managing financial exposure across complex chains of obligation. The principle resonates in the financing of capital-intensive projects such as Electric Arc Furnaces (EAFs), where lenders and investors must grapple with credit risk and devise mechanisms to safeguard repayment. Just as CIPAA provides a safety net for subcontractors, effective financing structures for EAFs demand proactive risk allocation through guarantees, credit enhancements and covenants.

Risk management extends beyond financial exposure into the regulatory domain, where societal and environmental consequences are paramount. Recent developments under Malaysia's Atomic Energy Licensing Act impose stringent requirements for handling, storing and disposing of radioactive materials. Just as lenders demand robust protections before committing capital to high-risk projects, regulators impose uncompromising safeguards to ensure radioactive substances are managed safely, transparently, and with accountability.

The Atomic Energy Licensing Act exemplifies how regulation enforces non-negotiable safeguards. A similar stance is evident in construction law, where Section 35 of CIPAA 2012 renders conditional payment clauses void. This prohibition applies not only in adjudication proceedings but also in court and arbitral forums, ensuring that subcontractors and contractors cannot de deprived of payment certainty through 'pay when paid" or "pay if paid" clauses.

Section 35 of CIPAA 2012 demonstrates how legislation can override contractual autonomy to secure certainty. This emphasis on statutory safeguards finds a parallel in the financial sector, where Bank Negara Malaysia's exposure draft on open finance sets out eight key elements to build a more connected, interoperable and consumer-centric system. Just as CIPAA protects subcontractors from delayed or contingent payments, open finance seeks to protect consumers by mandating transparency, accessibility and fair data-sharing practices.

Bank Negara's open finance vision highlights how interoperability can transform the financial ecosystem. This principle finds immediate relevance in the property sector, where loan disbursement often depends on the speed and accuracy of information exchange between banks, solicitors and developers. Just as open finance aims to eliminate friction in consumer transactions, strategies to expedite property loan disbursement focus on streamlining processes, reducing bottlenecks and delivering funds more efficiently, thus turning regulatory aspirations into tangible benefits for borrowers and the market.

From corporate law to construction contracts, from industrial financing to nuclear regulation and from open finance to property lending, the developments this month share a common thread: law and regulation are ultimately about creating certainty, fairness and trust in everyday transactions.

As Malaysia and global markets continue to evolve, these changes remind us that behind every statute, judgment or policy lies a practical goal, namely to safeguard interest, reduce risks and enable growth. Whether you are a lawyer, a corporate leader or a curious reader, the challenge and opportunity ahead is to translate these principles into decisions that make a difference in practice and in daily life.

We hope this issue offers timely insights and practical perspectives for professionals, clients, and readers navigating Malaysia's evolving legal and regulatory landscape. 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

TABLE OF CONTENTS

Financing an EAF Project: Managing Credit Risk Through Covenants

Opening hook: “When a RM200 mil electric arc furnace sits on the balance sheet, the loan is only as strong as the covenants that back it.”

Introduction

Steel manufacturing is capital-intensive, cyclical, and increasingly shaped by environmental imperatives. Among the most significant investments a steel company can make today is the installation of an electric arc furnace (EAF). For banks, financing such a project is not just about underwriting a loan, it is about structuring covenants that can withstand market volatility, operational risks, and regulatory scrutiny. This article explores the relevance of EAF technology, the financing challenges faced by steel manufacturers, the credit risks banks must weigh, and how tailored covenants can mitigate those risks.

What is an EAF and Why It Matters in Steel Manufacturing

An electric arc furnace is a steelmaking technology that uses electrical energy to melt scrap steel or direct reduced iron (DRI). Unlike traditional blast furnaces, which is primarily an ironmaking technology that reduces iron ore with coke to produce pig iron, the EAF bypasses that stage by relying on recycled or pre-reduced feedstock. In the traditional route, pig iron from the blast furnace is transferred into a basic oxygen furnace where it is refined into steel. The EAF eliminates the need for pig iron altogether, offering a more flexible and less carbon-intensive pathway to steel production.

EAFs can reduce carbon footprints by up to 80% compared to blast furnaces, making them attractive in a world of tightening ESG regulations. They allow steelmakers to recycle scrap, reducing reliance on raw materials and strengthen circular economy credentials. EAFs can be adjusted up or down more easily to align production with demand cycles.

For steel companies, investing in an EAF is both a technological upgrade and a strategic positioning move. For banks, it represents a financing opportunity tied to ESG-linked lending frameworks, but also a concentration risk given the sheer size of the investment.

Financing Challenges for Steel Manufacturers

Steel manufacturers face several hurdles when seeking financing for EAF projects. A RM200 million furnace is a balance sheet-heavy asset and for large-scale operations even that figure may be insufficient. Few companies can finance such investments internally, making bank loans essential.

Market volatility compounds the challenge. Steel overcapacity in Malaysia and globally has led to price instability, while scrap availability which is the lifeblood of EAFs remains uncertain. These factors affect both profitability and debt service capacity.

Banks are also increasingly tying financing to sustainability risk as frameworks such as the Climate Change and Principle-based Taxonomy (CCPT). Steelmakers in the “transitioning” category must demonstrate compliance with emission targets and disclosure requirements. Financing is therefore not just about securing capital, it is about structuring terms that reassure lenders while giving steelmakers operational breathing room.

Credit Risks Banks Must Consider

From a bank’s perspective, financing an EAF project involves several layers of risk and we pick some to discuss here.

Operationally, EAFs depend on scrap supply, and any disruption can impair production. Banks must be assured that borrowers have reliable and diversified supply chains.

Financially, steel price volatility and global oversupply can erode margins thereby weakening debt service capacity.

Regulatorily, under the CCPT framework, steelmakers are typically classified as “transitioning” sectors, which means banks must ensure that financing is tied to credible transition plans and compliance with emissions disclosure requirements. This adds a regulatory dimension to credit risk: if borrowers to meet CCPT criteria, such as providing transparent emissions data and demonstrating progress toward decarbonisation targets, banks themselves risk supervisory scrutiny for weak due diligence.

Banks must therefore assess not only the borrower's financials but also the broader industry context, supply chain resilience, and regulatory landscape.

Managing Risk Through Financing Covenants

Covenants are the backbone of risk management in project financing. For EAF projects, they must be tailored to address both financial and operational realities, some of which are discussed below.

1. **Financial Covenants**

   When banks finance an electric arc furnace project, one of the most critical financial covenants they usually impose is a cap on the debt-equity ratio. This covenant is designed to ensure that the borrower does not over-leverage its balance sheet in pursuit of a capital-intensive upgrade. If the borrower funds too much of the project with debt, the risk of default rises sharply, particularly in a sector as volatile as steel where margins are constantly exposed to price swings and scrap feedstock fluctuations. Imposing a reasonable debt-equity ratio on the borrower enables the borrower to retain sufficient reserves. In market shocks, equity becomes the buffer that absorbs shock steelmakers, therefore, such covenant ensures the bank is not left carrying disproportionate risk.

   Another cornerstone of covenant structuring in EAF financing is the debt service coverage ratio (DSCR). This covenant is designed to protect banks against cash flow shortfalls by requiring borrowers to maintain a minimum level of operating cash relative to its debt obligations. A ratio above one signals that the company generates enough cash to service its debt while a ratio below one indicates vulnerability. A minimum DSCR ensures banks that borrowers cannot drift into a position where debt service depends on optimistic forecasts or unsustainable cash reserves and if the covenant is breached, remedies such as cash sweeps or restrictions on further borrowing can be triggered, thus giving banks early warning and control before the situation deteriorates into default.

2. **Operational Covenants**

   For an electric arc furnaces project, banks often require borrowers to secure long-term scrap supply contracts as an operational covenant because the furnace depends almost entirely on scrap steel or direct reduced iron, thereby making feedstock disruption a direct threat to debt service capacity.

   These contracts must demonstrate reliable tonnage, diversified suppliers, enforceable delivery schedules and quality standards with lenders sometimes insisting on assignment rights to step in if the borrower breaches the covenant. This is a necessary covenant to ensure operational continuity against volatile scrap markets.

3. **ESG Covenants**

   In the context of financing an electric arc furnace project, an ESG covenant on emissions reporting is one of the most powerful tools a bank can use to align borrower behaviour with sustainability commitments. This covenant requires the borrower to provide regular, verifiable data on its greenhouse gas emissions and other pollutants associated with steelmaking. The reporting obligation is typically structured around internationally recognised standards such as the Greenhouse Gas Protocol, ISO 14064 or local regulatory frameworks under the Environmental Quality Act to ensure that disclosures are consistent and comparable. For the bank, the covenant serves two purposes: it provides transparency into whether the borrower is genuinely progressing on its transition plan and it protects the lender from accusations of greenwashing by demonstrating that financing is tied to measurable outcomes.

A useful illustration of these risks can be seen in the financing of Malaysia Steel Works (KL) Berhad's electric arc furnace project in 2024. AmBank approved a facility of RM84 million to support the investment, which was highlighted in the company's press release. For the bank, the transaction demonstrates both opportunity and exposure: the EAF positions the borrower within a lower-carbon steelmaking pathway, but it also concentrates risk in a single, capital-heavy asset.

The case highlights why lenders must go beyond standard financial ratios. If the borrower fails to meet emission reduction commitments or struggles with scrap supply volatility, the bank faces reputational and regulatory scrutiny under ESG frameworks such as the CCPT framework. Covenants tied to emissions reporting, debt service coverage and scrap supply contracts therefore become essential tools to align borrower behaviour with lender protections.

Strategic structuring of covenants helps banks to transform a high-risk loan into a defensible financing arrangement, thereby helping high risk industries transition to low-carbon industry.

Conclusion

Financing an electric arc furnace project is not a routine transaction. It is a complex interplay of technology, sustainability, market cycles, and credit risk. For steel manufacturers, the challenge lies in securing financing without suffocating operational flexibility while meeting regulatory requirements. For banks, the challenge is to underwrite loans that are resilient against volatility and regulatory change.

The RM200 million EAF on the balance sheet is more than just an asset, it is a test of how well covenants can align borrower incentives with lender protections. Done right, covenant structuring can turn a risky bet into a sustainable partnership and ensure that both steelmakers and banks emerge stronger in a world where ESG compliance and operational resilience are non-negotiable.

The ESG Service Line at Halim Hong & Quek provides advisory services to clients across a wide spectrum of sustainable finance and credit risk management. We work with corporations across sectors to support their transition journey toward a low-carbon economy, ensuring that financing structures, covenants and compliance frameworks are resilient against both market volatility and regulatory change.

Should your organization require assistance in occupational safety and health or in strengthening credit risk governance, we would be pleased to assist. Please feel free to contact us at pohyee.tan@hhq.com.my.

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Conditional Payment Clause in a Construction Contract is Void / Invalid

Introduction

On 20 February 2025, the Court of Appeal in the case of ***SPM Energy Sdn Bhd & Anor v Multi Discovery Sdn Bhd* [2025] MLJU 515; [2025] CLJU 410** ruled that Section 35 of the Construction Industry Payment and Adjudication Act 2012 ("**CIPAA 2012**") which prohibits the practice of conditional payment terms, applies in court / arbitral proceedings even when no adjudication proceedings under CIPAA 2012 have been instituted. Section 35 of CIPAA 2012 is of general application, and *"back-to-back"* conditional payment provisions in construction contracts are void and invalid even if adjudication proceedings have not been commenced.

Background Facts & High Court Trial

The Plaintiff company filed the High Court suit against five Defendants. The 1st Defendant company is a subsidiary of the 2nd Defendant company, and the 3rd, 4th and 5th Defendants are directors/shareholders of the 1st and 2nd Defendant.

PRPC Utilities and Facilities Sdn. Bhd. ("**Employer**") awarded to the 2nd Defendant a construction project named "*Utilities, Interconnecting, Offsite (UIO) Facilities: Construction and Commissioning (CC) of 33 kV and below Distribution Substation Feeder Cable Laying, Jointing and Termination at Gas Insulated (GIS) (Rapid 1200 Project)*" in Pengerang, Johor ("**Project**"). The 2nd Defendant then awarded the Project to the 1st Defendant.

On 12.10.2016, the 1st Defendant appointed the Plaintiff as a sub-contractor of the Project by way of a Letter of Award dated 12.10.2016 ("**LA**"). Clause 5 of the LA stipulates that the 1st Defendant "*will make payment*" to the Plaintiff *"based on a back to back arrangement after receiving payment"* from the Employer. Clause 7 of the LA stipulates that the 1st Defendant *"reserves the right to terminate"* the LA if the Plaintiff *"refuses, fails or neglects to comply with"* the LA.

On the same date, the Plaintiff also issued a Letter of Award dated 12.10.2016 appointing Tiemura Engineering Sdn Bhd ("**Tiemura**") to perform all of the Plaintiff's works for the Project. The Plaintiff later assigned its right to payment under the LA to Tiemura.

In February 2018, the Plaintiff proposed a novation of the LA to Tiemura as the Plaintiff claimed that it no longer had the capacity to finance the Project and that the proposed novation will ensure that there will be no more issues on payment to subcontractors and suppliers of the Project.

In April 2018, the 1st Defendant informed the Plaintiff that it had to make direct payments to the Plaintiff's subcontractors since January 2018 to avoid delays, and claimed that the Plaintiff failed to pay its subcontractors, despite the fact that the 1st Defendant had been paying the Plaintiff for its works. The 1st Defendant also disagreed with the Plaintiff's proposed novation and rescinded its earlier approval of the assignment of right to payment under the LA.

The Plaintiff responded to the 1st Defendant, stating that the Plaintiff appointed Tiemura as a sub-contractor for the Project. The Plaintiff claimed that it had paid Tiemura and Tiemura's contractors for the works carried out for the Project, and the Plaintiff did not receive any payment from the 1st Defendant for the works.

The 1st Defendant terminated the Plaintiff's employment pursuant to Clause 7 of the LA, citing, among others, the delay in the works and that the Plaintiff failed to pay its sub-contractors.

The Plaintiff in the High Court suit claimed for, among others, that the 1st Defendant had breached the LA as follows: -

- The 1st Defendant did not pay directly to the Plaintiff for the works after the Plaintiff's invoices had been issued to the 1st Defendant;
- The 1st Defendant had delayed in paying the Plaintiff for the works;
- The 1st Defendant had made direct payments to the Plaintiff's Sub-Contractors for the works; and
- The 1st Defendant's termination of the LA was unlawful;

After a trial, the High Court Judge allowed the Plaintiff's claims and ruled that: -

- The 1st and 2nd Defendants did not satisfy the court that there was a delay in the performance of the works by the Plaintiff;
- The 1st Defendant wrongfully terminated the LA because the 1st Defendant could not rely on the allegation that the 1st Defendant had not received payment from the "*project owner*" as a reason not to pay the Plaintiff for the Works and to terminate the LA;

- The 2nd Defendant is "*jointly and severally liable*" with the 1st Defendant because the 1st Defendant is "*merely a shelf company*" for the 2nd Defendant; and
- The Employer had awarded the Project to the 2nd Defendant and the 2nd Defendant then appointed the Plaintiff by using the 1st Defendant as a "*front*" to issue the LA.

The 1st and 2nd Defendants appealed to the Court of Appeal against the decision of the High Court.

Court of Appeal

The Court of Appeal held that the High Court had committed a plain error of fact and law in arriving at its decision. The Court of Appeal allowed the 1st and 2nd Defendants' appeal, set aside the High Court's decision, and directed an assessment in the High Court.

Before the appeal was heard, the Court of Appeal highlighted that the parties did not submit on the validity and application of Clause 5 in the High Court. Hence, the learned High Court Judge did not allude to Clause 5 in the High Court grounds of judgment, let alone decide on its validity and application. The written submissions of the parties in the Court of Appeal also did not refer to the validity and application of Clause 5.

The Court of Appeal explained that Clause 5 is relevant in the appeal as the Plaintiff relied on Clause 5 and demanded payment for the works from the 1st Defendant based on Clause 5. If Clause 5 is valid, upon the 1st Defendant's receipt of payment from the Employer for the works performed by the Plaintiff's sub-contractors, the 1st Defendant was bound under Clause 5 to pay to the Plaintiff for the works and if the 1st Defendant failed to do so, the 1st Defendant would have breached Clause 5.

The Court of Appeal posed the following question of law, in relation to Clause 5 of the LA: -

"Whether Clause 5 was valid in court / arbitral proceedings pursuant to Sections 35(1) and (2)(a) CIPAA 2012 when there are no adjudication proceedings"

Section 35 of CIPAA 2012 provides that: -

"

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.*"

The Court of Appeal highlighted that there are conflicting High Court decisions on this question of law: -

- In ***Bond M&E (KL) Sdn Bhd v Isyoda (M) Sdn Bhd [2017] MLJU 376;*** **[2017] CLJU 259**, the High Court decided that Section 35 of CIPAA 2012 only applies in adjudication proceedings and does not apply in court proceedings; and

- In the following cases, the High Court decided that Section 35 of CIPAA 2012 is of general application, and even if adjudication proceedings have not been commenced, Section 35 of CIPAA 2012 can invalidate back-to-back conditional payment provisions in construction contracts only (not all contracts) in court proceedings –

  a. Khairi Consult Sdn Bhd v GJ Runding Sdn Bhd **[2021] MLJU 694; [2021] CLJU 571;**

  b. MN Global Venture Sdn Bhd v CB Bersatu Sdn Bhd **[2022] MLJU 998; [2022] CLJU 959; and**

  c. Multi Network Sdn Bhd & Anor v Pembinaan Jari Jaya Sdn Bhd **[2022] MLJU 3452; [2022] CLJU 3223.**

The Court of Appeal decided that subject to two exceptions, it was the intention of the legislature for Section 35 of CIPAA 2012 to apply to "*construction contracts*" (defined in Section 4 of CIPAA 2012) in court / arbitral proceedings when there are no adjudication proceedings.

The decision of the Court of Appeal is premised on the following reasons in the interpretation of the following provisions in CIPAA 2012: -

1. Section 35 of CIPAA 2012 applies in court / arbitral proceedings when the following 4 cumulative conditions laid down in Section 2 of CIPAA 2012 have been fulfilled cumulatively: -

   there is a "*construction contract*" as understood in Section 4 of CIPAA 2012;

   a. the construction contract is made in writing;

   b. the construction contract relates to "*construction work*" as defined in Section 4 of CIPAA 2012; AND

   c. the construction work is carried out wholly or partly within the territory in Malaysia.

2. The following reasons explained by the High Court in ***MN Global Venture (supra)***, support the statutory interpretation that the Parliament had intended for Section 35(1) of CIPAA 2012 to apply in court / arbitral Proceedings (when no Adjudication Proceedings have been filed) if the 4 Cumulative Conditions (Section 2 CIPAA) have been satisfied –

a. Part II to Part V of CIPAA 2012 concern provisions regarding adjudication proceedings which have been filed under CIPAA 2012. Part II to Part V of CIPAA 2012 contain provisions to attain the purpose to "*provide a mechanism for speedy dispute resolution through adjudication*". In contrast, Section 35 is expressly placed by Parliament in Part VI (General) of CIPAA 2012, and is therefore intended by the legislature to be of general application irrespective of whether adjudication proceedings have been instituted pursuant to CIPAA 2012 or not;

b. Parliament has expressly or impliedly referred to adjudication proceedings in Sections 8(1), (3), 12(1) to (9), 14, 17(1) to (4), 18(1), (2), 25(a) to (p), 26(1), (2), 27(1) to (3), 32(c), (d) and 37(1) to (3) of CIPAA 2012. If the legislature had intended to confine the application of Section 35 of CIPAA 2012 to adjudication proceedings, Parliament would have easily stated as such in Section 35 of CIPAA 2012;

c. There is nothing in Section 35 of CIPAA 2012 which has expressly or by necessary implication, confined the scope of Section 35 to adjudication proceedings. On the contrary, the legislature has employed a wide term "any" in Section 35(1) of CIPAA 2012.

d. CIPAA is a specific statute which applies to certain construction contracts. The Contracts Act 1950 (CA), however, is of general application to all contracts. By virtue of the maxim of statutory construction "*generalia specialibus non derogant*", the specific provisions in CIPAA shall prevail over the general provisions in CA. The scope of CIPAA 2012, including Section 35 of CIPAA 2012, is therefore not confined by any provision in CA. Nor is there a reason to amend the CA so as to provide for Section 35 of CIPAA 2012 to apply when no adjudication proceedings have been commenced under CIPAA.

3. There are 2 exceptions, even if the 4 cumulative conditions (under Section 2 of CIPAA 2012) have been fulfilled, Section 35 of CIPAA 2012 does not apply in court / arbitral proceedings.

a. the existence of circumstances as stipulated in Section 3 of CIPAA 2012 – a construction contract entered into by a natural person for any construction work in respect of any building which is less than four storeys high and which is wholly intended for his occupation; and

b. where a person, class of persons, contract, matter or transaction or class of contracts, matters or transactions has been exempted from the application of CIPAA under Section 40 of CIPAA 2012 by the "*Minister*" (defined in Section 4 of CIPAA 2012).

The Court of Appeal held that Sections 35(1) and (2)(a) of CIPAA 2012 invalidate Clause 5 as: -

1. The 4 cumulative conditions (under Section 2 of CIPAA 2012) had been satisfied with regard to the LA and the works in this case;

2. The 2 exceptions cannot be invoked in respect of the LA; and

3. Clause 5 provided for the 1st Defendant to pay the Plaintiff after the 1st Defendant received payment from the Employer (back-to-back conditional payment provision)

Clause 5 is therefore void and irrelevant for the purpose of the appeal before the Court of Appeal.

Conclusion

The decision of the Court of Appeal clarified and resolved the previously conflicting High Court decisions on the issue of applicability of Section 35 of CIPAA 2012. The law is now clear – a conditional payment clause in a construction contract (which falls within the definition of a "*construction contract*" under Section 4 of CIPAA 2012) is invalid in court and arbitral proceedings, even when no adjudication proceedings have been commenced under CIPAA 2012.

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How to Speed Up Your Property Loan Disbursement for property: Practical Tips for Purchasers

Most property purchasers, particularly first-time buyers, often assume that once their housing loan is approved and they have signed the Letter of Offer, the bank will automatically release the funds to the developer. In practice, loan disbursement is a structured, **multi-stage process** that involves coordination among several parties, including the purchasers, bankers, solicitors, developers, and in some cases, the chargee bank and the relevant land office.

Developers may impose **Late Payment Interest (LPI)** for any delay in loan disbursement, calculated from the date stipulated in the Sale and Purchase Agreement (SPA). Many purchasers are unaware that such delays commonly arise due to incomplete documentation, outstanding conditions for pre-disbursements or procedural steps that have not been fulfilled or submitted in a timely manner.

The following practical recommendations are intended to help purchasers better understand the loan disbursement process, expedite the release of loan and avoid unnecessary delay or LPI charges.

1. **Ensure Complete and Timely Submission of Documents to the Bank**

   The bank will only proceed with loan disbursement once all required documents are fully submitted and in order. These typically include the duly executed and stamped Sale and Purchase Agreement (SPA), copies of the purchasers' identification documents, and the essential developer's documents such as the Advertisement Permit and Developer's Licence, Contractor All Risk Policy, Quit Rent and Assessment receipts, as well as the progress billing. Incomplete documentation remains one of the most common causes of delay in disbursements.

   A frequent issue arises where the bank does not receive confirmation that the **differential sum of the purchase price** has been fully settled. Purchasers should be aware of whether any differential sum is payable at the point of purchase, particularly, where the approved loan margin does not cover the full purchase price. Understanding the loan margin and payment obligations at an early stage helps prevent delays caused by outstanding balances.

   The developer will only issue confirmation of settlement of the differential sum upon full payment. Without this confirmation, the bank will not proceed with disbursement. Purchasers are therefore strongly encouraged to settle any differential sum promptly to ensure a smooth and timely loan drawdown process.

2. **Sign Loan and Security Documents Without Delay**

   Once the developer issues instructions, the solicitor will prepare the Sale and Purchase Agreement (SPA) together with the loan and security documents. Purchasers should arrange an early appointment to sign these documents as soon as they are contacted by the solicitor. For, joint purchasers or borrowers, all parties must attend the signing together and bring their identification documents for verification. Timely execution of these documents enables the solicitor to proceed with the necessary steps, including bank execution, stamping, title search, and other mandatory formalities. These process must be completed before the bank can release the loan and any delay at the signing stage will inevitably affect the disbursement timeline.

   Purchaser should also be aware of whether their transaction involves a **first-party or third-party security arrangement**, as this impacts the documents to be prepared. In addition, any intention to add or remove a purchaser or borrower should be communicated to the agent or developer well in advance of the signing appointment This ensures that the solicitor prepares the correct documents from the outset.

   In practice, delays often occurs when purchasers only request changes to the list of purchasers or borrowers during the signing session. In such cases, the documents cannot be signed and must be re-prepared, requiring a new appointment. This can significantly delay the process, particularly if the parties are unavailable at short notice.

   Furthermore, where changes may need to issue a Notification Letter or a Supplemental Letter of Offer to ensure consistency with the revised SPA, especially in relation to the purchase price and financing structure. This additional step further prolongs the disbursements process and may expose purchasers to Late Payment Interest.

3. **Maintain Regular Communication with Bankers and Solicitors**

   Purchasers should maintain polite and consistent communication with both their banker and solicitor to stay informed of the loan disbursement status. Regular follow ups help confirm whether all required documents have been received by the Bank, whether the solicitors has submitted the complete set of documents. The pro-active approach allows potential issues to be identified and resolved early, preventing unnecessary delays.

Purchasers should also follow up with the bank regarding the **insurance requirements** under their loan facility. In some cases, loan disbursement is delayed because the purchaser's MRTA/MLTA or insurance documentation has not been finalised. Where additional documents are required or a medical check-up is requested, the purchaser or borrower are strongly advised to comply immediately. Delays in completing the insurance formality can postpone the disbursement by **several weeks**, even when all legal documentation has already submitted to the bank.

4. **Respond Promptly to Solicitor's Queries**

Timely responses from purchasers are critical in avoiding administrative delays and ensuring the transaction progresses smoothly, particularly in title-related matters. A common issues arises when purchasers submit copies of their identity card that do not meet the land office's requirements (for example, copies containing annotations, altered wordings or unclear formatting). When such documents are rejected by land office, the solicitor must resubmit the application, resulting in delays and in some cases, additional costs due to resubmission fees or penalties imposed by the land office

Solicitor will usually request a clear and compliant copies of the purchaser's identification documents. Purchaser should follow these instruction carefully, as repeated submission of incorrect formats can lead to avoidable delays.

In cases where amendment to the Letter of Offer are required, solicitors may request the banker's contact number to liaise directly for the issuance of Supplemental Letter of Offer/Notification Letter. Timely cooperation with such requests helps ensures timely bank execution and avoids disruption to the loan disbursement timeline.

Even seemingly minor matters such as names, unit details, or other supporting documents, can stall the entire transaction if not addressed quickly. Purchasers should therefore prioritise providing accurate and timely responses to all requests from solicitor and banker requests.

Conclusion

In summary, smooth loan disbursement is a collective effort and not solely the responsibility of the bank or solicitor. Active cooperation from purchasers play a crucial role in ensuring timely cooperation. By staying organized, responding promptly, and understanding each stage of the process, most delays can be avoided. With proper preparation and consistent communication, purchasers can help ensure their financing proceeds efficiently and their property transaction remains on track.

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Open Finance in Malaysia: Bank Negara Malaysia's Exposure Draft

Bank Negara Malaysia ("**BNM**") has released its Exposure Draft on Open Finance ("**ED**") on 18 November 2025, a landmark document that lays the groundwork for a more connected, interoperable, and consumer-centric financial system. The ED sets out the proposed regulatory framework for the implementation of open finance arrangement. Stakeholders can submit comments to the ED until 1 March 2026.

This article highlights 8 key elements of the ED to help financial institutions, in-house counsels, compliance teams, and data-protection professionals understand the upcoming requirements, and prepare ahead of implementation.

1. What is Open Finance?

The term "Open Finance" is defined in the ED as a framework that enables permissioned sharing of customer information between a data provider and a data consumer in a secure, open, accessible, interoperable, and timely manner.

In layman terms, open finance is a system that allows banking customers to share their financial information held by one financial institution, such as bank account data, e-wallet balance, or credit card transactions, with other financial institutions. You can think of it as the banking version of "allowing apps to connect with other apps", just like how you would allow Microsoft Outlook to be connected with your mobile phone's calendar app, or a fitness app to access Apple Health data for Apple users.

2. Why is Open Finance Useful?

Why is this useful if you ask me? Because it enables interconnectedness.

These days, customers do not just bank with one financial institution. We maintain several bank accounts for different purposes – payroll, savings, FDs, etc. The information about you that each financial institution may see differs largely by the banking products or services that you obtain from each of them, which can affect how "personalised" the services of these financial institutions are. If the financial institutions can see your financial information at the other banks, they may have a clearer picture about you as a customer, which allows better customisation of their services to you, or even facilitates the processing or approval of your application for certain financial products such as credit cards or loan.

For illustration, open finance can essentially allow Bank A to pull your last 12 months of data from Bank B so that your loan application can be expedited. Through open finance, you may also be able to view all your credit card statements from just one single application, as opposed to having to navigate across several banking apps when you are trying to clear your credit card bills.

3. Who Will be Impacted?

The open finance arrangement is set to impact financial institutions in Malaysia. The ED specifically states that the following financial institutions are mandated to participate in the open finance arrangement when it is being implemented:

i. Licensed banks;
ii. Licensed investment banks;
iii. Licensed Islamic banks;
iv. Licensed insurers;
v. Licensed takaful operators;
vi. Prescribed development financial institutions; and
vii. Eligible e-money issuers ("**EMIs**").

However, not all the categories of the financial institutions listed above will have to participate in open finance arrangement – only those that meet certain customer volume thresholds are mandated. For banks and prescribed development financial institutions, the open finance arrangement will be applicable to those with more than 100,000 customer base (BNM is proposing a phased implementation specifically for the banks, starting with banks with more than 1,000,000 customer base first). For eligible EMIs, only those operating a network-based e-money solution with an aggregate distinct count of more than 5,000,000 active users have to participate in open finance arrangement.

For the financial institutions that fall outside of the prescribed thresholds, participation in open finance arrangement is still possible, albeit on a voluntary basis.

4. When is the Open Finance Arrangement Expected to be Implemented?

BNM is proposing to adopt a phased implementation of the open finance arrangement, starting with banks with more than 1,000,000 customers first on 1 January 2027, gradually moving on to banks with more than 100,000 customers on 1 January 2028, and lastly to roll it out with development financial institutions with more than 100,000 customers and EMIs with more than 5,000,000 active users, on 1 January 2029.

The ED does not expressly mention when non-mandated financial institutions can participate in the open finance arrangement. Given that the earliest implementation of the open finance arrangement in relation to the mandated financial institutions falls on 1 January 2027, we surmise that the earliest that non-mandated financial institutions can opt to participate in the open finance arrangement would also start from the same date.

5. What Information Will be Shared?

According to the current proposal by BNM, only the following information is obligated to be shared by financial institutions participating in the open finance arrangement:

i. Transaction information for the most recent 12 months including the date, description and value; and
ii. The current outstanding balance of an account.

The above being said, the ED does not prohibit participating financial institutions to share information beyond the scope prescribed above. Sharing of additional information of customers is allowed as long as industry standards and technological solutions permit, and where explicit consent of the customers has been obtained. It is thus entirely up to the participating financial institutions to explore possible use cases of open finance arrangement and to voluntarily propose additional scope of information to be shared through the open finance framework.

6. What is the Role of an Open Finance Platform?

The open finance arrangement is envisaged to be implemented through the so-called “open finance platforms”, being technical infrastructure, system or utility that enables capturing of customers consent and secure transmission of customer information.

One can think of the open finance platform as a standalone platform where participating financial institutions and banking customers will be using to facilitate the sharing of customer information.

Participating financial institutions that wish to access a customer’s financial information held by other participating financial institutions can make an access request on the open finance platform. Before any of the requested financial information can be shared, the customer will have to provide his consent to the data sharing through the open finance platform. Once consent has been received, the financial institution with the relevant requested information of the customer will then release the requested information to the requesting institution based on the scope of the customer’s consent.

At present, it is unclear whether an open finance platform will be operated exclusively by non-financial institutions (i.e,. third-party service providers to the financial institutions), or if a financial institution will also be allowed to operate an open finance platform. We view that the latter is unlikely given the risk of conflict of interest, but clarity on this point will have to be addressed when the definitive framework is up.

In order to enable the working of open finance platforms, it is envisaged that all participating financial institutions will have to establish API gateways with the open finance platform to facilitate data sharing.

7. Consent Requirements

All sharing of information on the open finance platform hinges on the consent of the banking customers. Based on the ED, customers’ consent will have to be both specific, voluntary, revocable, explicit and deliberate. Let us break down what these mean.

i. <u>Specific</u> – When requesting for consent, a participating financial institution is required to ensure that the terms used are clear, concise, and written in plain language. Specifically, the terms must describe to whom the disclosure will be made, the purpose of the disclosure, and the type of information that will be disclosed.

ii. Voluntary – The giving of consent must be voluntary in that customers must not be compelled, coerced or misled into giving consent. Bundled or blanket consent, where customers are asked to indicate consent to a statement or term that combines agreement to the disclosure of their information with other matters in a single statement of consent, will be strictly prohibited.

iii. Revocable – There must be a mechanism for the customers to revoke their consent to the sharing of information, which should be as easy to exercise as the grant of consent by customers. Once consent is revoked, the participating financial institutions will have to cease the sharing and usage of information forthwith.

iv. Explicit and deliberate – The ED requires the giving of customer consent to be explicit and deliberate. In other words, there must be an affirmative action on the part of the customers when giving consent, either through the ticking of a consent box, or the clicking of "I Agree" button. Silence or inaction on the part of the customer cannot be taken as consent.

Furthermore, BNM is also proposing for the consent given by the customers to be time-bound. Essentially, each customer consent will be valid for a given period, during which the relevant information can be accessed by the requesting financial institution. If access to the information is required beyond the validity of the consent, customers will have to renew their consent to allow continued access to their information. At present, the proposal is for each consent to have a maximum validity of 6 months only.

The consent requirement under the proposed open finance framework is very similar to that of the consent requirement under the Personal Data Protection Act 2010 ("**PDPA**"). In fact, the consent requirement here is even more stringent than that of the PDPA, considering that consent given for the purpose of open finance is time-bound.

8. Customer Protection Requirements

A substantial portion of the ED focuses on customer protection requirements to be implemented by the participating financial institutions. It is undisputable that a person's financial information is sensitive, and to establish a platform that facilitates the sharing of financial information, one must ensure that appropriate safeguards are in place to prevent misuse, unauthorised access or loss of the information being shared.

The ED has proposed substantial requirements on the establishment of data governance and privacy policies by participating financial institutions, implementation of technical and operational safeguards on the security of data, requirements on management of third-party service providers to ensure security of data is protected, as well as notification requirements on breaches of customer information.

However, it should not be too challenging for participating financial institutions to meet these requirements, given that the requirements will be more or less in line with the existing policies that financial institutions are already in compliance with, such as the Policy Document on Risk Management in Technology, Policy Document on Management of Customer Information and Permitted Disclosure, Guidelines on Data Management and MIS Framework, etc.

The ED marks a major step toward creating a connected, user-controlled, and innovation-friendly financial ecosystem. While it is certainly a welcomed initiative, the implementation of open finance framework will certainly expose banking customers to new form of risks. It will be crucial for BNM to closely monitor the safeguards to be implemented by the participating financial institutions, and for financial institutions to continuously uphold the security of customers' information as their top priority, all while balancing the need for innovation.

The open finance initiative also presents opportunities for technology solution providers to explore how their innovations can complement the offerings of financial institutions under the open finance initiative. For those who may want to take advantage of the proposed open finance framework, it will be crucial to keep an eye on the space closer to the end of year 2026. Given that the first batch of implementation of open finance arrangement is proposed to be on 1 January 2027, we anticipate that the framework itself will have to be firmed up and released by Q3 or Q4 2026 latest.

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.

If you wish to know more about the open finance framework, or if you need any legal assistance regarding technology, media or telecommunications, you may reach out to the partners at our Technology Practice Group, Ong Johnson and Lo Khai Yi, for enquiries.

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Section 30 CIPAA 2012: Navigating the Direct Payment Mechanism, Evidential Burden and Recent Judicial Clarity

Section 30 of the Construction Industry Payment and Adjudication Act 2012 (CIPAA 2012) serves as a critical statutory enforcement tool, enabling a subcontractor to demand direct payment of the Adjudicated Sum from the project principal (Employer or Developer) when the main contractor fails to comply with the Adjudication Decision. This mechanism is vital for ensuring cash flow certainty down the construction supply chain.

The Four Pillars of Successful Direct Payment Claim

The Federal Court's leading authority in ***Cabnet Systems (M) Sdn Bhd v Dekad Kaliber Sdn Bhd & Anor*** [2020] 3 MLRH 83, established 4 mandatory conditions that must be satisfied for a successful direct payment order under s30 of CIPAA:

i. The main contractor must have failed to pay the adjudicated amount to the subcontractor (ss30(1) and (3) of CIPAA);

ii. The subcontractor must have made a written request for direct payment of the adjudicated amount from the principal (s30(1) of CIPAA);

iii. There must be a sum of money **due or payable** from the principal to the main contractor at the time the principal receives the written request (s30(5) of CIPAA); and

iv. The principal must subsequently fail to make the direct payment to the winning party.

Defining the Attachability of Debt: "Money Due or Payable"

The third prerequisite is the most heavily contested issue. Recent case laws define the scope of this attachable debt.

1. **Retention Sum and Present Debt**

   The Court of Appeal in ***Kinu Sdn Bhd v Kerajaan Malaysia (Jabatan Kerja Raya Malaysia)*** [2025] 5 MLRA 633 affirmed that:

   a. Retention sums and other amounts certified and retained by the principal are considered a present, existing debt that is attachable.

   b. This present existing debt is attachable even if the due date for payment has been deferred, distinguishing it from a purely contingent debt.

2. **Void Agreement with Insolvent Main Contractors**

   The High Court case of ***Foong Li Trading Sdn Bhd v Ocr Properties*** (Kuantan) Sdn Bhd [2025] MLRHU 2561 reinforces the sanctity of the original debt:

   a. The developer attempted to rely on a settlement agreement with the main contractor to settle outstanding payments after the main contractor had been wound up.

   b. The High Court ruled that this settlement agreement was *void ab initio* because the directors of the main contractor lacked the requisite legal authority to act on behalf of the company post-winding up.

   c. The original outstanding debt was therefore never extinguished and remained as money "due or payable."

3. **Shifting the Evidential Burden of Proof**

   Following the case of ***JDI Builtech (M) Sdn Bhd v Danga JED Development Malaysia Sdn Bhd*** [2024] 3 MLRA 713, the Court of Appeal in ***Kinu Sdn Bhd v Kerajaan Malaysia (Jabatan Kerja Raya Malaysia)*** [2025] 5 MLRA 619 clarified the burden of proof:

   a. Subcontractor's Initial Burden: The subcontractor's initial evidential burden is light, requiring only the assertion that they have an unpaid Adjudication Decision in their favour and the exhibition of the Decision.

   b. Principal's Shifting Burden: The evidential burden then shifts to the principal to prove that there is no amount owing to the main contractor.

   c. The principal must adduce credible evidence of a bona fide dispute with its main contractor and documents to substantiate that no money is owing at that moment.

The Mandatory Nature of Section 30(2) of CIPAA

Parliament implemented s30(2) of CIPAA to overcome the difficulty for a subcontractor to prove a negative (that they have not been paid). This provision states:

> *"Upon receipt of the written request under subsection (1), the principal shall serve a notice in writing on the party against whom the adjudication decision was made to show proof of payment and to state that direct payment would be made after the expiry of ten (10) working days of the service of the notice."*

Judicial Interpretation of Non-Compliance

The Courts previously adopted different views on whether a principal's non-compliance with s30(2) of CIPAA was fatal to their case.

a. Some courts held that non-compliance was fatal:

- ***PCOM Pacific Sdn Bhd v Apex Communications Sdn Bhd & Anor*** [2020] MLRHU 118
- ***HSL Ground Engineering Sdn Bhd v Civil Tech Resources Sdn Bhd*** [2020] MLRHU 656

b. Some courts held that non-compliance was not fatal, provided the precondition of money "due or payable" was first met:

- ***Chong Lek Engineering Works Sdn Bhd v PFCE Integrated Plant and Project Sdn Bhd and Another Appeal*** [2020] MLRHU 1879
- ***Glocal Tech Engineering Sdn Bhd v Panzana Enterprise Sdn Bhd*** [2021] MLRHU 2546

The Court of Appeal in ***Kinu Sdn Bhd v Kerajaan Malaysia (Jabatan Kerja Raya Malaysia)*** [2025] 5 MLRA 619 adopted a middle-ground approach.

a. Mandatory Compliance: The use of the word "shall" in s30(2) of CIPAA conveys a mandatory need for compliance.

b. Not Invariably Fatal: While the failure to give a s30(2) Notice is not invariably fatal in all cases, it carries significant evidential consequences.

c. Evidential Consequences: Non-compliance:

- Becomes a significant factor when assessing whether money is "due or payable."
- Can justify drawing an adverse inference against the principal under s114(g) of the Evidence Act 1950.

d. Heightened Burden: A principal who fails to serve the notice must then independently and upon credible and cogent evidence satisfy the Court that no amount is owing, reinforced by s106 of the Evidence Act 1950.

Conclusion

The current legal landscape surrounding s30 of CIPAA 2012 highlights the Judiciary's firm commitment to ensuring the effectiveness of this key statutory enforcement mechanism, securing payment rights for subcontractors.

The Court of Appeal's ruling in ***Kinu*** (supra) established a nuanced standard for s30(2) of CIPAA compliance. While the procedural failure to serve the notice is not invariably fatal, the use of "shall" confirms the provision's mandatory nature. Breach of this statutory duty carries significant evidential consequences: it forces the principal to overcome a heightened burden under s106 of the Evidence Act 1950 by producing independent and cogent documentary evidence (i.e. financial records) that no monies are due or payable. Furthermore, the non-compliance remains a factor that may justify the Court in drawing an adverse inference under s114(g) of the Evidence Act 1950.

The takeaway for principals is clear: compliance with s30(2) of CIPAA is not optional; it is essential for managing the evidential risk, successfully discharging their statutory burden, and avoiding judicial scrutiny and potential adverse inferences in a direct payment application.

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Upholding the Cornerstone of Separate Legal Personality in Employment Disputes: Boundaries Redefined and No More "The Loose Nexus"

Introduction / Summary

An employee's success in the Industrial Court for unfair dismissal does not always translate into receiving compensation or remedy awarded. In some instances, the employer company may be wound up, leaving the employee with no avenue to enforce the award. This raises a difficult question: Can such injustice be cured simply by lifting the corporate veil and allowing the employee to enforce remedies against the sister or parent companies in the same corporate group?

A thorough discussion is found in ***Hubline Berhad v Intan Wazlin An Wahab & 39 Ors***[1], where the Court of Appeal clarified that the Industrial Court cannot override or ignore the doctrine of separate legal personality to impose liability on a non-employer company, even though justice/sympathy/compassion demands so. On such basis, the appellate court reversed the High Court decision that upheld the Industrial Court decision.

Background Facts

The Respondents were former employees of Hub Shipping Sdn Bhd ("**Hub Shipping**") or EM Shipping Sdn Bhd ("**EMS**"). Following the retrenchment, they filed representations to the Industrial Court for unfair dismissal.

Pending the disposal of the dispute, Hub Shipping was wound up. Consequently, the Respondents applied under **Section 29(a) of IRA**[2] for: -

a. Substitution of Hub Shipping with Hubline Berhad ("**Hubline**"); and
b. Joinder of Highline Shipping Sdn Bhd ("**Highline**") as a party to the proceedings.

The basis of the application was that there is nexus between Hub Shipping, Hubline and Highline, having common shareholders, addresses and directors. Without the substitution of Hubline and joinder of Highline, any eventual Award would be unenforceable given that Hub Shipping had ceased operations after being wound up.

The Industrial Court agreed with the Respondents and allowed the substitution and joinder. Hubline and Highline sought judicial review for an order of certiorari to quash the Awards. Both applications were dismissed by the High Court, leading to the present appeals.

Issues To Be Tried

The issue before the Court of Appeal are: -

a. whether **Section 29(a) of the IRA**[3], which empowers the Industrial Court to join or substitute any party to the proceedings, could be invoked to substitute or join of a non-employer corporate entity merely because the actual employer is insolvent and the companies have common shareholders, directors, addresses or management, even though the proposed party had no role in the dismissal claim?

b. Whether the Industrial Court, relying on its equitable powers under **Section 30(5) of the IRA**[4], may ignore the doctrine of separate legal personality in *Salomon v Salomon* and impose liability on a company which was not an employer?

The Court of Appeal Decision & Analysis

The Court of Appeal allowed the appeals, with the consequential order allowing the Judicial Review and quashed the Awards of substitution and joinder.

In doing so, the Court rejected the legal positions established in the following cases: -

1. [2025] CLJU 2677
2. Industrial Relations Act 1967, Section 29(a).
3. Industrial Relations Act 1967, Section 29(a).
4. Industrial Relations Act 1967, Section 30(5).

a. ***Hotel Jaya Puri Bhd v National Union of Hotel, Bar & Restaurant Workers & Anor***[5], which permitted lifting of the corporate veil when the justice of the case so demands, notwithstanding the separate existence of subsidiary and parent companies.

b. ***Asnah Ahmad v Mahkamah Perusahaan Malaysia & Ors***[6], which endorse a low threshold for joinder, applying the test of whether there was any "*reasonable factual or legal nexus*" between the respondents.

c. ***Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd***[7], which applied the single economic unit test, allowing the lifting of corporate veil when the relationship between companies in the same group is so intertwined that they should be treated as a single entity to reflect the economic and commercial realities.

In furtherance of the above, the court clarified that the principle of separate legal personality in *Salomon v Salomon* remains trite. Once incorporated, a company becomes its own legal person distinct from its shareholders, directors or related entities. The court relied on the Federal Court decision in ***Ong Leong Chiou v Keller (M) Sdn Bhd & Ors***[8] and held that this principle equally applies uniformly across all fora and the Industrial Court is not at liberty to override this foundational doctrine.

The Court emphasised that **Section 29(a) of the IRA** is procedural, not substantive. It cannot be used as a tool to pierce the corporate veil. The proper test for joinder is that **there must be a reasonable factual or legal nexus between the proposed joinee and the dispute** which is before the Industrial Court and that the proposed joinee is amongst the persons/parties who is/are responsible for termination of employment.

The mere fact that the actual employer is wound up or devoid of assets cannot justify the imposition of liability on third parties who are legally distinct and not privy to the employment contract. The law does not allow courts to rewrite legal identity of the employer merely to ensure that an award does not become a paper judgment. To do so is to rewrite the legal principle at the altar of practical convenience.

In light of the above, the Court also observed that the current trend in Industrial Court proceedings risk turning Section 29(a) into a backdoor for ignoring corporate separateness. The on Section 30(5) that the court is to act according to equity and good conscience further blurs the line.

5. [1980] 1 MLJ 109
6. [2015] 4 MLJ 613
7. [2020] 5 MLJ 58
8. [2021] 3 MLJ 622

Conclusion

In conclusion, the Court of Appeal's decision in this matter serves as a resounding reaffirmation of the sanctity and foundational doctrine of separate legal personality enshrined in *Salomon v Salomon*. The judgment underscores that procedural provisions in the Industrial Relations Act, including Sections 29(a) and 30(5), cannot be stretched to circumvent core principles of company law unless there are extremely special circumstances. Liability cannot be inordinately and/or indiscriminately imposed on entities that are legally distinct from the actual employer merely for reasons of convenience or practical enforcement.

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Jurisdiction or Merits? Courts Draw the Line in Arbitration Challenges

Case Review: V N v K [2025] EWHC 1523 (Comm)

Overview

In **V N v K**, the English Commercial Court dismissed a challenge to a Partial Final Award arising from an LMAA arbitration, reaffirming the exceptionally high threshold for challenges under sections 67 and 68 of the Arbitration Act 1996. The decision serves as an important legal update for practitioners and commercial parties alike, clarifying the threshold that must be met before a court will interfere with an arbitral award on jurisdictional grounds.

Factual Background

The dispute arose from a Memorandum of Agreement ("**MOA**") for the sale of a vessel. Following the designation of V as a sanctioned entity by OFAC, K terminated the MOA and sought release of the deposit. The claimants contended that the MOA had been novated to N prior to the sanctions and that termination was therefore unlawful.

Arbitration was commenced under the LMAA Rules. During the proceedings, the claimants repeatedly alleged procedural unfairness and bias, particularly directed at Mr. H, K's party-appointed arbitrator, due to his past professional connections with Reed Smith. Rather than pursuing a statutory challenge under section 24, the claimants asserted that the tribunal was in repudiatory breach of their terms of appointment.

The tribunal proceeded and issued a Partial Final Award ("A**ward**") in favour of K, dismissing all counterclaims and ordering the release of the deposit.

Grounds of Challenge

The claimants challenged the Award on two bases:

i. **Section 67**: The tribunal lacked jurisdiction - the Tribunal's apparent bias amounted to a repudiatory breach terminating the appointment agreement, and having accepted the repudiatory breach, the Tribunal ceased to have substantive jurisdiction over the parties' dispute thereafter.

ii. **Section 68**: There had been a serious irregularity due to apparent bias and inadequate disclosure by Mr. H.

The Court's Decision

Section 67

During the hearing, counsel for the Claimants confirmed that he is only relying upon the ground of the alleged lack of candour by K's party-appointed arbitration, Mr. H, in allegedly misrepresenting the nature and extent of his relationships with Zaiwalla, the Claimants' solicitors, and with Reed Smith.

The court held that this concession kills off the challenge under section 67. In any event, the court found that the section 67 challenge, based upon the alleged apparent bias of the Tribunal in the making of its procedural decisions, was always hopeless in any event. Allegations of apparent bias arising from procedural rulings were legally incapable of terminating the arbitration agreement. Jurisdiction cannot be unilaterally extinguished by a party's subjective dissatisfaction with the tribunal's conduct.

Section 68

In discussing the section 68 challenge, the court set out the relevant test for apparent bias, as stated by Lord Hope in **Porter v Magill** [2002] 2 AC 357 at [103] as follows: "*The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.*" This requires objectivity and detachment.

The court made the following observations in relation to the law:

i. An arbitrator is under the statutory duties in section 33 of the Act to act fairly and impartially in conducting arbitral proceedings. The arbitrator is accordingly under a legal duty to disclose facts or circumstances which would or might lead the fair minded and informed observer, having considered the facts, to conclude that there was a real possibility that the arbitrator was biased.

ii. However, if, because of the custom and practice of specialist arbitrators in specific fields, such as LMAA arbitrations, multiple appointments are a part of the process which is known to and accepted by the participants, then no duty of disclosure would arise.

Based on the facts and evidence of the case, the court held, among others, that Mr. H had no duty of disclosure of his previous Reed Smith arbitral appointments. This is because there is an established custom or practice in LMAA arbitrations that an arbitrator may take on such multiple appointments without disclosure. The court is not concerned with "multiple appointments". Rather, this case concerns repeated instructions in *unrelated* arbitrations by the same *law firm* over a number of years. The court agreed that law firms specialising in maritime law such as Reed Smith will naturally act for many different clients, such that the inevitability of repeat appointments of individual LMAA arbitrators is greatly magnified.

The court also found:

i. No failure of disclosure by Mr. H;
ii. No lack of candour in responding to enquiries;
iii. No evidence that procedural rulings were one-sided or protective of Reed Smith; and
iv. No basis on which apparent bias could be inferred.

The court went on to discuss that even if the court was wrong and Mr. H had a duty to disclose his other unrelated appointments by Reed Smith as arbitrator, the court did not consider that factor, namely Mr. H's failure to disclose them, when viewed in the light of all other relevant factors, would or might lead the fair-minded and informed observer, having considered all the facts, to conclude that there was a real possibility that he was biased.

Having found no serious irregularity, the court held it unnecessary to consider whether substantial injustice had arisen.

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Conclusion

Both the section 67 and section 68 challenges failed in their entirety. The tribunal had substantive jurisdiction throughout, and the award stood.

The court was particularly critical of the claimants' conduct, describing the allegations as opportunistic and tactical, and noting that most bias grounds were abandoned when tested in court.

Key Takeaways

i. Challenges under sections 67 and 68 face an exceptionally high threshold.
ii. Procedural dissatisfaction does not amount to apparent bias, let alone a repudiatory breach.
iii. Disclosure obligations must be assessed in context, particularly in specialist arbitrations such as LMAA references.
iv. Tactical non-participation in arbitration is strongly discouraged and may seriously undermine any subsequent court challenge.

Beyond Nuclear Power: A New Compliance Landscape for Dealing in Radioactive Materials

The recent amendment of the Atomic Energy Licensing Act 1984 (“**AELA**”)—now retitled the Atomic Energy Act 1984 (“**AEA**”)—represents a fundamental shift in Malaysia’s regulation of atomic energy activities. Key provisions came into force in phases commencing 1 December 2025.

Beyond Nuclear Power

Although associated with nuclear power, the AEA does not primarily serve as a mandate for developing nuclear energy. Instead, it provides the necessary regulatory backbone for the safe use, security, and disposal of radioactive materials across diverse sectors, including healthcare, manufacturing, industrial testing, oil and gas, and research.

Consequently, the amendments operate less as an energy-policy directive and more as a modernised governance framework. The AEA supports the continued development of radiation-based technologies while aligning Malaysia with international regulatory best practices. Unlike the AELA, which focused narrowly on licensing specific activities, the AEA adopts a holistic view, governing the full lifecycle of radioactive and nuclear-related materials. The table below sets out a summary of significant amendments under the AEA and its implications for companies.

Key Regulatory Area	Previous Position (AELA)	New Requirement (AEA)	Commercial Impact
Licensing Scope	**Limited scope:** Only specified installations/activities required to be licensed.	**Expanded scope (s.12):** All dealings with radioactive material, nuclear material, or radiation generators now required to be licensed.	**Wider regulatory net:** Persons handling and generally dealing with radioactive materials in previously ambiguous areas now fall squarely within the licensing framework.
Import, Export and Transit	**No explicit permit requirement** for the cross-border movement of radioactive or nuclear materials.	**Mandatory permits (s.12A)** required for the import, export, transhipment, or transit of radioactive materials, nuclear materials, or nuclear-related technologies.	**Supply chain interruptions:** Failure to secure the necessary permits risks interruptions to the cross-border movement of goods. Logistics providers and just in time manufacturers must audit their supply chain immediately.
Licence Validity	**Short-term validity:** Licences valid for a maximum of 3 years	**Extended validity (s.16):** Licences and permits may be valid for up to 40 years.	**Investment certainty:** De-risks investments by locking in long-term regulatory approval for new projects.
Decommissioning & Waste	**Limited framework:** Limited regulatory obligations on disposal and decommissioning	**Detailed framework (ss.26A–27B):** A detailed regulatory framework now governs decommissioning plans, radioactive waste management, spent fuel handling, and restricts disposal or reuse.	**Improved compliance:** Strict "cradle-to-grave" accountability for radioactive materials to improve environmental accountability.

Emergency Preparedness	**No explicit requirement** for emergency-response planning.	**Mandatory emergency plans (s.21A):** Licensees must prepare and submit emergency-response plans for regulatory approval.	**Elevated safety protocols:** Persons handling and generally dealing with radioactive materials must integrate approved emergency plans into their safety protocols.
Security & Safeguards	**Limited security measures:** Focus on safety rather than security	**Global security standards:** Introduces nuclear material accounting, 24-hour reporting, International Atomic Energy Agency ("**IAEA**") inspection access, non-proliferation provisions, and a radioactive waste fund, among others.	**Adopting global standards:** Aligns Malaysia with global standards, significantly raising the compliance bar for corporate security systems and internal reporting.
Institutional Governance	**No advisory body:** Administrative processes and appeal mechanisms less defined.	**Enhanced governance structure:** Establishes the Atomic Energy Advisory Council to advise on policy and refines the Appeal Board mechanism for regulatory disputes.	**Transparency & accountability:** Increases transparency in policy development and provides clearer recourse for regulatory decision-making.
Offences & Penalties	**Lighter penalties:** • General penalty of imprisonment up to 10 years and/or fine up to RM100,000. • Directors/ Officers liable for corporate offences.	**Severe penalties:** New offences introduced with substantially heavier penalties: • *Procedural breaches*: Fines up to RM500,000 and/or 10 years' jail. • *Security/ Weapons offences*: Death penalty or 30–40 years' imprisonment (and min. RM30 million fine for companies). • Directors/ Officers' liability is retained and carries significantly higher risks.	**Existential corporate risks:** The *death penalty* and significant fines make compliance critical to business survival. Company boards must prioritize strengthening internal controls and legal oversight to mitigate existential corporate risks and legal liabilities.

A New Compliance Landscape for Dealing in Radioactive Materials

The AEA marks a pivotal shift in Malaysia's atomic energy regulatory environment, expanding its scope to encompass more businesses while introducing stricter compliance obligations and severe penalties, including potential operational suspension and severe criminal liability. However, this rigorous framework is balanced by the introduction of long-term licensing options and the adoption of global standards, which provide industry participants with the regulatory predictability needed to make long-term investment decisions.

To navigate this new landscape, organizations must immediately audit cross-border supply chains to secure newly mandatory transit permits and avoid operational stoppages. With the stakes raised by severe criminal penalties, company boards should also prioritize strengthening internal controls and legal oversight to mitigate existential corporate risks and legal liabilities. Finally, industry stakeholders are encouraged to engage regulators early to leverage the new long-term licensing options, thereby securing greater regulatory certainty for future investment decisions.

By aligning with global best practices, the AEA not only ensures the protection of public health and the environment but also prepares Malaysia for a future where atomic technologies are central to commerce and daily life. For all stakeholders—from investors seeking opportunities to legal and professional advisors navigating new advisory areas—the amendments represent an essential step towards a resilient economy where economic growth and safety standards remain mutually reinforcing.

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Inside Out

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

HLP's Annual Christmas Celebration

On 9 December 2025, HLP held its annual Christmas celebration, bringing the team members together for an evening of festive cheer.

The celebration featured a Secret Santa exchange and Christmas gifts presented by the firm to its team members. A highlight of the evening was HLP's cherished tradition, where our new team members took the stage with special performances.

The event marked a memorable close to the year and ushered in the festive spirit as we look forward to even greater achievements in the year ahead.

HLP's Annual CSR Initiative

As part of HLP's annual Corporate Social Responsibility (CSR) initiative, our team visited the children's home to spend time with the children. Beyond sharing Christmas gifts, we sat down to listen to their stories and better understand their needs for the future.

The visit was a gentle reminder that presence, empathy, and genuine care often matter more than material gifts. We returned inspired and grateful, reaffirming HLP's continued commitment to uplifting and supporting the communities around us.

HHQ Annual Dinner

The HHQ Annual Dinner 2025 was truly a special evening, bringing colleagues together from across our offices in Kuala Lumpur, Johor Bahru, and Penang, alongside our collaborating partners from KL, Sabah, and Sarawak. Having everyone gathered under one roof was a meaningful reminder of the strength of our connections and the spirit of one HHQ family.

The night was filled with laughter, good food, and memorable moments. From Secret Santa exchanges and creative departmental performances to over 100 lucky draw winners, the energy in the room reflected the camaraderie we share beyond our daily work. We were also honoured to celebrate our long-service colleagues who have been with the firm for 10, 15, 20, and even 25 years, recognising their dedication, loyalty, and the shared journey we have built together.

Our heartfelt appreciation goes to the organising committee for their hard work in creating such a memorable evening, and to everyone who made the effort to attend. Events like these remind us that while our work may be demanding, it is the people, relationships, and sense of fellowship that truly define our firm.

Chambers Asia-Pacific 2026

We're pleased to share that Halim Hong & Quek has been recognised in the Chambers Asia-Pacific Guide 2026.

This year, our firm earned rankings across three key practice areas:

- Real Estate | Band 3
- Tax | Band 3
- Banking & Finance | Band 4

We're grateful for this recognition and for the trust our clients continue to place in us.

This recognition follows our recent ranking in the Chambers FinTech Guide 2026, where Ong Johnson was ranked Band 1 and our Technology Practice Group received a Band 2 ranking in FinTech Legal.

We thank all our clients, colleagues, and partners for their continued support.

Chambers Fintech Guide 2026

We are pleased to share that Halim Hong & Quek's Technology Practice Group, led by Ong Johnson and Khai Yi Lo, has been recognised in the Chambers FinTech Guide 2026 (Malaysia).

- Firm Ranking: FinTech | Band 2
- Individual Ranking: Ong Johnson | Band 1

A special congratulations to Ong Johnson on his Top Ranked recognition, and thank you to our clients for the confidence and trust they continue to place in our team.

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