

UNDERSTANDING THE DETIK RIA DECISION: THE INTERSECTION OF CONDITIONAL CONTRACTS AND REGULATORY APPROVALS

by Sherā Chuah

In corporate transactions, commercial outcomes are shaped not only by timing, structure and strategy, but also by strict adherence to regulatory requirements. Where regulatory approval is a condition imposed by law, its absence operates not merely as a procedural irregularity but as a substantive legal defect capable of rendering the transactional documents void for being contrary to law. The Federal Court's decision in *Detik Ria Sdn Bhd v Prudential Corporation Holdings Ltd & Anor* [2025] 4 CLJ illustrates this principle with striking clarity.

Background Facts

The dispute arose from a call/put option agreement (CPOA) entered into between the appellant, Detik Ria Sdn Bhd (Detik Ria), which held 49% of the shareholding in Sri Han Suria Sdn Bhd (SHS) and the second respondent, Prudential Assurance Company Limited (Prudential Assurance) which held 51% of the shareholding in SHS – under which Detik Ria granted a call option to Prudential Assurance and Prudential Assurance granted Detik Ria a put option. On exercise of the option, Detik Ria's shares in SHS would be sold to and purchased by Prudential Assurance, which would make Prudential Assurance the sole shareholder of SHS. The CPOA was expressly conditional upon obtaining the prior approval of, inter alia, the Minister of Finance, as mandated under the Insurance Act 1996 (IA 1996).

In 2008, Detik Ria issued a notice to exercise the put option to Prudential Assurance. The purchase consideration was RM114,120,328.77. In 2009, Prudential Assurance and Detik Ria entered into a supplemental call/put option agreement (SCPOA) where they agreed that the completion date of the put option would be deferred until Prudential Assurance was able to purchase (or to procure such person(s) acceptable to Bank Negara Malaysia to purchase) the option shares. In 2013, the Financial Services Act 2013 (FSA 2013) repealed the IA 1996. Under the FSA, instead of obtaining the requisite approval from the Minister of Finance, approval was to be obtained from Bank Negara Malaysia.

By a letter dated 30.4.2018, Detik Ria indicated its wishes to rescind its exercise of the put option and to maintain its 49% shareholding in SHS.

Together, Prudential Corporation and Prudential Assurance filed an originating summons in the High Court against Detik Ria and the late Tan Sri Datuk Abdul

Rahim, who was a 50% shareholder and a director of Detik Ria for, *inter alia*, a declaration to seek recognition of the initial arrangement between the parties. The appellants counterclaimed against Prudential for restitution, seeking for amongst others, a declaration that the CPOA and the supplements thereto were illegal and unenforceable.

High Court And Court Of Appeal

The High Court upheld the CPOA on the basis that: (a) it was not illegal, and section 66 of the Contracts Act 1950 (CA 1950) did not apply; and (b) the CPOA was a conditional contract where the obligations of the parties would only be legally enforceable upon obtaining the approval from Bank Negara. The Court of Appeal affirmed the High Court's decision that the agreements were valid and enforceable and that the parties were bound to honour their respective obligations thereunder.

Federal Court

Following the decisions of the High Court and the Court of Appeal, Detik Ria appealed to the Federal Court. The several key issues before the Federal Court are amongst others, as follows:

(1): What is the relevant legislation that applies – the IA 1996 or the FSA 2013?

The Federal Court agreed with the High Court and Court of Appeal that the applicable law is the IA 1996 and that the prior written approval of the Minister was a statutory requirement for the share transaction envisaged in the CPOA. By reason of section 272(1) of the FSA 2013 (which provides that the FSA 2013 is not retrospective in nature), the relevant applicable statutory provision is section 67 of the IA 1996 that prevails and is applicable.

(2): Was the entry into of agreements which contained conditions precedent that require mandatory approvals be obtained prior to performance of contract, illegal?

The CPOA contains a clause that affects the very formation or existence of the contract. The entry into of the CPOA did not amount to a disposal or acquisition by Detik Ria or Prudential, as it was made subject to securing consent from the Minister of Finance. Given that conditional contracts do not come into force or existence until the condition precedent is fulfilled, it was ruled that the entry into of such a contract does not, per se, render the same illegal or void.

In delivering its judgment, the Federal Court held that if parties to a corporate transaction cannot even enter into a conditional contract which sets down the content, object and purpose of the transaction, and is intended to be performed only upon obtaining full regulatory approval, then businesses and corporations would be adversely affected due to the lengthy regulatory approval process.

(3): Was there performance or effective performance of the CPOA and SCPOA notwithstanding the lack of regulatory approval? What is the effect of the substantive or material performance of the agreements?

The Federal Court considered the factual matrix from 2009 to 2018 holistically and

formed the view that the CPOA and SCPOA were substantively put into effect, such that Prudential enjoyed a degree of control over the option shares which enabled it to effectively determine SHS's decision making. Relying on documentary evidence, the Federal Court concluded that the agreements had been effectively and substantially performed and came into existence without the consent of the Minister of Finance. Such performance was therefore carried out in contravention of section 67 of the IA 1996, and the agreements had become void.

(4): Did the CPOA and the SCPOA remain specifically enforceable or become void such that specific performance was unavailable?

The question arose as to whether CPOA and SCPOA were void by reason of section 33 of the CA 1950 which provides that contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

On this point, Prudential contended that since the contingent condition (i.e. the Minister of Finance's approval) had not occurred, the agreements remained valid and subsisting and could therefore be enforced through specific performance. However, the Court disagreed and held that the agreements in the present case became void pursuant to the application of s. 33 of the Contracts Act 1950 as the consent of the Minister was never obtained. Instead, the Court opined that s. 66 of the CA is relevant and applicable to determine the remedial obligations of the parties.

(5): What is the available remedy? Does Section 66 of the CA 1950 come into play?

As previously mentioned, the Federal Court found that section 66 of the CA 1950 is applicable. Section 66 provides as follows: *"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."*

Having examined the principles of applicability of section 66, the Court allowed Detik Ria's appeal with costs and concluded that section 66 is an appropriate remedy to be applied in the present appeal so as to restore the parties to their original position status quo ante i.e. the return of the purchase price paid to Detik Ria for shares in SHS that Prudential is no longer acquiring, and the restoration of Detik Ria's effective ownership and control of the 49% shareholding in SHS, together with other benefits, if any, it lost during this period.

Conclusion

The Detik Ria decision underscores the need for companies and investors to incorporate requisite regulatory approval as a strategic component of transaction planning at the initial stage, as failure to comply with such approval is not a mere irregularity but potentially an illegality which affects the basis of the transactional document, rendering them unenforceable and void.

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