



the *ZRp* brief

Brief: 6/08

Folder 2/April - June 2008

KDN No: PP12857/08/2009(021767)



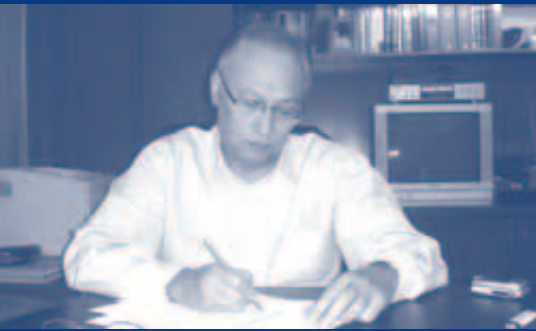
ZUL RAFIQUE & partners at the In-House Congress 2008

From left: T. Kuhendran (Dispute Resolution); P. Jayasingam (Industrial Relations); Ermira Faridah (Corporate Construction); Au Wei Lien (Corporate Telco); Rishwant Singh (Dispute Resolution); S. Nantha Balan (Dispute Resolution)

ZUL RAFIQUE & partners

A BRIEF NOTE...

by Dato' Zulkifly Rafique



The Internet, the Law and You !

Twenty years ago, if someone told me that I would have instant communication at my finger tips, I would have scoffed at that notion. Today, science and technology have reached an unbelievable level. Mobile phones are not just phones anymore and computers are beginning to look less and less like they used to. With access to the Internet, we have truly become borderless.

The appreciation of Internet Law is therefore vital, especially in the cyber environment that we live and work in most of the time. In a constantly developing technological climate, it was most apt to organise a workshop entitled *The Internet, the Law and You!* at the recent In-House Congress, co-hosted by **ZUL RAFIQUE & partners** with Pacific Business Press and three other law firms. This annual event was held at the Westin Hotel Kuala Lumpur on 19 June 2008.

I would like to thank everyone who made this event a success and to our clients who had attended our workshop, we hope you enjoyed attending it as much as we enjoyed your presence.

On that note, let me leave you with a quote by Professor Tim Richardson:

Teachers will not be replaced by the Internet, they will be replaced by teachers using the Internet.

in this issue...

BRIEF-FLASH...

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The highlights in this Folder include:

- 28 April Listing
- Land Laws relaxed
- Landmark Civil Suit filed
- From Lawyer to Law Minister

BRIEFING...

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Amongst the articles in our features:

- *UK Corporate Manslaughter and Corporate Homicide Act 2007*
- *Partnership v LLP*
- *Pedra Branca – Dead Calm or Turbulent Waters?*

BRIEF-CASE...

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Our Brief-Case contains the following:

- *Invescor Sdn Bhd v Sobena Maju Sdn Bhd*
[2008] 2 CLJ 561, Court of Appeal
- *Cepatwawasan Group Bhd & Anor v Tengku Dato' Kamal Ibni Sultan Sir Abu Bakar & Ors*
[2008] 2 CLJ 620, High Court
- *The Co-operative Central Bank Ltd v KGV & Associates Sdn Bhd*
[2008] 2 CLJ 545, Federal Court

BRIEF-UP...

11

Legislation Update:

- Solid Waste & Public Cleansing Management Corporation Act 2007
- East Coast Economic Region Development Council Act 2008
- Employees Provident Fund (Amendment) Act 2007
- Northern Corridor Implementation Authority Act 2008

✚ BRIEF-FLASH...

- **28 APRIL LISTING** Shares in TM International Bhd (TMI) were listed on 28 April. In September 2007, Telekom Malaysia Bhd had announced a de-merger exercise in order to spin off its mobile and non-Malaysian business, which is now housed under TMI. Market capitalisation of TMI at the point of listing was about RM25.0billion. ✚
- **ADOPTION ACT TO BE REVIEWED** The Adoption Act 1952 will be reassessed by the Ministry of Women, Family and Community Development with a view to make adoption procedures less complicated. ✚
- **BLOGGER CHARGED FOR SEDITION** Raja Petra Kamaruddin was charged under the Sedition Act 1948 for comments that he posted on his blog in relation to the Deputy Prime Minister, Datuk Seri Najib Tun Razak and his wife Datin Seri Rosmah. The trial is expected to take place in October 2008. ✚
- **CYBER CAFÉ WATCH** Cyber cafes in Malaysia will be subject to stricter rules soon. These rules will see the cafes close at midnight with a requirement for those below 12 years old to be accompanied by their parents or guardians. The guidelines are reported to take effect as soon as possible. ✚
- **DMA FOR DERIVATIVES MARKET** Direct Market Access (DMA) has been introduced for the derivatives market. The main aim is to give investors more control over their trade executions. ✚
- **FALSE PROMISES** In a first of its kind, a suit has been filed by a woman against her husband claiming that he caused her to lose her virginity on a false promise. ✚
- **HDC FOR HALAL INDUSTRY** The Halal Industry Development Corporation (HDC) will be the only body to issue halal certificates. Previously, halal operations were handled by two separate bodies, namely Department of Islamic Development Malaysia (JAKIM) and the Ministry of International Trade and Industry (MITI). ✚
- **HILL SLOPES PROJECT HALTED** The development of hill slopes that was approved by the Kuala Lumpur mayor was brought to a halt when the High Court granted an ex parte injunction in favour of the residents of Bukit Gasing. ✚
- **INFORMATION ACT V OFFICIAL SECRETS ACT** The Government has been urged by the National Union of Journalists, Malaysia to replace the Official Secrets Act 1972 with the Information Act. The statement by the Union was released in conjunction with the World Press Freedom Day on 3 May 2008. ✚
- **KLIA – WORLD'S BEST AIRPORT** This is the third consecutive year that the Kuala Lumpur International Airport has won World's Best Airport in the Airport Council International's (ACI) Airport Services Quality Awards. ✚
- **LAND LAWS RELAXED** Non-Kelantanese will be allowed to buy property in Kelantan without having to wait the mandatory 10 years. This however is subject to the condition that the purchase is a one-time opportunity of up to a maximum of 10% of property in Dataran Raja Dewa. ✚
- **LANDMARK CIVIL SUIT FILED** A landmark civil suit has been filed by the Securities Commission against businessman, Low Thiam Hock, also known as Repco Low. The suit is in relation to the rigging of shares in Iris Corporate Bhd. ✚
- **MCSC SUED!** An action by Koperasi Keretapi Berhad (KKB) has been brought against the Malaysian Co-Operative Societies Commission (MCSC) on the basis that certain provisions in the newly enacted Malaysia Cooperative Societies Commission Act 2007 are unjust and unconstitutional. ✚

• **NCIA ACT ADOPTED BY PENANG**

The Northern Corridor Implementation Authority Act has been adopted by the Penang Government after a two month study. The Act empowers the Authority to oversee the development of the Northern Corridor Economic Region which comprises Penang, Kedah, Perlis and Northern Perak. ☞

• **NO WAY OUT!** The Court of Appeal ruled on 30 April 2008 that housing developers are not allowed to use new contracts imposed on buyers as a means of escaping their legal obligations stated in the sale and purchase agreement. Parties are prohibited by law to contract out to impose terms that are more burdensome on purchasers. ☞

• **SP SETIA – BEST DEVELOPER** In the Cityscape Asia Real Estate Award 2008 held in Singapore, SP Setia won the Best Developer Office/ Commercial Project Award for its eco-friendly development, Setia Eco Gardens. ☞

• **WORK UNTIL 70?** According to the Federal Court, managing directors and executive directors of public listed companies can work until 70 if their terms of employment are silent on the retirement age. This was decided when the apex court dismissed an application for leave to appeal by Kian Joo Can Factory Bhd and its four directors against the ruling of the Court of Appeal. ☞

FOREIGN FLASH

• **CORPORATE MANSLAUGHTER ACT**

The UK Corporate Manslaughter & Corporate Homicide Act 2007 will do away with archaic company law where a company could be convicted only if the 'directing mind' could be associated with the responsibility. Instead the new Act will render collective actions of a company's management to be scrutinised. This is expected to result in an increase of prosecutions of companies. ☞

• **CYBER CRIMINAL CONVICTED**

Owen Thor Walker of New Zealand has been convicted of six charges of using computers for illegal purposes. The 18 year old is expected to be sentenced in May 2008. ☞

• **FROM LAWYER TO LAW MINISTER**

One of Singapore's top litigation lawyers, K Shanmugam is now the Law Minister and Second Home Affairs Minister. Although many view it to be a loss to the legal profession, the Singapore Government is said to have gained with his entry into the administration. ☞

• **OUT WITH THE OLD**

Over 250 statutes are expected to be repealed in the UK by the Statute Law (Repeals) Bill. The laws which are considered archaic and outdated include the Disorderly Houses Act 1751, Servants' Characters Act 1792 and the Wapping Workhouse Act 1819. ☞



At the In-House Congress 2008
From left: Partners (*Wilfred Abraham; Ermira Faridah and P Jayasingam*) and representatives from Pacific Business Press (*Simon King; Wendy Chan and Tiffany Hsiao*).



From left: *Hamsa Valli* (Associate - Corporate Telco); *P Jayasingam* (Partner - Industrial Relations); *Shahriz Rezal Nordin* (Pupil); *Joanne Ching* (Associate - Knowledge Management); *Rishwant Singh* (Partner - Dispute Resolution).

BRIEFING...

COMPANY LAW

UK CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

This Act is a legal innovation in the UK legal landscape. Now, companies and organisations may be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care. In this article we examine several aspects of this statute.

HISTORY OF THE ACT Companies in the UK which have long enjoyed the loopholes in the common law provision for 'gross negligence' are now more susceptible to being prosecuted for the offence, which is now termed 'corporate manslaughter' under the new UK Corporate Manslaughter and Corporate Homicide Act 2007 (the Act).

The Act came into force on 6 April 2008 with a view to update the corporate law and health and safety law. Previously, a company may be convicted of the offence only if the prosecution could identify which individual, who must be part of a 'directing mind' of the organisation, caused or contributed to the death. This is also known as the 'identification principle' which resulted in difficulties in prosecution of companies as the more complex and multilayered the organisation, the more difficult it was to find an individual within the company who could be seen as the 'directing mind'.

An example of a prosecution of a large company which failed is the *Capsize of the Herald of Free Enterprise* in 1987 which killed 187 people. The trial collapsed in its early stages when the judge ruled that there was insufficient evidence against any director or senior manager.

Another interesting case where the Crown Prosecution Service tried to prosecute the company without identifying any individual director or manager was the case of the *Great Western Trains* which was cleared of the manslaughter of 7 people who died in the Southall Train crash in 1997.

IMPLICATIONS OF THE ACT Before the Act came into force, there have been only six successful prosecutions and these were all against small companies, and although the sentences open to the courts were unlimited fines and jail sentences, most sentences were suspended and the fines were comparatively small.


Under the Act, an organisation is guilty of an offence of corporate manslaughter if the way in which any of the organisation's activities are managed or organised by the senior managers causes a person's death and amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

WHO IS A SENIOR MANAGER? A person is a 'senior manager' if he is solely responsible or plays a significant role in the making of decisions on the whole or a substantial part of the activities of the company.

WHAT IS A GROSS BREACH? A gross breach is a breach of a duty of care by an organisation that falls far below what can reasonably be expected of the organisation in the circumstances. In the UK, what amounts to 'gross' is a question of fact and has to be decided by the jury. There are however a number of factors to be taken into account, which include attitudes, policies, systems and accepted practice that were likely to have encouraged the breach. The Act is closely linked with existing health and safety legislation and the jury will take this into account.

In view of the above, organisations must now thoroughly review their safety management systems so as not to breach their duty of care. There will certainly be costs incurred for such review but such costs are likely to be a fraction of the potential penalty if found guilty of corporate manslaughter.

Although the penalty does not involve prison sentences (as the offence is directed not to an individual but at an organisation), it faces unlimited fines, the imposition of a remedial order and most importantly a publicity order whereby the organisation would be compelled to advertise their conviction in the local or national press. It must be noted that the fine would be an amount equal to 5% of the organisation's annual turnover, with the ability to go up to 10% or more if there are aggravating factors. This could translate to hundreds of millions of pounds for large organisations.

Such penalty would serve as a warning to all organisations to update their health and safety controls for the wellbeing of their employees and the public. 



Partners at the In-House Congress 2008
From left: P Jayasingam; Ermira Faridah and Wilfred Abraham

PARTNERSHIP LAW

PARTNERSHIP V LLP It was reported in May 2008 that the Companies Commission of Malaysia is proposing to introduce limited liability partnership (LLP), a hybrid-like business vehicle with the features of both a company and partnership.

In this article we examine the differences between a company, partnership and an LLP.

WHAT IS AN LLP? Setting up a business can be quite tedious especially in deciding which business structure is best suited for one's practice. The current business vehicles available in Malaysia are sole proprietorships, partnerships and companies.

The Companies Commission of Malaysia recently introduced the concept of limited liability partnership (LLP) via a consultancy document released in December 2003 with a view to provide a wider choice for businesses to structure their operations which would make them more competitive globally. It is a concept which has been established in countries like the UK, Singapore and Dubai.

WHY LLP? The most attractive feature of an LLP is that it is a corporate body and has a continuing legal existence independent of its members as compared to the traditional partnership of which its legal existence is dependent upon the membership.

An LLP operates much like a limited partnership, but allows the members of the LLP to take an active role in the business of the partnership, without exposing the partners to personal liability for other partner's acts except to the extent of their investment in the LLP.

An LLP is essentially the same thing as a limited liability company (LLC) except that the former is specifically designed for use by certain professions. Generally the partners in an LLP are not responsible for the debts, obligations, or liabilities of the partnership resulting from negligence, malpractice or wrongful acts, or misconduct by another partner, employee or agent of the partnership.

Professional organisations generally prefer LLPs because they are specifically designed to limit malpractice claims against partners who are not involved. But a partner of an LLP is liable for other partnership debts and obligations as well as for their own negligence, malpractice or wrongful acts, or misconduct, and that of any person under their direct supervision and control.

HOW DOES IT WORK? LLPs are run like general partnerships and have a similar degree of management flexibility. Income, losses and gains are passed through to the general partners according to the partnership agreement.


Under the conventional concept, the predicament facing the professionals is that if the firm is sued, all the partners would be liable. Through the LLP, we are trying to look into the concept where liability of partners in professional firms can be limited – Azryain Borhan (SSM Director of Corporate Development and Policy Division) – Business Times, 28 May 2008

If there is no partnership, income, losses and gains will be allocated in proportion to the partnership interests of each partner. Partners can agree among themselves as to how income, losses, and gains are divided among the partners. The partners then report the amount allocated on their own income tax returns and pay tax accordingly.

WHAT IS AN LLC? An LLC is a hybrid between a partnership and a corporation. The owners have many of the same tax benefits as a partnership, while at the same time being able to take advantage of the limited liability characteristics of a corporation. Unless the members elect to be taxed as a corporation, the tax treatment of a properly organised LLC is very similar to that of a partnership or sole proprietorship. Profits and losses are passed through to the members of the LLC and there is no income tax at the business level.

Like a corporation, the members of an LLC are generally shielded from personal liability for the debts and obligations of the company. Limited liability companies have the advantages of a corporation and of a sole proprietorship or partnership rolled into one. Many small business owners and entrepreneurs prefer LLCs because they combine the limited liability protection of a corporation and the pass through taxation of a sole proprietorship or partnership. Indeed, with the limited liability company, the LLC is responsible for the debts and liabilities of the business, which means that one will not be personally liable and taxes pass through like a partnership, i.e. on your personal tax returns.

WHAT IS A PARTNERSHIP? A partnership shares the attributes of flexibility of management styles, flexibility of capital and contribution structures, pass through tax treatment (single level taxation) and lack of corporate formalities. However, a great disadvantage of a partnership is its lack of protection for its individual partners. This means that if a partner was not involved in the project, his personal assets would still be at risk to pay damages arising from errors and omissions occurring in connection with that project.

CONCLUSION There is no hard and fast rule as to which business medium is most beneficial. Choices would have to be made in accordance to particular circumstances of the practice in question. However, one must acknowledge the fact that choosing the right form of entity can be an effective risk management tool. 

INTERNATIONAL LAW

PEDRA BRANCA – DEAD CALM OR TURBULENT WATERS?

The island of Pedra Branca (Pulau Batu Puteh) has been in the news recently as the subject matter of the dispute between Malaysia and Singapore.

In this article we examine whether there has been closure with the resolution of the dispute.

HISTORY OF THE DISPUTE Pedra Branca, consisting of a reef of granite obtained its name (which means 'white rock') as a result of accumulated and hardened seabirds' droppings.

The island was documented in navigational records in the 16th century when Dutch voyager, Johann van Linschoten described it as 'where ships that come and go to and from China pass in great danger and some are left upon it.'

By the middle of the 19th century, Pedra Branca, at that time considered to be terra nullius (no man's land)¹, was used by the British to construct a lighthouse.

The curtain raiser to the dispute occurred on 21 December 1979 when Malaysia had published a map depicting the island as lying within Malaysia's territorial waters. On 14 February 1980 when Singapore protested such publication, Malaysia contended that it had original title to the island (dating to the time of the Sultanate of Johor) and that it continued to hold such title.

Singapore's team, led by, among others, Tommy Koh (Ambassador at Large), Shanmugam Jayakumar (Law Minister) and

Chao Hick Tin (Attorney General) argued that Pedra Branca was terra nullius (no man's island) in the mid-19th century when the British took lawful possession of the island to construct a lighthouse.

The Malaysian team, represented by Abdul Ghani Patail (Attorney General), Abdul Kadir Mohamad (Prime Minister's adviser on Foreign Affairs) and Noor Farida Ariffin (Malaysian Ambassador to the Netherlands) contended that the ownership of the island was recognised to be with Malaysia as early as 1500 and that the Sultan of Johor had merely given the British permission to build and operate the lighthouse but had never given up sovereignty.

JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE

The decision of the International Court of Justice (ICJ) was based on, among others, the following: (a) that for over 100 years, Malaysia had not taken any steps to assert its ownership over the island in any significant way, which left the state of affairs to the British and (b) a letter written on 12 June 1953 by the State Secretary of Johor giving away this piece of territory to Singapore and that Malaysia's continued inaction reinforced its disinterest in the island.

The court's view was compounded by the fact that Malaysian officials had sought permission from the Singapore Government to survey the waters surrounding the island and also Malaysia's lack of response to Singapore's flying of its ensign on the island. These facts were found to have weakened Malaysia's line of argument.

We found volumes and volumes of other evidence but this one (letter), we could not find – Tan Sri Abdul Kadir Mohamad (The STAR 25 May 2008)

¹ Malaysia however claimed that the British were merely given permission by the Sultan of Johor to build the lighthouse constructed by Scotsman James Horsbrough. This claim unfortunately was not substantiated by any evidence.

During the ICJ proceedings, Malaysia submitted that there was an important letter from the British requesting permission from the Sultan of Johor. The letter remained elusive and the ICJ ultimately decided in favour of Singapore.

Middle Rocks on the other hand was awarded to Malaysia on the basis that it did not have any structure built on it by Britain or Singapore. The original sovereignty therefore remained with Malaysia.

IMPLICATIONS OF THE JUDGMENT One of the issues that arises is the maritime boundary between Pulau Batu Puteh and Middle Rocks. The distance between the two is merely 0.6 nautical miles. This would therefore mean that both governments may have to agree on a maritime plan. The ambiguity with regard to the maritime boundary arose from the very fact that the court was asked to decide only on sovereignty and not on the maritime boundary.

The court is of the opinion that the relevant facts, including the conduct of the parties, reflect a convergent evolution of the positions of the parties regarding title to Pedra Branca/Pulau Batu Puteh. The Court concludes, especially by reference to the conduct of Singapore and its predecessors a titre de souverain, taken together with the conduct of Malaysia and its predecessors including their failure to respond to the conduct of Singapore and its predecessors, that by 1980 sovereignty over Pedra Branca/Pulau Batu Puteh had passed to Singapore – International Court of Justice

The outcome also seems to complicate the delimitation of a maritime boundary in an area where the territorial sea claims of

Malaysia, Singapore and Indonesia overlap, taking into account that Pulau Batu Puteh is a mere 7.6 nautical miles away from the Johor Coast.

The question that many may harbour is also whether the decision of the ICJ has effectively resolved the 30-year dispute or has it created more problems. What the ICJ has achieved is to settle the issue of sovereignty in a way that both governments can accept and justify to their political constituents.

According to Dr Beckman (Associate Professor of Law at the National University of Singapore), '...the international dispute settlement process legitimises the result because it has been accepted by both parties in advance as a fair and reasonable method of resolving the dispute'.

Barry Desker, Dean of the S Rajaratnam School of International Studies, states, '...the judgment indicates that Southeast Asia is moving to accept the broader norms of international law. I think we are now moving in the direction of accepting a turn to international law - a willingness to accept international arbitration and this bodes well for issues in which there are bilateral differences.'

PULAU PISANG Malaysia, on the other hand has since become more alert to the existence of other islands and their maritime features. Pulau Pisang is one such island. The issue of ownership of Pulau Pisang was raised because of the lighthouse on the island that is operated by Singapore. Pulau Pisang which is located about 15km from Pontian, Johor, is listed in the Johor Land Office Registry. The basis for the lighthouse is an agreement signed in 1900 between Johor's Sultan Ibrahim and the British, who at that time, administered Singapore.

Government agencies are now working feverishly to gather information about these islands and their marine features that may appear attractive to other countries. Documentation on these islands is also being sought in the event of any dispute. After all, once bitten, twice shy! 🌀


CONSTRUCTION

PLANNING FOR THE FUTURE Much has been said about the East Coast Economic Region (ECER). With the enforcement of the East Coast Economic Region Development Council Act 2008 with effect from 13 June 2008, the wheels have been put in motion for the 12 year plan that is expected to turn the East Coast Economic Region into a vibrant trading centre. We examine the several aspects of the ECER Master Plan.

INTRODUCTION The East Coast Economic Region (ECER) which was launched in October 2007, encompasses the states of Kelantan, Terengganu, Pahang and the district of Mersing, Johor. An area of 66,000sq km with a population of 4 million falls under its purview.

The ECER Master Plan will be the basis for guiding the development of this region that is expected to be transformed into a major international and local tourism destination, an exporter of resource based and manufactured products, a vibrant trading centre and an infrastructure and logistics hub.

Measures to eradicate poverty are also stipulated in the Master Plan. The broad-based plan estimates that RM112bil would be spent on 227 projects in key industries such as tourism, agriculture, petrochemicals and manufacturing.

ECER, IDR AND NCER The ECER runs concurrently with the Iskandar Development Region (IDR) and the Northern Corridor Economic Region (NCER). However whilst the focus of the IDR is to boost the property and real estate development in southern Johor to be at par with Singapore, ECER and NCER will address the general economic development of the areas within its purview. 


BRIEF-CASE...

CONTRACT – Deposit/ Earnest money – Forfeiture – Whether deposit of part payment – Whether vendor entitled to 10% of security deposit

INVECOR SDN BHD V SOBENA MAJU SDN BHD [2008] 2 CLJ 561, Court of Appeal

FACTS Pursuant to an agreement, the appellant had agreed to pay the respondent RM15 million as security deposit for a right to develop a piece of land belonging to the respondent. The appellant however paid only RM200,000 and the respondent filed a claim for 10% of the security deposit less the RM200,000 already paid on the basis that they were entitled to forfeit 10% of the security deposit (even though the 10% remained unpaid).

ISSUES One of the issues for consideration was whether the respondent was entitled to claim the 10% less the RM200,000 which remains unpaid as 'earnest money'.

HELD It was held that the agreement was a contract of sale and the 10% claimed was conventionally accepted as an 'earnest deposit' and that the respondent could rightly sue for it even though it remained unpaid. The court also held that what amounted to 'earnest deposit' depended largely on the intention of the parties and a true construction of the contract. The deposit, being an earnest for performance of a contract, confers a consequential right of forfeiture. 


COMPANY LAW/ CIVIL PROCEDURE – De facto or shadow directors – Whether there were directions or instructions in respect of management of company – Companies Act 1965, s 4(1) – Whether sufficient material adduced to substantiate claim to strike out

CEPATWAWASAN GROUP BHD & ANOR V TENGKU DATO' KAMAL IBNI SULTAN SIR ABU BAKAR & ORS [2008]
2 CLJ 620, High Court

FACTS The plaintiff filed a claim against the 14th - 17th defendants alleging that they had breached their fiduciary duties as *de facto* or shadow directors on the basis of extravagant and wrongful expenditure.

ISSUES One of the issues that arose was whether the 14th - 17th defendants were in fact *de facto* or shadow directors of the plaintiff company.

HELD A director is not necessarily defined by designation as such but rather by the dominant or controlling role he plays in running the company. A *de facto* or shadow director can be a natural or a corporate person but he is usually identifiable by his power to give directions or instructions in relation to the company that can only be discharged by a director. The difference between the two is that a *de facto* director, though not validly appointed as such, assumes the role of a director and holds himself out to be one, whilst a shadow director merely 'lurks in the shadows, sheltering behind others who, he claims, are the only directors of the company to the exclusion of himself'.

The evidence that were adduced throughout were merely disparate incidents involving various employees; inferences and perceptions that even if considered in totality, were insufficient to prove that the 14th - 17th defendants were acting or holding themselves out to be *de facto* or shadow directors of the plaintiff company and therefore owing a fiduciary duty to the plaintiff. 


TORT – Negligent misstatement – Whether valuer who prepared report had knowledge that report was to be relied on by the bank – Whether valuer owed duty of care to persons unknown such as bank

THE CO-OPERATIVE CENTRAL BANK LTD V KGV & ASSOCIATES SDN BHD

[2008] 2 CLJ 545, FC

FACTS This was an appeal from a bank against the respondent (a property valuer) for negligence. The property valuer had prepared the valuation report at the request of one Tan, who was a friend of the borrower, Kong. The property that was valued belonged to one Lim. The appellant's loan offer made to Kong was based upon this valuation report. Kong defaulted in his repayment. A second valuation report was commissioned by the appellant for the purpose of the foreclosure proceedings. It showed that the land was vacant and the forced sale value was very much lower than previously evaluated. On this basis, the appellant filed a negligence suit against the respondent.

ISSUES Whether the respondent owed a duty of care to persons unknown to him considering the fact that the report was made out specifically to Tan and marked confidential.

HELD In dismissing the appeal, the court found that there was no evidence to suggest that the respondent knew or ought to have known that the valuation was to be used or relied on by the appellant as it was confidential and addressed to Tan alone. Furthermore the letters of offer by the appellant did not require a valuation report to be produced as a condition precedent to obtaining the loan and the appellant did in fact carry out its own inspection at the site and confirmed it before disbursing the loan. 


BRIEF-UP...

SOLID WASTE & PUBLIC CLEANSING MANAGEMENT CORPORATION ACT 2007

No
673

Date of coming into operation
1 June 2008

Notes


An Act to provide for the establishment of the Solid Waste & Public Cleansing Management Corporation with powers to administer and enforce the solid waste and public cleansing management laws and for related matters. 

EAST COAST ECONOMIC REGION DEVELOPMENT COUNCIL ACT 2008

No
688

Date of coming into operation
13 June 2008

Notes


An Act to incorporate the East Coast Economic Region Development Council, to provide for the proper direction, policies and strategies in relation to the development within the East Coast Economic Region, to provide for coordination between Government entities in the promotion of trade, investment, tourism and development activities, and to provide for matters connected therewith and ancillary thereto. 

NORTHERN CORRIDOR IMPLEMENTATION AUTHORITY ACT 2008

No
687

Date of coming into operation
13 June 2008

Notes

An Act to incorporate the Northern Corridor Implementation Authority, to provide for the proper direction, policies and strategies in relation to the socio-economic within the Northern Corridor Economic Region, to provide for coordination between Government agencies to promote trade, investment and development within the Northern Corridor Economic Region, and to provide for matters connected therewith and ancillary thereto. 

EMPLOYEES PROVIDENT FUND (AMENDMENT) ACT 2007

No
A1300

Date of coming into operation
1 July 2008

Amendments

Sections 2, 3, 18, 20, 26, 29A, 31, 33, 39, 41, 43, 45, 49, 50, 54, 54A, 54C, 58, 63, 64, 70E, 71, 73, First Schedule and Third Schedule

Incorporation

Sections 31A, 33A, 44A, 51A, Part VA, 55A, 57A and 70G

Deletion


Sections 40 and 55 

PERSONS WITH DISABILITIES ACT 2008

No
685

Date of coming into operation
7 July 2008

Notes

An Act to provide for the registration, protection, rehabilitation, development and wellbeing of persons with disabilities, the establishment of the National Council for Persons with Disabilities, and for matters connected therewith. 

GUIDELINES/RULES/ PRACTICE NOTES ISSUED BETWEEN APRIL AND JUNE 2008 BY BANK NEGARA MALAYSIA/ SECURITIES COMMISSION/ BURSA MALAYSIA SECURITIES BHD

BANK NEGARA MALAYSIA (BNM)

- Foreign Exchange Administration Rules on Borrowing in Foreign Currency by Residents as well as Borrowing and Lending in Ringgit by Residents – *Date Issued: 28 May 2008*

SECURITIES COMMISSION (SC)

- Guidelines on Venture Capital – Guidelines and Best Practices on Islamic Venture Capital – *Date Issued: 7 May 2008*

- Guidelines on Stockbroking – Guidelines on Market Conduct and Business Practices for Stockbrokers and Licensed Representatives – *Date Issued: 8 April 2008*

BURSA MALAYSIA SECURITIES BERHAD (BMSB)

- Additional questions and answers relating to the Listing Requirements of BMSB for Main Board / Second Board – *Date Issued: 20 June 2008*
- Additional questions and answers relating to the Listing Requirements of BMSB for the MESDAQ Market – *Date Issued: 20 June 2008*
- Update of the Listing Requirements of BMSB for Main Board / Second Board – *Updated: 23 April 2008*
- Update of the Listing Requirements of BMSB for the MESDAQ Market – *Updated: 23 April 2008*
- Amendments to the Listing Requirements of BMSB for Main Board / Second Board – Amendments arising from SC's Guidelines on the Offering of Equity and Equity-Linked Securities and Guidelines on Principal Advisers for Corporate Proposals and Other Amendments – *Effective Date: 2 May 2008*
- Amendments to the Listing Requirements of BMSB for the MESDAQ Market – Amendments arising from the SC's Guidelines on the Offering of Equity and Equity-Linked Securities and Guidelines on Principal Advisers for Corporate Proposals – *Effective Date: 2 May 2008*

GET MOTIVATED !

HOW TO STAY POSITIVE IN SPITE OF THE NEGATIVITY AROUND YOU...

BY JOSH HINDS

I'm often asked how it is that I stay so positive. Now allow me to clear up some misconceptions you might have based on that last statement. I am not one of those folks that walk around with what is commonly referred to as a career politician's smile painted across my face.

Although I do believe whole-heartedly in the power that a simple smile can impart on another. No, you see, just like everyone else, no matter how over all a positive person I am, or attempt to view things I still have my down moments.

I like to call it being human !

The very fact that we are just that, human, allows us all to have down times. The difference lies in how quickly we choose to get over those things that are holding us back, or making us feel at less than our personal best. And that I believe is a major key - being able to get past the downtimes in ones life as quickly as possible and getting back on with being your best. Moving towards continuous improvement.

Remember, self-improvement is a hands-on project. That is to say that without ongoing implementation and attempting of the new ideas we learn, try as we might, we aren't going to miraculously wake up one day changed people. No, we've got to apply those ideas and bits of advice we learn.

Now if I might elaborate a bit on motivation itself. And how I believe you can better stay


on the path of leading a more positive life, as well as pursuing your journey with greater motivation. I'll use the saying of Zig Ziglar; he has such a simple - yet powerful way of getting the point across...

Zig say's, "People often say motivation doesn't last, well that may be true, but neither does bathing - that's why we recommend it every day."

Now if that's not an "ahhh haaaa" moment for you, I'd like to ask you to really take in the simplicity of Mr. Ziglar's words. You see, that is the "gasoline" that has fueled my own journey to where I am now. It's how I stay positive in a world that others might tend to view as negative. It's how I tune out most of the negative things around me, and tune into what's positive.

The difference lies in how quickly we choose to get over those things that are holding us back or making us feel at less than our personal best.

But enough about me... Most importantly, it's how you can lead a more positive daily life. And as you can see, it's not really all that complex is it?

Let's look at it another way. You wake up and you pretty much have a clean slate. In most cases your day is fresh - neither overly negative nor positive. That being the case - and if you'll concede that what I illustrated above is true, then wouldn't it stand to reason that importing positive thoughts (i.e. reading, listening, reciting, etc.) first thing in the morning, and throughout your day could do wonders towards reprogramming your mind and the over all way in which you see your world? 

I would say that it would - So here's your homework for today... Uggghh, I never was that great of a student, and so I must tell you that even hearing that word homework, gives me the shivers as I'm sure it did some of you... Even so, like I said before, self-improvement is a hands on project so it's worth getting over it and now embracing the view that you are a life long learner.

I did, and I can tell you - I've been infinitely better for it as I'm certain you will as well. It really is just a shift in your thinking from - I'm not a good student to - I enjoy learning for what it will make of me. Simple? Of course, but I'm living proof that simplicity is often all it takes.

So here's what I'll ask you to do....

Copy the following quote again on a 3x5 index card - or somewhere you can keep it handy and not lose it:

"People often say that motivation doesn't last. Well, neither does bathing - that's why we recommend it daily" - Zig Ziglar.

Read that several times a day. Also, choose to read something or listen to something of a positive nature at least three times a day - preferably, morning, noon and evening. What would be even better is if you could immediately counter any and all negative experiences with something positive.

Given the events of most people's days this isn't always feasible, but it can pay dividends and is worth attempting. The big thing to keep in mind here is that no matter how great any idea or advice is, unless YOU choose to implement it and give it a fair shot to work its magic in your life you're not going to get results.

Let me say that again - because it's that important!

YOU have to be a part of your own success journey. If you want to see real lasting change for the better in your life, you've got to be the biggest part of the process.

So simply knowing that you can offset your negative feelings by introducing positive thoughts into your mind simply isn't enough. No - you've got to actually do it - it's going to mean keeping that motivational book, or tape handy to refer to when you need to. It might mean stopping what you're doing at the moment or even scheduling yourself (and sticking to it) sometime to take in positive or motivational material.

Like dieting, or exercising, developing a positive mental attitude is a choice. It requires nurturing. It's not always immediate, but if you will work on it, and cultivate it you will see results.

Like dieting, or exercising, developing a positive mental attitude is a choice. It requires nurturing. It's not always immediate, but if you will work on it, and cultivate it you will see results. And those around you will as well.

To Your Success,
Josh Hinds

Josh Hinds of <http://GetMotivation.com> specializes in helping people to achieve maximum success and live the life of their dreams. He is the author of Why Perfect Timing is a Myth: Tips for Staying Inspired and Motivated Day in and Day out! available at <http://GetMotivation.com/booklet/>

✿ ZRp IN-BRIEF...

The ZRp Brief is published for the purposes of updating its readers on the latest development in case law as well as legislation. We welcome feedback and comments and should you require further information, please contact the Editors at:

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Publisher:

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Suite 17.01, 17th Floor, Menara PanGlobal
No 8 Lorong P Ramlee, 50250 Kuala Lumpur
Tel: 03-20788228; Fax: 03-20341913

Printer:

Max & Mint (M) Sdn Bhd
No 32-2, Jalan Puteri 5/5, Bandar Puteri Puchong,
47100 Puchong, Selangor
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BRIEF-TAKE...



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- Speaking at the In-House Congress 2008

Mr Rishwant Singh, who joined ZUL RAFIQUE & partners in August 2007 was recently appointed a partner. He graduated with a Bachelor of Laws (First Class Honours) from Bond University, Queensland, Australia and was called to the Malaysian Bar in 1999.

Rishwant's practice has, in the main, involved media law, including defamation, competition and antitrust law, corporate and commercial litigation, land and general property, insurance law and disputes involving clubs and unincorporated associations. He has also written various articles on aspects of arbitration and civil procedure in Malaysia which include the Malaysian chapter of Robert Knutson's *FIDIC: An Analysis of International Construction Contracts*, the *Malaysian chapter of International Civil Procedure* and *Halsbury's Laws of Malaysia on Civil Procedure* in 2002.

Rishwant's recreational activities include table tennis and pool. He lists cycling and walking too as his favourite activities. An avid reader, he also enjoys an occasional visit to art galleries. He has a keen interest in technology and news, and spends hours surfing the internet in order to keep abreast of the latest news shaping the world today. He believes that technology is very important, especially for a lawyer where learning the law and storing and retrieving such information would greatly benefit his legal practice. ✿