

9 NOVEMBER 2021

## Penal Consequences Of Submitting False Information To Bursa Malaysia

### Contact Persons:

Datuk D P Naban  
Senior Partner

+603 6209 5405

naban@rdslawpartners.com

Nagarajah Muttiah  
Partner

+603 6209 5400

naga@rdslawpartners.com

Nur Syafinaz Vani  
Partner

+603 6209 5422

syafinaz@rdslawpartners.com

Rosli Dahlan  
Partner

+603 6209 5420

rosli@rdslawpartners.com

R Rishi  
Partner

+603 6209 5400

rishi@rdslawpartners.com

Kenny Lam Kian Yip  
Senior Associate

+603 6209 5400

kenny@rdslawpartners.com

Shaun Tan Cheng Hong  
Senior Associate

+603 6209 5400

shaun@rdslawpartners.com

The submission of false information to Bursa Malaysia Securities Berhad (Bursa Malaysia) made with the intention of deceiving public investors is a serious offence with heavy penal consequences.

This article highlights some of the key takeaways in establishing an offence under Section 122B and Section 122(1) of the Securities Industry Act 1983 (SIA) (which are similar, if not identical, to the current Section 369 and Section 367 of the Capital Markets and Services Act 2007 (CMSA)), as made out in the case of *Dr Haji Mohd Adam Che Harun v Public Prosecutor*<sup>1</sup>.

Under Section 122B of the SIA (now Section 369 of the CMSA), it is an offence if a person:

- (a) With an intent to deceive, makes or furnishes; or
- (b) Knowingly authorises or permits the making or furnishing of; any false or misleading statement or report to the Commission, a stock exchange or a recognised clearing house relating to:
  - i. dealings in securities;
  - ii. the affairs of a listed corporation;
  - iii. any matter or thing required by the Commission for the due administration of this Act; or
  - iv. the enforcement of the rules of a stock exchange or the rules of a recognised clearing house.

REIMAGINING  
LEGAL  
SOLUTIONS

<sup>1</sup> [2019] 1 LNS 2391

Whilst Section 122(1) of the SIA (now Section 367 of the CMSA) deems an officer of the company to have committed an offence committed by a company.

## Background Facts

The accused was the Executive Chairman and director of Megan Media Holding Berhad (MMHB), an investment holding company whose shares were listed on the Main Board of Bursa Malaysia.

MMHB's board of directors, as chaired by the accused, approved the contents of the company's 3rd Quarter Condensed Consolidated Income Statement which stated MMHB's revenue for the nine months ended 31.1.2007 as RM306,150,000. MMHB then submitted the said Income Statement to Bursa Malaysia on 23.3.2007. Investigations soon revealed that RM227,000,000 out of the RM306,150,000 were based on 227 fictitious invoices made out for non-existent sales.

## Key Takeaways

### 1. Company Need Not Be Charged

Interestingly, MMHB itself was not charged for committing the offence under Section 122B of the SIA. Instead, the Public Prosecutor chose to directly charge the accused under Section 122B to be read together with Section 122(1) of the SIA to make him personally liable for MMHB's offence.

In hopes of relying on procedural irregularities as a defence, the accused argued that the application of Section 122(1) against him was defective since MMHB was not even charged for committing an offence under Section 122B in the first place.

The High Court specifically found this argument untenable due to the reasons below:

- (a) Following the Federal Court case of *Public Prosecutor v Gan Boon Aun*<sup>2</sup>, the court appreciated that Section 122(1) of the SIA aimed to impose personal liability on

<sup>2</sup> [2017] 3 MLJ 12

#### OUR EXPERTISE:

Administrative Law

Appellate Advocacy

Competition Law

Civil & Commercial Disputes

Contractual Disputes

Construction & Arbitration

Debt Recovery

Defamation

Employment & Industrial Relations

Intellectual Property

Probate

Judicial Review & Administration Law

Shipping & Maritime

Tax & Customs Disputes

Trusts

the actual violators of the offence - i.e., the human operatives of the company. As such, the offence could be ascribed to the human operatives without the need for an accompanying prosecution against the company; and

- (b) The Public Prosecutor has the prosecutorial discretion when deciding whether to charge either the company, or its director(s), or both based on the evidence before it.

Therefore, the charge under Section 122B to be read together with Section 122(1) could be made out against the accused since:

- (a) The accused was the Executive Chairman and director of MMHB at the material time;
- (b) MMHB furnished false information (i.e., the false profits) to Bursa Malaysia; and
- (c) The submission was done with the intention to deceive public investors.

The above would similarly apply if the case fell under the current Section 369 and Section 367 of the CMSA.

## OUR EXPERTISE:

Administrative Law  
Appellate Advocacy  
Competition Law  
Civil & Commercial Disputes  
Contractual Disputes  
Construction & Arbitration  
Debt Recovery  
Defamation  
Employment & Industrial Relations  
Intellectual Property  
Probate  
Judicial Review & Administration Law  
Shipping & Maritime  
Tax & Customs Disputes  
Trusts

## 2. Attribution Of Intention

When assessing whether MMHB had the intention to deceive, the High Court applied the rules of attribution to establish intention on MMHB's part.

In doing so, the High Court relied on the Court of Appeal case of *CGU Insurance v Asean Security Paper Mills Sdn Bhd*<sup>3</sup> which ruled that the state of mind of a company is to be attributed to the state of mind of the directors of the company. This meant that MMHB's intention to deceive could be derived from the accused intention to do so - i.e., his *mens rea*. Throughout the trial, evidence was adduced to show that the accused knew that the statement reporting the inflated profits was false. Nevertheless, the accused allowed the submission of the false information to Bursa Malaysia. This

<sup>3</sup> [2006] 3 MLJ 1

#### Contact Persons:

Datuk D P Naban  
Senior Partner

+603 6209 5405

naban@rdslawpartners.com

Nagarajah Muttiah  
Partner

+603 6209 5400

naga@rdslawpartners.com

Nur Syafinaz Vani  
Partner

+603 6209 5422

syafinaz@rdslawpartners.com

Rosli Dahlan  
Partner

+603 6209 5420

rosli@rdslawpartners.com

R Rishi  
Partner

+603 6209 5400

rishi@rdslawpartners.com

Kenny Lam Kian Yip  
Senior Associate

+603 6209 5400

kenny@rdslawpartners.com

Shaun Tan Cheng Hong  
Senior Associate

+603 6209 5400

shaun@rdslawpartners.com



#### About Us

We are a full-service commercial law firm with a head office in Kuala Lumpur and a branch office in Penang. Our key areas of practice are as follows:-

- Appellate Advocacy
- Banking & Finance (Conventional and Islamic)
- Capital Markets (Debt and Equity)
- Civil & Commercial Disputes
- Competition Law
- Construction & Arbitration
- Corporate Fraud
- Corporate & Commercial
- Personal Data Protection
- Employment & Industrial Relations
- Energy, Infrastructure & Projects
- Construction & Arbitration
- Fintech
- Government & Regulatory Compliance
- Intellectual Property
- Medical Negligence
- Mergers & Acquisitions
- Real Estate Transactions
- Shipping & Maritime
- Tax, SST & Customs
- Tax Incentives
- Trade Facilitation

sufficiently established both his and MMHB's intention to deceive.

### 3. The Rebuttable Presumption

Section 122(1) of the SIA (now Section 367(1) of the CMSA) offers a saving grace by way of proffering a rebuttable presumption of guilt. This can be achieved by proving that:

- (a) the offence was committed without his consent or connivance; and
- (b) that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

The accused here could only raise a bare denial in the face of the clear evidence showing his consent to the offence. He thereby unsurprisingly failed to rebut the presumption against him.

### Conclusion

The saga which began in December 2007 finally ended in November 2020 when the Court of Appeal upheld the accused's conviction and reinstated the original sentence of 18 months imprisonment and a fine of RM300,000. By this time, the accused was already 76 years old. However, his advanced age did not deter the imposition of the longer prison sentence. The Court of Appeal recognised that submission of false information to Bursa Malaysia constitutes a serious crime that attacks the integrity of the Malaysian securities market. This serves as a strong warning to heads of public listed companies of the serious penal consequences that come with the commission of such an offence.

Authored by Michelle Lim Li Ann, associate from the firm's Dispute Resolution team.

**REIMAGINING  
LEGAL  
SOLUTIONS**