LEGAL CAULDRON

Jayadeep Hari & Jamil

Advocates and Solicitors

In this Issue:

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EDITOR'S NOTE

"We must learn to regard people less in the light of what they do or omit to do, and more in the light of what they suffer. "

- Dietrich Bonhoeffer, Letters and Papers from Prison

In the first issue of our 2015 Legal Cauldron, we made brief mentions on the humbling experience of being a participant in several anti human-trafficking programmes. The human trafficking trade had been an invisible plague troubling our nation and it was not till recently that the corollary of this plague turned manifestly graphic, with a global ripple effect.

From the plights of human-trafficking victims, we realised the importance of building a culture which does not just medicalize conditions to create social compassion and tolerance but also to incubate a culture which creates a harmonious environment. Therefore in May 2015, we have embarked on the ***#SaySomethingNice*** campaign, a project propounded by Zubedy aimed to promote the sense of gratitude and positivity. The whole of JHJ got involved in this campaign and the findings were enlightening to say the least. On a separate note, we also had during one of our training session, the pleasure of meeting Jonathan Yabut, winner of the 1st season of the hit pan-Asian reality TV Show — Asia's Apprentice, and author of the motivational title "From Grit To Great".

Over the years, JHJ has been engaged to advise and work on, *inter alia*, housing development projects as well as mining and quarrying ventures. In this issue of the Legal Cauldron, we would like to share our industry experiences by featuring articles related to both the housing industry and the mining industry so as to provide you a snapshot of the legislative features and industry practices pertinent to the commercial workings of these trades respectively, along with the sharing of knowledge on the manner in which stakeholders may be affected by the laws, regulations and practices governing these industries.

With the implementation of the Housing Development (Control & Licensing) (Amendment) Act 2012 effective 1st June 2015, a string of changes has been introduced to developers and house buyers alike to provide for better regulation and safeguard. Siti Khadijah's article on the amendments to the Housing Development Act seeks to address the concerns of house buyers in the unfortunate event of abandoned housing projects.

For those who take an interest in understanding the keen revival of our local mining scene particularly in the mining centric state of Perak, "The Awakening of an Ancient Industry: Is the law ready for Modern Mining?" by Kamlesh boldly shares thought provoking views on the past and current legislative structure affecting today's mining sector.

Taking a cue from the write-ups on sizeable industries such as housing and mining, issues like environmental preservation, industrial relations, human rights, and good governance inevitably follow suit. Shasha's article pursues, through a critical analysis, the existential impact and enforcement issues of corporate social responsibility (CSR) clauses which have been generally perceived to function like a 'toothless tiger' in corporate contracts; whilst the article on Constructive Dismissal authored by Chin Han provides informative pointers on the practice areas of employment and industrial relations, allowing readers to better understand the possible situations whereby constructive dismissal could occur and the available recourse for those who fell victim to the game of hiring and firing.

As always, we hope that you enjoy the read in this issue of our Legal Cauldron as much as we took pleasure in sharing it with you. We also welcome feedbacks or queries which you may have on any of the topics or columns contained in our Legal Cauldrons. Please send your comments, suggestions or queries to kd@jhj.com.my and we look forward to hearing from you!

Sincerely,

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You Are Fired!

What you need to know about Constructive Dismissal

"You're fired!" is an exclamation popularly associated to a situation whereby an employer informs his or her employee of the employee's dismissal or termination from the company. Of course, knowing that you have been dismissed is never a good feeling and you may feel lost. However, your employer may feel the same way too as they will be put in an unpleasant situation when breaking such news to you. Hence, it is not uncommon for an employer to persuade someone into resigning rather than having to utter the words "you're fired".

Hypothetically, in what ways can your employer force you to quit? The most common answer is by making your life at your work place so miserable that you feel compelled to quit; for example, shifting your location of employment, changing your job scope, demoting you or reducing your monthly salary.

Therefore, not all "resignations" are made free willed, hence the question, was your resignation voluntary or was it forced?

The law in this aspect is clear: it is not the form or manner but whether or not there had been "just cause" or "excuse". It is crucial to bear in mind that if your employment contract is terminated without just cause or excuse, a legal cause of action may arise in your favour.

The law governing unfair or unjust termination of employment is known as the doctrine of constructive dismissal. The doctrine of constructive dismissal deals with situations whereby the unjust conduct of the employer has caused the employee to initiate the termination of their own contract of employment as opposed to the employer expressly terminating the contract of employment.

So, in what situation can your resignation from employment be considered a constructive dismissal? Before venturing an answer, know that fundamentally, your relationship with your employer is a contractual one. Therefore, it is the employment contract that will govern both your conducts at work.

Hence, your resignation from employment may amount to a constructive dismissal if your employer breaches a condition in your employment contract.

The English Court of Appeal in the case of ***Western Excavating (ECC) Ltd v Sharp [1978] 1 ALL ER 713, CA [ENG]*** laid down the test in a situation whereby a voluntary resignation may amount to a constructive dismissal. Based on the judgment in Sharp's case, the main factors in establishing constructive dismissal are as follows:

a) The employer no longer intends to be bound by one or more of the essential term(s) of the contract of employment;
b) The employer's conduct must be a sufficiently serious or significant to entitle the employee to leave at once; and
c) The employee must leave the employment because of the breach of the term of the contract of employment by the employer.

'It is crucial to bear in mind that if your employment contract is terminated without just cause or excuse, a legal cause of action may arise in your favour.'

The Malaysian Courts have adopted the principles laid down by the English Court ***Sharp***'s case and it is clear that the test to determine constructive dismissal is a factual one and it differs from case to case. Whether or not constructive dismissal occurred depends on whether your employer had breached the fundamental terms in your contract of employment.

Apart from that, the Court in ***Sharp***'s case also emphasized that the employee claiming constructive dismissal must leave the employment and give notice of such intention immediately after the breach of the contract of employment. If the employee fails to do so, the employee will be regarded as having elected to affirm the termination.

An example where there was a breach of a fundamental term in the contract of employment would be the case of ***Kumpulan SF Powertech Sdn Bhd v Marnokarrun D Maruthamuthu [2013] 2 ILR 237***. In that case, the

Court in allowing the employee's claim for constructive dismissal held that the act of the company in deducting their employee's salary without informing the reason for such deduction amounts to a repudiation and breach of a fundamental term of the employee's contract of employment.

'Whether or not constructive dismissal occurred depends on whether your employer had breached the fundamental terms in your contract of employment.'

Furthermore, it is also important for you to be aware that the terms of your contract of employment do not solely consist of express terms, e.g. the amount of your salary and your position in the company. Your contract of employment also consists implied terms.

In the English case of ***Woods v W.M. Car Services [Peterborough] Ltd [1981] ICR 666***, the court acknowledged that there is an implied term in a contract of employment saying that employers shall not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employers and employees.

Following the above decision, the law imposes a duty on your employer to treat you fairly and reasonably. However, whether or not your employer breached an implied term is a question of fact that the court will have to determine on a case to case basis. Some of the situations whereby the Courts may find your employer to have breached an implied term would be, e.g. when your employer failed to provide you with a safe place to work, harassed you or accused you without reasonable ground, amongst others.

Doubtless, an employer has every right to reorganise company or restructure the business in any manner the employer desires, provided the reorganisation or restructuring is made with bona fide intent. That being said, a case for constructive dismissal may fail if the Court finds the employer to have acted reasonably by giving due consideration to its employee's view and that it was a bona fide act made in the interest of the company.

In conclusion, a resignation an employee may not necessarily mean that the resignation was made voluntarily and an employee is entitled to treat himself as having been constructively dismissed if his employer had breached a fundamental term in the employment contract. It is therefore important to know and be fully aware of the terms of your employment contract and observe the conduct and reasons of your employer in his actions regarding your employment.

JHJ PHOTO ARTICLE

Family Day & Charity Day field trip with the girls of Rumah Bakti Dato' Harun to Aquaria KLCC.

Family Day & Charity Day field trip with the boys of Rumah Bakti Dato' Harun to Aquaria KLCC.

JHJ's 18th Anniversary celebration in office.

JHJ's May 2015 training session with the winner of the first season Asia's Apprentice, Jonathan Yabut and award winning business coach, Jeevan Sahadevan.

About The Author:

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Greater Protection for House Buyers in cases of Abandoned Projects

A critical analysis on the Housing Development (Control & Licensing) (Amendment) Act 2012 and its possible effects on house buyers of abandoned housing projects.

According to the Ministry of Urban Wellbeing, Housing and Local Government, there are 155 abandoned housing projects which involved 28,637 houses and affecting 28,255 buyers as at March 2015.

The **Housing Development (Control & Licensing) Act 1966** ("HDA") has always been used by the Government to monitor housing projects and provide the necessary guidelines. The latest amendment to the HDA is the **Housing Development (Control and Licensing) (Amendment) Act 2012** [Act A1415] ("the Amendment"). This latest amendment to the HDA in my view offers greater protection to house buyers who are trapped in a situation where housing projects are abandoned.

The amendments to the HDA will be discussed in the following paragraphs:

DEPOSIT IN APPLYING LICENCE

According to Section 6 of the HDA, it is a condition for an applicant, e.g. a licensed housing developer, to place a deposit of not less than RM200,000.00 in order to apply for a housing development licence.

Section 6 of the HDA has been amended by section 3 of the Amendment to alter the sum of deposit for obtaining a housing development licence from the current RM200,000.00 to 3% of the estimated cost of construction. The proposed amendment is to ensure that only licensed housing developers with sufficient financial capability in proportion to the construction cost of their development are allowed to undertake any housing development.

The meaning of "estimated cost of construction" under the Amendment is the cost of constructing a housing development and includes financial costs, overhead costs and all other expenses necessary for the completion of the housing development but excludes land cost.

It is hoped and envisaged that the Amendment will also help the Government financially in reviving the project in case the licensed housing developer abandons the project.

TERMINATION OF SALE & PURCHASE AGREEMENT

The amended section 8A of the HDA provides for statutory termination of sale and purchase agreements if the buyer finds that there is no development on a housing project within six months from the date the sale and purchase agreement was signed.

This amended provision provides for the right of a purchaser to terminate the sale and purchase agreement if the licensed housing developer refuses to carry out or delays or suspends or ceases work for a continuous period of six months or more after the execution of the sale and purchase agreement.

The purchaser has to first obtain the written consent from the end financier and confirmation from the Controller of Housing appointed by the Minister that the licensed housing developer has refused to carry out or delayed or suspended or ceased work for a continuous period of six months or more after the execution of the sale and purchase agreement to be entitled to a refund of deposit and ensuing damages.

ABANDONING HOUSING PROJECT IS NOW A CRIMINAL OFFENCE

The Amendment has also made it an offence for any licensed housing developer who abandons a housing development by virtue of the amended section 8A.

This is to hopefully deter the occurrence of abandoned housing developments and to enable criminal proceedings to be taken against licensed housing developers who abandon their housing developments.

This provision states that any licensed housing developer who abandons or causes to be abandoned a housing development shall be guilty of an offence and will be liable to a fine between RM250,000.00 to RM500,000.00 or to imprisonment for a term not exceeding 3 years or to both.

The Amendment has also finally defined the word "abandons" in subsection (2) of section 18A to mean refusing to carry out or delaying or suspending or ceasing work continuously for a period of six months or more or beyond the stipulated period of completion as agreed under the sale and purchase agreement.

'…a purchaser [can] terminate the sale & purchase agreement if the licensed housing developer refuses to carry out or delays or suspends or ceases work for a continuous period of six months…'

However, it is thought that the above approach of criminalizing housing developers who abandon their development projects will only serve as a penal measure but not as a preventive one. The most effective method in preventing abandoned housing projects could be by making it statutorily compulsory for all housing developers to fully adopt the Build-Then-Sell ("BTS") concept of housing delivery.

This is suggested by Pasukan Petugas Khas Pemudahcara Perniagaan (PEMUDAH). According to PEMUDAH, the Government should adopt the BTS concept in the Malaysian housing industry in order to more effectively deal with the problem of abandoned housing projects.

PEMUDAH also proposed the introduction of a Home Completion Insurance or Guarantee Scheme to counter the problem of abandoned housing projects. In my view, this is a good suggestion as it may reduce the problem of insufficiency of funds on part of the defaulting developer and facilitate rehabilitation by the white knights.

PEMUDAH further proposed that the schedule of payment for the respective agreements (***Schedules G, H, I and J***) should be amended. This proposal is to ensure that the title and vacant possession to the property can be made available simultaneously.

With all the amendments and proposals made in contemplation of protecting purchasers' interest, the purchasers too have to be mindful of the procedures in upholding their rights.

One example can be found in the case of ***Zulkepli Bin Mohamad Zain & Ors v. BCM Development Sdn. Bhd [2010] MLJU 1165*** where a purchaser of an abandoned housing project failed to serve a notice of termination on the developer and the proprietor of the land (if there was a joint venture) to terminate the sale and purchase agreement.

The Court held that, if the notice of termination was not duly served on the relevant parties (i.e. the developer and the proprietor), the purported termination will not be recognised under the law.

This is because serving of the notice on one party alone renders the notice defective and incompetent pursuant to sections 6(a), 67 and 77 of the **Contracts Act 1950**. Following this failure, the purchaser was not entitled to any compensation and damages from the defaulting abandoned housing developer, even though the developer had breached the terms and conditions of the agreement by abandoning the project.

It is also interesting to note that the Court in ***Zulkepli's*** case above was of the view that even though the developer was not in a position to complete the housing project due to the termination of the Development Rights Agreement between the developer and the land proprietor, the developer was still under an obligation to complete the housing project pursuant to the Sale and Purchase Agreement made between the developer and the purchaser. The reasoning behind this judgment was that the Development Rights Agreement is distinct and separate from the Sale and Purchase Agreement.

In reality, this may be impossible to achieve as the developer may not be able to continue being on the land if the land owner has terminated the Development Rights Agreement. The housing developer in this case should have terminated the Sale and Purchase Agreement immediately upon the termination of the Development Rights Agreement, and then face the contractual consequences from the buyers.

The **Housing Developer (Control and Licensing) (Amendment) Act 2012** became officially operative on 1st of June, 2015. Other corresponding statutes such as the **Strata Management Act 2013** and the **Strata Titles (Amendment) Act 2013** have also come into effect in June 2015 to satisfactorily deal with, *inter alia*, the problem of abandoned housing projects.

The author is of the opinion that even though the latest amendments offer greater protection to house buyers and might reduce the problem of abandoned housing projects, it would not necessarily end the problem.

This is because as previously mentioned, the above amendments seems to serve more as a penal measure and not a preventive measure.

It is hoped the proposals forwarded by PEMUDAH, especially on the BTS concept to be incorporated in the next amendment to ensure the disease of abandoned housing projects is finally cured.

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The Awakening of an Ancient Industry

Is the law ready for modern mining?

It is a well-known and documented fact that Malaysia is a country rich in natural resources. The common perception on Malaysia's mining industry revolves around the mining of tin, and it is understandably so.

Malaysia was one of the top tin producers in the early 1900's until the collapse of the global tin market in the year 1985. Since the collapse, most major players in the industry have either packed up or downsized their operations, thus creating new opportunities for many small scale miners to carry on with the industry. However, with the advancements in technology and improvement in mining methods as well as the increase in prices of minerals on a global scale, mining seems to be making a big comeback in the country. Long gone were the days of dredging whereby the famous "*kapal korek*" can be seen harvesting tin ores leaving behind huge mining ponds in its wake.

Breaking the preconception of mining, tin is actually only one of the many possible types of minerals which Malaysia is abundant with. Mining is really a very diverse industry and it encompasses a large variety of substances. Before detailing the local mining industry further, a distinction between minerals and rocks would be necessary. The natural composite categorized as "rocks" are governed under the **National Land Code 1965** ("NLC") which is a federal law rather than a state enacted law. Rock material has been defined in the **National Land Code (Amendment) Act 2009** to be, in simplified terms, any rock and sand apart from minerals.

The mining industry in Malaysia is under the jurisdiction of the State Government within each state in Malaysia as mining is classified as a state matter in List II of the Ninth Schedule of the **Federal Constitution**, until and unless such right is disposed by the State. Therefore, most if not all states in Malaysia will have a framework or laws governing the mining industry. Essentially, the law in each state follows the same concept but application of the laws may differ depending on each state's authoritative body. In Perak for instance, the main laws governing mining is the **Mineral (Perak) Enactment 2003**, the **Mineral (Perak) Regulations 2008** with certain references made to the **Mineral Development Act 1994**, and the **Environmental Quality Act 1974** when it comes to safety concerns and environmental impact. Therefore, with the exception of rocks as discussed above and the naturally occurring mineral – petroleum, most other minerals that you can think of would fall under the classification of a mineral under the Mineral Enactment and the mining such minerals will have to follow the due processes laid out under the **Mineral (Perak) Enactment 2003**.

Generally speaking, a prospective miner who is interested in applying to mine on State Land would first require an exploration license/prospecting license, and subsequently a mining lease and the "*Sijil Kelulusan Melombong*". This is a broad view of the necessary processes which one would need to follow. However, this isn't the end of it. If a prospective miner intends to enter the industry, each level of application is imposed with many conditions and criteria by the State in order to ensure that the prospective miner is going into the industry in a manner acceptable by State. This includes the submission of environmental reports, mine plans, rehabilitation plans and not to mention the obtainment of many other required licenses in order to operate a mine which includes, inter alia, explosive licenses and water license/permit. If you were to dissect the processes, it would seem like a tedious process in order to even start mining.

Well, it seems fair as mining is a multi-million dollar industry and those with deep pockets may venture into this as the capital needed purely for exploration, which I may add, carries a huge risk on its own and is usually in the range of millions of dollars.

The laws currently in place here in Malaysia involves many overlaps and intertwining between different legislation. For example, in terms of a designated permanent forest reserve, the laws do not cater for mining. Under the **National Forestry Act 1984**, no mining can be done in permanent forest reserves. The only way around such a prohibition is to excise the parcel of the forest reserve. This would then inevitably cause negative political and social consequences as the general public still has the perception that mining is destructive for the environment.

Lands that have been zoned for other purposes apart from mining under the **Town and Country Planning Act 1976** also pose prohibits mining unless the area is rezoned as mining lands. This leaves miners or mining corporations the only option to mine on state land or alienated land. It gets even more complicated when mineral deposits are found to be spread across different parcels of land which

may include a combination of state land and permanent forest reserves, or the lands may even cross into a different district or state whereby the licenses and permits obtained prior do not cover. These leave the potential miner in a lurch as it may not be commercially viable to just mine on the state land, and it becomes exponentially complex to get all necessary approvals from so many different entities just to mine in Malaysia should the scenario described above happen.

Another example of intertwined legislations is where changes have been made to the NLC whereby limestone and granite are removed from the definition of a rock material. In turn, the **Mineral Perak (Amendment) Regulations 2013** was amended to include limestone and granite as a mineral. Therefore now, for the mining of limestone and granite on state land, a mining lease has to be issued by virtue of the 2013 Regulations rather than a "4C permit" under the NLC. Furthermore, being redefined to be minerals, limestone and granite are consequently not allowed to be mined on permanent forest reserve lands. This is where a confusing overlap occurs. The **National Forestry Act 1984**, however, still classifies limestone and granite as rock material and therefore, limestone and granite can be removed from permanent forest reserve lands albeit them being classified as rock material under a different legislation. This creates uncertainty and confusion for potential international investors and prospective miners.

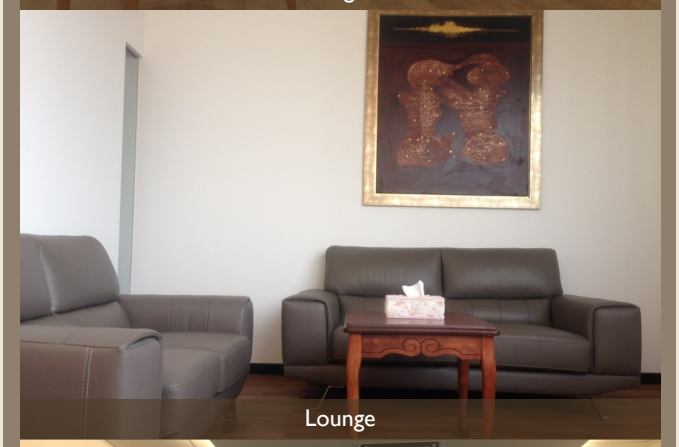
The laws in Malaysia give an obligatory role to prospective miners whereupon the burden of assessment of viability and commercialization of a potential mine site lies with the prospective miner rather than the State government itself. The State Government, through its relevant agencies and departments, takes a more authoritative role in ensuring that the prospective miner complies with all conditions and regulations imposed on them.

Taking heed of other countries with more advanced mining industries, it is clear that Malaysia would need to take crucial steps in order to make mining here a more investment friendly industry for bigger industry players. According to the 2014 Fraser Institute Survey, Malaysia has been ranked the least attractive jurisdiction for mining investments, placing us behind countries such as Nigeria, Botswana and even our neighbour Indonesia. From a legal standpoint, the laws here although comprehensive, lack the simplicity to attract investments. The survey also stated that the main aspects that miners look for are competitive taxation regime, good scientific support, efficient permitting procedures and clarity around land claims, all of which we currently need to improve on to properly establish Malaysia as a global name in the mining industry.

JHJ'S NEW FACELIFT

Foyer


Waiting area


Lounge


Conference Room

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Corporate Social Responsibility

Are CSR clauses of Lip Service or Of Service?

Corporate Social Responsibility ("CSR") is a strategic management concept through which a company achieves a balance of economic, environmental and social imperatives, whilst still addressing the expectations of shareholders and stakeholders. A stakeholder is often generalised as an individual or a group that is affected by the organisation's policies or actions, such as employees, customers, suppliers and the community within which the corporation operates.

The concept of CSR addresses environmental management, eco-efficiency, responsible sourcing, stakeholder engagement, labour standards and working conditions, employee and community relations, social equity, gender balance, human rights, good governance and anti-corruption measures.

CSR CLAUSES ARE OF LIP SERVICE

Contract clauses are included in a contract with reference to legal principles; be it the identification of parties and subject matters of the contract, structuring of payment methods and timelines, and other relevant expressions of legal principles, precedents and applicable laws; for example, **S40 of the Contracts Act 1950** provides for the effect of a refusal of a party to perform the promise wholly. This would be embodied into a contract by way of breach and termination clauses, which would attract obligations and liabilities for the parties of a contract.

Unlike other clauses in a contract which are derived from legal principles and the law, CSR clauses are derived from frameworks such as those provided by Bursa Malaysia (Malaysian Code on Corporate Governance 2012) or the Companies Commission of Malaysia (Corporate Social Responsibility Agenda 2009) for the implementation of CSR initiatives. Such frameworks provide companies with scorecards and guidelines to measure the effectiveness of their proposed CSR policies and evaluate the CSR ideas propounded. It is opined that a CSR clause does not attract obligations and liabilities in the same manner as other clauses of a contract. It is a clause of lip service because it has no actual legal implications and therefore is not a contract clause in the strictest sense for the reasons stated below.

A CSR clause merely encapsulates the vision or manner in which the party wishes to carry out the strategic management concept of the business as a long term business plan. Whilst clauses that are derived or based on law governs the rights and liabilities of business practices that arise from execution of the business plan, the business plan of a company does not give rise to rights and liabilities unless they are codified under statute or embodied as a condition or warranty under the contract. Some laws of Malaysia are based on and/or have arisen due to the principles from CSR general practices in determining labour standards and working conditions. For example, the implementation of the **Industrial Relations Act 1967** found its roots in CSR principles, and the Act has been utilized by the Industrial Courts of Malaysia to reach their judgments.

However, it should be noted that although CSR principles are more often than not encapsulated in our statutes, the enforcement of such practices in Malaysia are a separate matter altogether. The prominent case of ***Zakaria bin Abdullah v Lembaga Perlesenan Tenaga Atom [2013] 5 MLJ 206*** where a judicial review proceedings were instituted against Lynas Corporation by Kuantan residents regarding the disposal of radioactive wastes in Malaysia illustrated that the parties should not have initiated a judicial review application in the Malaysian courts but exhaust the internal appeal procedure that was provided in the **Atomic Energy Licensing Act 1984** instead. Thus, although some CSR practices are encapsulated in statute, it does not mean that the enforcement of such CSR practices is within the jurisdiction of the Malaysian Courts.

Hence, if CSR clauses are not law and does not attract rights and liabilities under the contract, what is the purpose of including a CSR clause in a contract?

CSR CLAUSES ARE OF SERVICE

CSR goes beyond mere compliance with the applicable legal and regulatory requirements and the safeguarding of financial interests of the shareholders and stakeholders.

Bursa Malaysia is one of the driving forces behind CSR for listed companies in Malaysia as listed companies are required to submit reports detailing their compliance in accordance with the Malaysian Code on Corporate Governance 2012 and Part A of Appendix 9C (paragraph 29) of the Listing Requirements which states, "A description of the corporate social responsibility activities or practices undertaken by the listed issuer and its subsidiaries or if there are

none, a statement to that effect." Whilst this is of great service to shareholders and stakeholders, there are no sanctions for non-compliance with CSR practices. Instead, shareholders and the general public as stakeholders are allowed to judge for themselves the conduct of the companies.

The CSR frameworks and guidelines are arguably of service to shareholders when assessing whether a director of a company is acting in the best interest of the company by virtue of the **Companies Act 1965**. For example, S132 (1) of the Companies Act 1965 provides that: "A director of a company shall at all times exercise his powers for a proper purpose and in good faith in the best interest of the company." The term "best interest of the company" is difficult to define and determine, but CSR frameworks and regulations, or a company's CSR policy can provide corporations guidelines and key areas which will be of great assistance to parties when determining whether directors are indeed ensuring that the best interests of a company are taken into account. It can be surmised that CSR practices are merely instructive and not conclusive, as it is not utilised to date by the Malaysian courts to determine whether a director is guilty of a breach of fiduciary duties towards the company.

As illustrated above, CSR practices are of service but CSR clauses do not have the force of law nor enforcement or application by the Malaysian Courts of law. Such clauses will be of lip service in a contract in a strict legal sense but will be of service for the shareholders and stakeholders of a contract to determine whether the company has a management concept crucial to a company's sustainability.

CSR CLAUSES TO BE ON PAR WITH OTHER CONTRACT CLAUSES

Whilst it is clear that CSR clauses have no legal weight in a contract, its qualitative weight reaps benefits that cannot be quantified. Should the parties to a contract determine and provide for CSR clauses to be enforced in the same manner as all other clauses of the contract, then a CSR clause will not only be of service but also carry legal weight in a contract. CSR clauses are often included in a contract by parties in the manner of a standalone or severable clause. However, if parties were to implement CSR clause(s) as an essential term of the contract to the extent that it is a condition of a contract, it can be enforced by the Malaysian courts in the same manner as all other contract clauses by the provisions of **Contracts Act 1950**.

In conclusion, whether CSR clauses are of service or mere legal lip service in a contract is dependent on the intention of the parties of the contract and the choice of implementation of the CSR practices. Thus, considering the merits that can be reaped from implementing CSR practices as a condition of the contract, parties should determine the manner of implementing CSR clauses in their contract, for whether CSR clauses are of lip service, of service or enforceable is entirely up to the parties to the contract.

JHJ LEGAL UPDATES IN BRIEF

1. ***Unilever (M) Holdings Sdn Bhd v So Lai @ Soo Boon Lai & Anor [2015] 3 AMR 413 (Federal Court)***

In a claim for constructive dismissal, an award for "compensation in lieu of reinstatement" will only arise if the employee is in a position or situation to be reinstated.

2. ***Au Kean Hoe v Persatuan Penduduk D'Villa Equestrian [2015] 3 MLRA 101***

The legal cause of action for actionable obstruction or private nuisance is not available for inconvenience. The conduct has to be unreasonable for it to be actionable in law.

3. ***Prudentdeals Sdn Bhd v YM Tengku Abdul Halim Ibni Almarhum Sultan Ibrahim [2015] 2 MLJ 801***

An agent or attorney could not give to a third party a greater power than what has been conferred on him by his principal.

4. ***Laila Binti Mazlan v Amlife Insurance Berhad & 2 Ors [2015] 2 AMR 277***

A genuine offer for reinstatement of employment is one which restores not only the position, but also the importance and prestige of the employee's previous post.

5. ***Syarikat Rodziah (sued as a legal firm) v AD Development Sdn Bhd [2015] 1 AMR 160***

If the partner in a business partnership has acted within his authority and that the act is expected of him in his given position, then the partner's act would bind the partnership as a whole.

6. ***Pelita Rasa Sdn Bhd & Ors v Theeban Vengadesh Govintarau [2015] 2 CLJ 593***

Even though the company was liable for being negligent in ensuring the safety of its employees, the company's directors should not be made personally liable in the negligence suit unless there was fraud involved.

JHJ 360° STUDENT ATTACHMENT PROGRAMME 2014/2015

GIDEON JOHN LUKE
University of Reading, UK

'The programme in its own right is vastly different from my previous attachments… It's flexible and the tasks given to us actually complements the CLP syllabus which we are studying for. It is indeed a great experience as we were able to see what we read in our textbooks come to life in the real world. Yet another good thing about this programme is that we were given the opportunity to explore various areas of law, thus not limiting our options to learn.'

GIGI MONA MOERS
University of Applied Sciences, Netherlands

'The smart and efficient tasks list was an excellent way to make sure the attachment students learn as much as possible during their internship. And I did. Not only about the law, but also about myself. The overall experience is something you will never forget. I got the chance to see how the real legal world works and every task showed a different side of the Malaysian legal system. Learning from so many people from different backgrounds helps me to think out of the box. Learning about a country with its culture very different than the one I grew up with is something amazing to experience.'

NUR AISYA AHMAD YOSSRY
Universiti Teknologi MARA

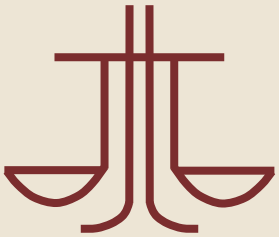
'I would say that this programme is an eye opener for me as prior to joining JHJ, I had never set foot in a legal firm. I have always wanted to know how lawyers work and present their case in court as well as how a firm operates, and this was made possible through this programme. I could not have experienced a firm better than how this program have allowed me to and it also gave me the opportunity to know the legal industry from a different perspective.'

PREMJEET SINGH GILL
University of Hertfordshire, UK

'Despite their busy schedule, the lawyers took their precious time to explain some of the basics for the tasks that was given to me, detailing how and why the tasks were to be done. Even the chambering students and clerks never turned me down if I ever needed any help from them. This is the culture and values of JHJ which is reflected in their motto "We Care". I now believe that I have a head start to my legal career armed with the knowledge and experience that I've gained from this attachment programme.'

PRISCILLA KOH
University of Kent, UK

'One of the highlights of the attachment programme with Jayadeep Hari & Jamil is being able to see the legal profession for what it is, as it is. In addition to the incredible amount of knowledge that one can soak up in a short and intense period of time, it does live up to its name as a 360° programme. It is like standing on a rotating platform with an extensive view of the intricacies of the legal practice. This unique experience has granted me the liberty to explore where my passion lies in within the legal profession.'



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