

The Limits Of Secrecy Provisions Under The Securities Industry (Central Depositories) Act 1991 & Financial Services Act 2013 In Discovery Applications

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The Court of Appeal in *P G Doraisamy a/l P Gopal v AmlInvestment Bank Bhd and other appeals* [2026] MLJU 919 has recently revisited the interplay between the law of discovery under Order 24 of the Rules of Court 2012 and the statutory secrecy obligations imposed under the Securities Industry (Central Depositories) Act 1991 (SICDA 1991) and the Financial Services Act 2013 (FSA 2013), which clarifies the extent to which financial institutions and authorised depository agents may rely on statutory secrecy provisions to resist disclosure.

Key Facts

In or about 2013, the Appellant, P G Doraisamy a/l Gopal deposited the total sum of RM9,086,685.11 into the accounts of the four Respondents namely AmlInvestment Bank Berhad (AmlInvestment), Kenanga Investment Bank Berhad (Kenanga Investment), Affin Hwang Investment Bank Berhad (Affin Hwang Investment) and TA Securities Holdings Berhad (TA Securities). The first three Respondents are investment banks whilst TA Securities is a stockbroking firm. All four Respondents are participating organisation of Bursa Malaysia Securities Berhad (Bursa Malaysia).

The Appellant asserted that the deposits were made with the objective of acquiring shares in a public listed company. However, as the deposits were not returned to the Appellant, it was assumed that the prerequisites for securities trading, such as the opening of share trading accounts, had been created in his name to enable the Respondents to utilise the deposits to purchase shares in the public listed company. Subsequently, in or about 2021, the Appellant discovered that no share trading accounts were opened in his name in any of the four Respondents, and no shares of the public listed company had been purchased for him.

The Appellant sought explanation from the Respondents but did not obtain any satisfactory explanations from any of them.

Thus, in May 2024, the Appellant initiated legal action against the four Respondents (and another two defendants in the High Court) seeking the recovery of the deposits paid to each of the Respondents.

In October 2024, the Appellant filed discovery applications against each of the four Respondents. The Respondents' primary contention before the High Court was that they were not obliged to account to the Appellant for the deposits because the Appellant never opened a share trading account with them. In other words, the Respondents contended that the Appellant was not their customer.

In January 2025, the High Court dismissed the discovery applications on the ground that the disclosure of the documents was not necessary at this stage and amounts to a fishing expedition. In any event, such disclosure would have been prohibited by secrecy provisions found in Section 43 of the SICDA 1991.

Thereafter, the Appellant appealed against the High Court's decision.

The Court Of Appeal's Ruling

At the outset, in the Appellant's discovery applications, the documents sought for disclosure were categorised as follows:

1. Documents which evidence the transfers or deposits made by the Appellant into the relevant accounts with the Respondents' accounts (First Category);
2. Documents which show the authority, mandate or instructions upon which the Respondents relied on to deal with the deposited sums (Second Category); and
3. Documents showing how these deposits were dealt with or utilised by the Respondents (Third Category).

Whether Discovery Is Prohibited By Statutory Provisions On Secrecy

For context, in the High Court, the Respondents contended that discovery would be barred by secrecy provisions such as Section 43 of the SICDA 1991, while the Appellant contended that the secrecy provisions do not apply to the First Category documents as they do not involve third parties. The Respondents further maintained that, under the FSA 2013, they were under no obligation to disclose information to a non-customer such as the Appellant. The High Court accepted the Respondent's position.

Accordingly, apart from the general principles governing an order for discovery, the Court of Appeal examined the applicability of statutory secrecy provisions, in particular those under SICDA 1991 and FSA 2013.

Section 43 of the SICDA 1991 imposes a duty of secrecy in relation to any information or document concerning the affairs of a depositor, particularly information relating to the depositor's securities account, which is also known as central depository system account (CDS account). The duty of secrecy applies to directors, officers and authorised depository agents (ADAs). The disclosure of CDS information is only allowed under circumstances specified under Section 45 of the SICDA 1991, for instance, the depositor or his personal representative has given written consent for disclosure. In the present case, the four Respondents were ADAs for the purposes under SICDA 1991.

In this regard, the Court of Appeal held that Section 43 of the SICDA 1991 does not apply to the documents under the First Category. This is because such documents merely evidenced the receipt of monies transferred or deposited by the Appellant himself to the Respondents. They did not concern the affairs of any third-party depositor. Further, the Court of Appeal observed that if the Respondents' position was that the Appellant was not their customer, had no status as a depositor, and did not possess any securities account, then Sections 43 and 45 of the SICDA 1991 would be inapplicable to the First Category documents. Accordingly, disclosure would not be barred by the said provisions.

On the other hand, AmlInvestment contended that it is additionally bound by the secrecy provisions against disclosure under Section 133 of the FSA 2013, in particular Sections 133(1), (3) and (4). It further argued that the Appellant's situation did not fall within any of the exceptions permitting disclosure under Section 134 of the FSA 2013. Upon examining Section 134(1)(a) together with Schedule 11 of the FSA 2013, the Court of Appeal made several observations.

First, if the Appellant were a customer of AmlInvestment, paragraph 4 of Schedule 11 would permit disclosure, as it relates to civil proceedings between the parties. Secondly, on the same basis, disclosure would also arguably be permissible under paragraph 1 of Schedule 11 as it concerns the Appellant's own customer information. Thirdly, as the Respondents denied that the Appellant was a customer, the First Category documents could not properly be characterised as customer information protected under Section 133. Fourthly, the FSA 2013 does not apply to TA Securities, as it is not a financial institution within Section 131 of the FSA 2013. Accordingly, TA Securities cannot rely on Section 133 to resist disclosure.

With respect to the documents under the Second Category, the Court of Appeal took a similar view that these documents were also not caught by the secrecy provisions under SICDA 1991 or FSA 2013.

In contrast, in respect of the documents under the Third Category, the Court of Appeal held that they may fall within the secrecy provisions of Section 43 of the SICDA 1991. This is because such documents would, in all likelihood, identify the accounts of third parties, including the securities or CDS accounts of depositors who may have benefitted from the transactions undertaken by the Respondents using the Appellant's deposited funds.

Accordingly, disclosure of such documents would trigger the statutory duty of secrecy, particularly where it involves the securities or CDS accounts of third parties.

Conclusion

In conclusion, while discovery remains an essential procedural mechanism that enables parties to obtain all relevant documents necessary for the fair disposal of a dispute, its scope is not absolute and must be balanced against the statutory duties of confidentiality imposed on financial institutions and ADAs.

This case serves as a useful reminder that the secrecy provisions under the SICDA 1991 and the FSA 2013 cannot be relied upon as a blanket defence to resist discovery applications, in which the documents relating directly to transactions between the parties in dispute will generally not be protected by these secrecy provisions. However, where the documents sought extend to information involving third-party accounts or securities/CDS account details, the secrecy provisions under SICDA 1991 and FSA 2013 will apply, subject only to the limited exceptions provided under the respective statutes.

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