JANUARY 2021 | VOL. 1

in alliance with HLP
ADVOCATES & SOLICITORS

Empower

WHAT'S INSIDE THIS ISSUE:

A MONTHLY NEWSLETTER BY
HHQ & HLP

Greetings from the Partners

Dear Readers,

Welcome to 2021!

We are honoured and excited to present our very first Issue of the joint newsletter **EMPOWER** by Halim Hong & Quek (HHQ) and Harold & Lam Partnership (HLP) following our strategic alliance beginning January 2021.

With **EMPOWER**, we aim to provide you with timely legal updates on multiple areas of the law and a snapshot of novel legal developments in Malaysia. With 12 issues lined up for 2021, we will connect with you via a plethora of legal updates.

Our writers and contributors are eager to share and impart their legal knowledge with all of you through **EMPOWER**. The strategic alliance between HHQ and HLP enables **EMPOWER** to tap on a wider pool of legal experts who will ensure that you receive par excellent updates. In order to assist you, our objective is to keep **EMPOWER** easy-to-read with well researched and relevant content.

We, at HHQ and HLP, are dedicated to promoting awareness on common legal issues. It is our vision that 2021 will bring about new inspirations, bigger goals and great achievements. In line with that, we hope that **EMPOWER** will prove to be an insightful and informative tool to guide you in navigating legal matters.

If you have any questions or concerns, do feel free to contact us to share your thoughts on our contents.

Till our next issue – stay safe!

Dato' Quek, Harold Tan, Lam Wai Loon

The Impact of Proclamation of Emergency on Malaysia

WRITTEN BY TAN POH YEE

The Malaysian King has consented to the declaration of emergency in the country. The power was exercised pursuant to Article 150(1) of the Federal Constitution where he is satisfied that a threat to the security or economic lives or national peace in the Federation has occurred that necessitates the implementation of an emergency.

Historically, this is not the first time that Malaysia has been placed under emergency. Since 1948, Malaysia has gone through the state of emergency, including the emergency in Sarawak state in 1966 and Kelantan state in 1977. The last proclamation of emergency before this was in 1969 following the race riot that took place on May 13, 1969.

The Prime Minister has assured that the civilian government will continue operation
and no curfew will be enforced. The Prime Minister has also assured that the administration and public sector of the Federal and State government will not be affected by the emergency.

Gazette of the Emergency Ordinance 2021

Following the announcement by the Prime Minister, a gazette PU(A) 12 has been issued on January 14, 2021 ("the gazette") detailing what will happen so long as the emergency is in force.

Among others, the setting up of an independent special committee to advise the King on the continuing existence of the grave emergency threatening the security, economic life and public order of the Federation arising from the Covid-19 pandemic and that the King may take temporary possession of any land, movable property and demand use of resources from private healthcare during the emergency period.

Impacts of declaration of emergency

- Though the gazette provided for the setting up of an independent special committee to advise the King on the continuing existence of the grave emergency, no further information was provided as to who will sit on the committee and the extent of their powers.
- The government's power will comprise any matters in the state legislation except for matters concerning the Syarak laws or Malay customs or any legal matters or custom in Sabah and Sarawak, religious, citizenship and language, in accordance with Article 150 (6A) of Federal Constitution.
- The gazette did not expressly provide that any acquisition of land, building and movable property and resources must be for purpose of managing and controlling Covid-19 pandemic, despite assurance from the Prime Minister that any such acquisition will be for purpose of managing and controlling Covid-19 pandemic. This would mean that during the emergency, the acquisition of building, property or immovable property could be for any other purpose as the King decides necessary.

continued from page 2

- The Parliament and State Legislative Assembly will not convene during the emergency period in accordance with the provision of the Federal Constitution. Instead, the King will decide when to summon, prorogue or dissolve the Parliament and State Legislative Assembly. This would mean that the King may also decide not to summons, prorogue or dissolve the Parliament and State Legislative Assembly so long as the emergency is in force.
- In the event where the Parliament and State Legislative Assembly does not convene, bills will not be tabled and debated according to the provisions under the Federal Constitution. Instead, any bills may be passed by government without the usual process of tabling and debating a bill. This demonstrates a glaring lack of check and balance between the three branches of governance.
- In addition, despite the requirement in Article 150(3) of the Federal Constitution that a proclamation of emergency must be tabled in the Parliament for approval, there is no information of whether this requirement has been complied with.
- There would not be any general election or by-election during the emergency period. This would mean the current government will remains its status quo so long as the emergency is in force as provided under Regulation 11 of the Emergency Ordinance.
- While the legislative branch will be placed under the government, the judiciary will remain independent to uphold the rule of law and justice. On the other hand, we also note that Regulation 10 of the Emergency Ordinance prohibits anyone to bring any action against the Government or any public officer for any act done or omitted in good faith in enforcing the Ordinance. This would mean a claimant must be able to prove bad faith on the part of the Government or any public officer in bringing any suit against them.
- Despite the assurance of the Prime Minister that the proclamation of emergency is not a military coup, the armed forces are given additional powers of a police officer pursuant to Regulation 7(1) of the Emergency Ordinance. However, the armed forces must follow the process as laid down under the Criminal Procedure Code. For example, an army make an arrest, that arrest must be in accordance to the process and procedures under the Criminal Procedure Code. The armed forces may not make any arbitrary arrest on the civilian.

continued from page 3

- The punishment for anyone who fails to comply with any demand of the King or his authorized person is a fine or imprisonment or both. Even the directors, partners, compliance officers and secretary of a company can be found liable if the company commits an offence under the Emergency Ordinance. Consider this scenario. If the King demands for acquisition of a building which the owner had refused to comply because he believes that the reason for such acquisition is not justifiable. An action was brought against the government for bad faith and the question is, whether the owner may be considered as failing to comply with the demand of the King when a court case is pending?
- Another drastic effect of the Emergency Ordinance is that the Ordinance shall prevail over any other written law in the event of any conflict of provisions. Can an emergency ordinance prevail over the fundamental liberties which form the basic structure of the constitution of a country? This is a profound question that will eventually reach the courts for determination.
- Although it was announced that all economic activities will continue operating subject to the SOP and Movement Control Order and that movement would not be affected, this may not be guaranteed throughout the period of emergency, given that the government can make any changes through legislation and policy at any time during the emergency period.

Conclusion

The Emergency Ordinance has demonstrated the wide powers of the King during an emergency. We have also listed the possible impacts of an emergency in the country. As much as we hope that the state of emergency will end soon, we are in it now and it is important that we brave ourselves to weather the period of emergency and uncertainty with updates on the state of emergency.

About the Author

TAN POH YEE
SENIOR ASSOCIATE
HALIM HONG & QUEK
pohyee.tan@hhq.com.my

Advance Rulings of the Inland Revenue

Can such rulings be challenged by way of judicial review proceedings?

WRITTEN BY HAROLD TAN

Section 138B of the Income Tax Act 1967 ("ITA") allows a taxpayer to submit a request to the Director General of Income Tax ("DGIR") for an advance ruling on the application of any provision of the ITA to a particular type of arrangement. The aim of such a ruling is to ensure clarity and certainty of tax treatment and consistency in the application of the income tax laws.

According to the Guideline on Advance Rulings issued by the Inland Revenue Board, an advance ruling is binding upon the person in relation to an arrangement and also upon the DGIR. The advance ruling will however not be binding in the following circumstances:

- where the arrangement carried out is materially different from the arrangement stated in the advance ruling;
- where there were material omissions, misrepresentations or inaccuracies in connection with the application of the advance ruling;
- where an assumption about a future event or other material matter made by the DGIR in issuing the advance ruling is subsequently proved to be incorrect; or
- where the person fails to satisfy any of the conditions stipulated by the DGIR in the advance ruling.

It has also been explained in the Guideline that a request for an advance ruling would only be entertained where the proposed arrangement is seriously contemplated by the person for implementation in the near future, and also that once an advance ruling is issued, it is considered to be final and unappealable irrespectively of whether it is advantageous to the person or not.

In the Court of Appeal case of ***Ketua Pengarah Hasil Dalam Negeri (LHDN) v IBM Malaysia Sdn Bhd*** [2019] MLJU 2062, the court was concerned with the issue of whether an advance ruling issued under Section 138B of the ITA is opened to challenge in court by way of judicial review proceedings.

In this case, the taxpayer Respondent being IBM Malaysia was then seriously contemplating entering into a software distribution agreement with one of the companies within the IBM Group by the name of IBM Ireland Product Distribution Limited ("PDL") that would grant IBM Malaysia the right to distribute the software programs developed and owned by PDL in Malaysia.

continued from page 5

IBM Malaysia applied to the DGIR for an advance ruling on whether the distribution fee payable by IBM Malaysia to the non-resident PDL is to be classified as royalty and is subject to withholding tax.

In respond to IBM Malaysia's said application, the DGIR issued an advance ruling stating that the distribution fee is royalty and is subject to withholding tax ("Advance Ruling").

Dissatisfied with the Advance Ruling, IBM Malaysia initiated a judicial review proceeding seeking a court order to quash the Advance Ruling issued by the DGIR. The application was allowed by the High Court leading to the DGIR filing an appeal to the Court of Appeal.

The Court of Appeal found in favour of the DGIR and allowed the appeal. The Court of Appeal held that the Advance Ruling is not amenable to judicial review. In support of their unanimous decision, the appellate court judges explained their decision in the following manner:

- The Court of Appeal accepted IBM Malaysia's argument that the Advance Ruling is final and unappealable. However, the judges disagreed with counsel's argument that IBM Malaysia is left with no choice whether or not to be bound by the Advance Ruling. The court opined that even though IBM Malaysia may consider the Advance Ruling to be disadvantageous to it, it still has a choice to not proceed with the proposed arrangement, but when it chooses to go ahead with the proposed arrangement, IBM Malaysia has to then comply with the Advance Ruling.
- The Court of Appeal further found that IBM Malaysia is not left with no recourse to challenge the Advance Ruling. Instead of applying for judicial review, what IBM Malaysia ought to have done is to file its tax return, and then appeal against the assessment raised by the revenue to the Special Commissioners for Income Tax ("SCIT") and have the issues relating to the tax treatment stated in the Advance Ruling ventilated before the SCIT.

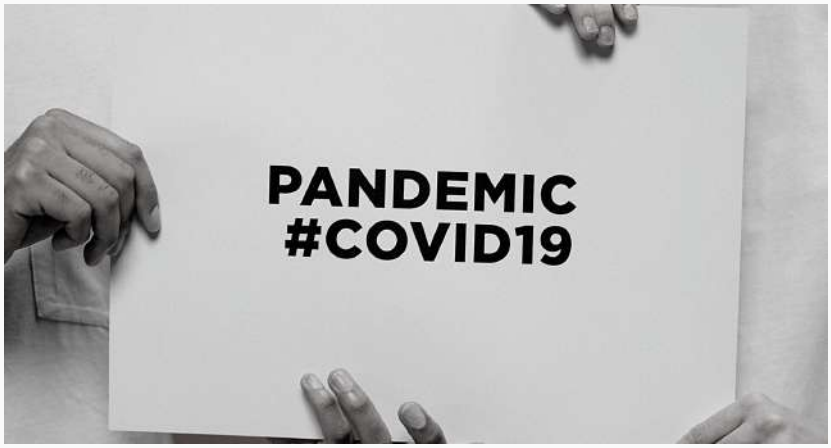
This case is pertinent as it reinforces the view that an advance ruling issued by the DGIR is not amenable to judicial review. It is understood that leave to appeal to the Federal Court had been granted to IBM Malaysia, but the appeal was unsuccessful. At the time of the writing of this article, the Federal Court grounds of judgment have yet to be made available.

About the Author

HAROLD TAN
PARTNER
HAROLD & LAM PARTNERSHIP
harold@hlplawyers.com

5 things to consider in real estate transactions during the COVID-19 pandemic.

WRITTEN BY LEON GAN



The ongoing Covid-19 pandemic brought about our first movement control order on 18th March 2020 and has affected all aspects of life. This includes that of transacting a property where many were caught by unforeseen circumstances resulting from the movement control order: e.g. fallout in transactions and/or incurring additional costs arising from late
payment interest in their real estate transactions.

Listed below are some points to consider in a real estate transaction during these unusual times:

Sale and Purchase Agreement: Force Majeure clause

A force majeure clause is a provision for unforeseen events that would render obligations under contract impossible to perform by a party. Once invoked, depending on the wordings of the force majeure clause, a party's obligations under contract may be relieved or suspended accordingly. It is common that a force majeure clause is drafted into most sale and purchase agreements – however, not all force majeure clauses are drafted equal. It is advisable that one considers the force majeure clause in their sale and purchase agreement to include a catch-all provision with clear wordings as to what constitutes a force majeure event and if a timeline is involved.

Equally important is the clear wordings on the parties' rights, remedies and obligations following a force majeure event: e.g. suspension of obligations, termination of contract.

continued from page 7

Sale and Purchase Agreement: Completion Period clause

In all real estate transactions, time is always of the essence. The seller will expect that they receive their sale proceeds within a certain time frame and the purchaser will want to know when they will be able to take possession of the real estate.

The Covid-19 pandemic has brought about many uncertainties when it comes to timelines for completing a sale and purchase transaction: e.g. closure of land offices, banks, restricted movements, etc. This inevitably leads to delay in many real estate transaction processes.

It is prudent to ensure that proper time frame is drafted into each and every process while also ensuring there is space to allow for extension to cater for delays not attributable to the fault of either contracting party.

Sale and Purchase Agreement: State and Condition of the Property

13th January 2021 saw the reintroduction of Movement Control Order and depending State you are in and the Movement Control Order imposed, interstate or inter-district travel may be prohibited.

If you are purchasing a property that is not within your residential locality i.e. where cross border travels are required, you may wish to be prudent when considering the possible imposition of travel bans at any time in the event that inspection of the property's state and condition is a requirement when purchasing a property.

Purchases made with a Housing Developer: Delivery of Vacant Possession

If you purchased a residential property that is regulated under the Housing Development (Control and Licensing) Act 1966 ("HDA1966") and your sale and purchase agreement is dated before the 18th March 2020: the time for the housing developer to deliver vacant possession pursuant to the sale and purchase agreement may have shifted to a later date pursuant to Section 35 of the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) Act 2020 ("COVID19 Act").

The COVID19 Act provided the exclusion of the period between 18th March 2020 – 31st August 2020 from the calculation of time for a housing developer to deliver vacant possession of the property. You may wish to seek clarification from your housing developer if the time for delivery of vacant possession is delayed.

continued from page 8

Purchases made with a Housing Developer: Defect Liability Period

If you purchased a residential property that is regulated under the HDA1966 and your sale and purchase agreement is dated before the 18th March 2020: the time of coverage by your housing developer on the defect liability pursuant to the sale and purchase agreement may be extended pursuant to Section 36 of the COVID19 Act.

Many homeowners having purchased a property directly from a housing developer may be facing with delay or the inability of a housing developer to properly attend to the defects of their property due to the movement control order while the time on defect liability coverage is counting down.

The COVID19 Act provided the exclusion of the period between 18th March 2020 – 31st August 2020 from the calculation of time provided for defect liability coverage by a housing developer on the property thus providing more time for defects to be attended to.

Conclusion

While no return to normalcy may be in sight for the immediate future and despite the challenges, real estate purchase opportunities are abound for most first-time homeowners, homeowners and investors alike considering the government announced incentives, attractive developers' sales packages, future potentials and present low financing interest rates.

While there may be an industry norm adopted commonly by many in their sale and purchase contracts, there is no "standard" when it comes to clauses in sale and purchase contracts unless one prescribed pursuant to the HDA1966. The clauses to be reviewed to suit the present situation and possible circumstances arising from the Covid-19 pandemic may defer depending on parties' transaction terms.

13th January 2021 saw the reintroduction of the movement control order dubbed "MCO 2.0" and it remains to be seen if the government will provide for an extension of the temporary measures provided under the COVID19 Act to help reduce the impact brought about by MCO 2.0.

The above are among other things to highlight and seek professional advice from when transacting a real estate during this pandemic.

About the Author

LEON GAN
PARTNER
HALIM HONG & QUEK
leon.ganhc@hhq.com.my

CASE SUMMARY ON SECTION 30 OF CONSTRUCTION INDUSTRY PAYMENT AND ADJUDICATION ACT 2012

WRITTEN BY SATSHANI N. RADHAKRISHNAN

HSL GROUND ENGINEERING SDN BHD v CIVIL TECH RESOURCES SDN BHD [2020] MLJU 717 (LIM CHONG FONG, J)

Salient Background Facts

By way of a letter of award dated 8.12.2016 ("Principal Contract"), Civil Tech Resources Sdn Bhd ("the Defendant") had appointed Civil Tech Sdn Bhd ("CTSB") to carry out works for bored pile works in relation to a project known as "The Construction and Completion of Proposed Sungai Besi – Ulu Kelang Elevated Expressway" ("the Project").

Thereafter, pursuant to a letter of award dated 10.4.2017 ("Contract"), CTSB had appointed HSL Ground Engineering Sdn Bhd ("the Plaintiff") to carry out and complete works for the supply of skilled labour, machinery and equipment for certain bored pile works in relation to the Project.

The Plaintiff had then rented a unit of Bauer Boring Rig RB28 c/w Kelly Bar ("the Equipment") by way of a rental agreement dated 21.8.2017 ("the Rental Agreement") to CTSB to carry out the bored piling works.

The central issue of the dispute is related to the failure of CTSB to make full payment to the Plaintiff for the works and services the Plaintiff had rendered under the Contract and Rental Agreement, accordingly.

Adjudication Proceedings

As CTSB had failed to make the full payment to the Plaintiff, the Plaintiff had initiated adjudication proceedings against CTSB under CIPAA 2012 to recover the monies owed by CTSB to the Plaintiff under the Contract and the Rental Agreement, separately.

The Learned Adjudicator had delivered its decision in favour of the Plaintiff in respect of both the adjudication proceedings.

continued from page 11

Request for Direct Payment

In view of the fact that the Defendant is the principal of CTSB, the Plaintiff had made written requests to the Defendant for direct payment of the adjudicated amounts awarded to the Plaintiff according to the adjudication decision which was delivered in relation to the Contract and Rental Agreement.

Due to the Defendant's failure to make direct payments to the Plaintiff, the Plaintiff proceeded to file two (2) originating summons against the Defendant for the amounts due and owing in respect of the adjudication decision pursuant to the Contract and Rental Agreement dispute.

Issues

The legal issues before the High Court were as follows:

1. Whether the Defendant's failure in issuing the mandatory notice under Section 30(2) CIPAA 2012 to CTSB without any reasonable explanation is acceptable?
2. Whether the Defendant as the principal of CTSB is liable to make direct payments to the Plaintiff on behalf of CTSB taking into account Section 30(5) CIPAA 2012?
3. Whether the Plaintiff is able to pursue a claim for direct payment from the Defendant in relation to any monies due or payable?
4. Whether the Defendant had conclusive evidence to prove that no amount was due or payable to the Plaintiff?

Findings of the High Court

Both the originating summons were allowed in favour of the Plaintiff for the following reasons:

Issue 1

The Court observed that the Defendant had failed to serve a written notice on CTSB to show proof of payment and to state that the direct payment would be made after the expiry of ten (10) working days of the service of the notice as required by Section 30(2) of CIPAA 2012.

By reason of this non-compliance, the Court concluded that the Defendant was compelled to pay the adjudicated sums to the Plaintiff directly.

On this particular point, the Court in reference to a case law held that the Defendant cannot rely on its breach of section 30(2) of CIPAA 2012 to avoid its mandatory obligation to make direct payment under section 30(3) of CIPAA 2012.

continued from page 12

Issue 2

The Defendant contended that there was no money due or payable by itself to CTSB by virtue of Section 30(5) of CIPAA 2012. This was premised on the fact that the Defendant had progressively paid CTSB a total of RM5,046,507.34 pursuant to progress certificates 1 to 6.

Based on the Defendant's assertion that it had paid CTSB against all the progress certificates and that there is no longer any monies due or payable to CTSB, the Court made a distinction between due and payable in that a debt accrues when it is due whilst an obligation to pay arises when it is payable. The Court was of the view that an obligation or liability to pay shall arise upon sufficient and proper evidence tendered.

In this instance, the Court made reference to the plain meaning of Section 30 (5) of CIPAA 2012 and concluded that the Defendant is obliged to make direct payment if there are monies due or payable to CTSB.

Issue 3

The Court held that it is not necessary that the payment for which the adjudication decision was given must be of the same payment for which the Plaintiff is seeking enforcement from the principal.

As such, this is not limited to the unpaid monies due pursuant to the progress certificates issued by the Defendant to CTSB but any other monies payable by the Defendant to CTSB such as any uncertified progress claims and release of retention monies as at the date the Defendant received the notices from the Plaintiff pursuant to Section 30(1) of the CIPAA 2012.

The Court concluded that the Plaintiff may seek direct payment from the Defendant in respect of any monies due or payable.

continued from page 13

Issue 4

The Court observed that the Statement of Final Account which was unilaterally produced by the Defendant which it sought to rely on to prove that no amount was due or payable to the Plaintiff was without the acceptance and/or endorsement of CTSB, contrary to the provisions of the Contract.

In reference to a case law, the Court held that statement of account which did not bear a stamp or signature of the bank on every page of the printed statement as well as not produced on the bank's letterhead is unworthy and unreliable.

In view of the above, the Court was satisfied there was still a substantial amount of unquantified and uncertified final value of work done and found that the retention monies of RM518,620.61 was payable by the Defendant to CTSB. Hence, the Defendant is liable to make direct payment to the Plaintiff on behalf of CTSB as it had failed to adduce a conclusive evidence to show that no amount was due or payable.

About the Author

SATSHANI N. RADHAKRISHNAN

PARTNER

HAROLD & LAM PARTNERSHIP

satshani@hlplawyers.com

FEDERAL COURT DECIDES THAT TIME FOR DELIVERY OF VACANT POSSESSION RUNS FROM THE DATE OF PAYMENT OF THE BOOKING FEE

WRITTEN BY HEE SUE ANN

PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor And Other Appeals Case No. 01(f)-29-10/2019(W)

Seven appeals[1] were filed before the Federal Court, comprising three sets of different cases stemming from applications for judicial review in the High Court of Kuala Lumpur and Malacca. The appeals involved consist of two appeals filed by PJD Regency Sdn Bhd for the project 'You Vista' against statutory housing tribunal and the purchasers ("**PJD Regency Cases**[2]"), three appeals filed by the purchasers of 'Taman Paya Rumput Perdana Fasa 2' against GJH Avenue Sdn Bhd ("**GJH Avenue Cases**[3]"); and two appeals filed by Sri Damansara Sdn Bhd against the purchasers for the project 'Foresta Damansara' ("**Sri Damansara Cases**").

All of these appeals were heard together by the Federal Court and on 19.1.2021, the Federal Court ruled unanimously that the wordings "from the date of this agreement" contained respectively in clause 24(1) of Schedule G of the Housing Development (Control and Licensing) Regulations 1989 ("HDR 1989") and clause 25 of Schedule H of the HDR 1989 should be construed as the date the purchasers paid the booking fee.

In arriving at the decision, the Federal Court has taken into the consideration the decisions of the Supreme Court in **Hoo See Sen**[4] and **Faber Union**[5]. The Court took the view that Faber Union, which was decided in the same fashion as Hoo See Sen where the calculation of the liquidated agreed damages ('LAD') runs from the date the booking fee was paid and not from the date of signing of the agreement, is good law.

The Federal Court also relied on the concept of social legislation in their judgment. The rationale is this. The long title of the Housing Development (Control and Licensing) Act 1966 ("HDA 1966") provides for the protection of the interest of purchasers and for matters connected therewith. When it comes to interpreting social legislation, the Courts must give effect to the intention of Parliament and not the intention of parties.

The Federal Court has arrived at this decision by taking into consideration relevant legislative history and statutory interpretation.

[1]PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor And Other Appeals Case No. 01(f)-29-10/2019(W)
[2]https://hhq.com.my/wp-content/uploads/2019/09/3.-HHQ-InPoint_GJH-Avenue-and-PJD-Regency-2019.pdf
[3]https://hhq.com.my/wp-content/uploads/2019/09/3.-HHQ-InPoint_GJH-Avenue-and-PJD-Regency-2019.pdf
[4] [1988] 2 MLJ 170
[5] [1995] 3 CLJ 797

continued from page 15

It is of view that the Scheduled Contracts (i.e. Schedule G and/or Schedule H type contracts under Regulation 11(1) of the HDR 1989) should not be read literally in the context of the current appeals due to the clear legislative intent of the provisions. From the Hansard in 1966, to the subsequent changes in the subsidiary legislation later on right up to the amendment to the HDR 1989 in 2015, the written law in force has made it crystal clear that the collection of booking fees is prohibited. The act of developers in collecting booking fees illegally, binds themselves to the booking fees. As such, these developers will have to bear the full extent of the LAD payable to the purchasers consistent with the overall intent of the written law in protecting the purchasers in respect of late delivery of vacant possession.

On the point of formation of contract, the Court is of view that a valid contract came into being when the purchasers paid booking fee to the developers. The legislative intent was that the initial payment of monies in the form of a deposit is sufficient to constitute an intention to enter into a contract given that the agreement would have to be signed at the same time. The date for calculation of LAD should therefore begin from the date of payment of deposit/booking fee/initial fee/expression by the purchaser of his written intention to purchase and not from the date of the sale and purchase agreement. The application of the foundational principles of contract law is to ensure maximal protection of the purchasers having regard to the social purpose of the HDA 1966 and its subsidiary legislation.

continued from page 16

In respect of the **PJD Regency Cases**, the Court found that the calculation of LAD in respect of the common facilities would depend on the date the certificate of completion and compliance ('CCC') was issued and not the date when the certificate of practical completion ('CPC') was issued. It is a legal requirement for the CCC to only be issued upon the developer complying with all regulatory laws which affords protection to purchasers. The same cannot be said in respect of the CPC or any other such document not amounting to a CCC.

For the **GJH Avenue Cases**, the Court held that the date of commencement for the computation of the LAD is from the date the booking fees was paid. By limiting the date of calculation to the date in the contract is to impliedly condone the collection of booking fees by the developers and to allow them to manipulate the date of the contract for LAD purposes. The orders of the High Court were accordingly restored.

As for the **Sri Damansara Cases**, the developer argued that LAD should be calculated based on the rebated purchase price and not on the actual price stipulated in the SPA as that would otherwise tantamount to unjust enrichment for the purchasers. The Court found that the developer had breached the law by collecting the initial fee from the purchaser in express contravention of regulation 11(2) of the HDR 1989. There can hence be no issue of unjust enrichment on part of the purchaser as an innocent party's right to enforce his remedy of LAD is a right that is statutorily provided for.

With the above judgment handed down by the Federal Court, the previous conflicting positions of the Court of Appeal in PJD Regency and GJH Avenue has been resolved with finality and there is now clarity on this matter. This decision will be most welcomed by homebuyers, but it is certainly something that would disappoint developers.

About the Author

HEE SUE ANN
ASSOCIATE
HALIM HONG & QUEK
sahee@hhq.com.my

| UPCOMING EVENT

WEBINAR via ZOOM:
CORPORATE RESCUE MECHANISM FOR COMPANIES IN DISTRESS

DATE: 25 FEBRUARY 2021
TIME: 3.00PM - 4.00PM
SPEAKER: MR LUM MAN CHAN

Mr Lum Man Chan is partner of Dispute Resolution Department in Halim Hong & Quek. Man Chan's practice mainly revolves around corporate litigation and critical matters such as liquidation and restructuring, debt recovery, insolvency and employment disputes. Over the years, Man Chan has acquired vast knowledge and experience in these areas of practice and has advised and represented various prominent institutional and individual clients, both foreign and local in all levels of Malaysian Court. For non-contentious matters, Man Chan regularly provides consultation and related legal services to SMEs from various sectors, amongst others being retail, property development and management, logistics, mining, and agriculture.

In this Webinar, Man Chan will seek to provide an overview of the corporate rescue mechanism in Malaysia and how it can help companies in times of crisis.

For registration, please scan the QR code below or visit the link https://bit.ly/3965oMq.

For enquiries, please email Ms Maizatul (maizatul@hhq.com.my).

Visit our website, https:hhq.com.my/hhq-webinars/ for more information.

Empower is a monthly newsletter jointly published by Halim Hong & Quek and Harold & Lam Partnership.

It is distributed for free and can be read on HHQ's or HLP's website at **https://hhq.com.my/** or **https://hlplawyers.com/**

All articles in this publication are intended to provide a summary or review of the subject matter and are not intended to be nor should it be relied upon as a substitution for legal or any professional advice.

Editorial Team


Chong Lee Hui


Ankit Sanghvi


Serene Hiew Mun Yi


Amy Hiew Kar Yi


Tan Poh Yee


Hee Sue Ann


Chan Jia Ying

Contact Us

HALIM HONG & QUEK
ADVOCATES & SOLICITORS
翰林方與郭律師事務所

KUALA LUMPUR OFFICE
OFFICE SUITE 19-21-1, LEVEL 21
WISMA UOA CENTRE
19, JALAN PINANG
50450 KUALA LUMPUR
T: +603 2710 3818
F: +603 2710 3820 (Corporate & Real Estate)
+603 2710 3821 (Dispute Resolution)
E: hhqkl@hhq.com.my

PENANG OFFICE
C-11-2, LORONG BAYAN
INDAH 3, BAY AVENUE
11900 BAYAN LEPAS
PULAU PINANG
T: +604 640 6818
T: +604 640 6817
F: +604 640 6819
E: hhqpenang@hhq.com.my

JOHOR OFFICE
A-2-23 & A-3-23, BLOCK A
PUSAT KOMERSIAL BAYU TASIK
PERSIARAN SOUTHKEY 1
80150 JOHOR BAHRU, JOHOR
T: +607 300 8101
T: +607 289 7366
F: +607 300 8100
E: hhq@hhqjb.com.my

HLP HAROLD & LAM PARTNERSHIP
ADVOCATES AND SOLICITORS

SUITE 32-5, 32ND FLOOR
OVAL TOWER DAMANSARA
NO. 685, JALAN
DAMANSARA
60000 KUALA LUMPUR
T: +603 7732 8862
F: +603 7732 8812
E: hlp@hlplawyers.com

FREE Publication
Printing Permit:
PP19508/08/2019(035103)