

Risk, Responsibility And Protection: The Business Judgment Rule In Malaysian Corporate Law

2 March 2026

For more information, please contact:

Datuk D P Naban
naban@rdslawpartners.com

Austen Emmanuel Pereira
austen@rdslawpartners.com

Bahari Yeow Tien Hong
bahari@rdslawpartners.com

Farah Shuhadah Razali
farah@rdslawpartners.com

Kenny Lam Kian Yip
kenny@rdslawpartners.com

Lim Zhi Jian
jian@rdslawpartners.com

Michael Soo
michaelsoo@rdslawpartners.com

Rosli Dahlan
rosli@rdslawpartners.com

Steven Perian KC
speriankc@rdslawpartners.com

Vinayak Sri Ram
vinayak@rdslawpartners.com

Beneath the glamorous and fast-paced veneer of the corporate world lies a creeping anxiety among directors: that a single lapse in judgment or a wrong commercial decision could lead to their professional crucifixion.

This alert seeks to quell such unease by unpacking a foundational doctrine in Malaysian corporate law, namely the business judgment rule and by setting out the confines within which directors may safely exercise their discretion without attracting liability.

A Director's Duty

A director owes to his company a duty to exercise reasonable care, skill and diligence, and he shall at all times exercise his powers for a proper purpose, in good faith, and in the best interest of the company. Such duty is statutory, enshrined in Section 213 of the Companies Act 2016 (CA 2016).

The standard applied is both objective and subjective. It is measured against the knowledge, skill and experience reasonably expected of a director having the same responsibilities, and any additional knowledge, skill and experience that the director in fact possesses.

In the event of a breach, the director risks committing an offence under the Act, which may attract a maximum five-year imprisonment term and/or a fine up to RM 3 million.

Precedents

In the past, the following actions or decisions undertaken by directors have been challenged in Malaysian courts:

- In *Iris Corp Bhd v Tan Sri Razali bin Ismail & Ors* [2026] 1 MLJ 807 (Court of Appeal), the directors' decision in approving an RM11.7 million investment, despite purported irregularities in such investment, which ultimately failed.
- In *Nautilus Tug & Towage Sdn Bhd v Nautical Supreme Sdn Bhd & Ors* [2025] 3 MLJ 573 (Court of Appeal), the directors were alleged to have conspired, or dishonestly assisted in such conspiracy, by entering into an advisory services agreement with the company that effectively diverted a corporate opportunity to themselves.
- In *Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd and another appeal* [2018] 2 MLJ 177 (Federal Court), the directors authorised and gave effect to two impugned share divestments, which were said to have caused loss and damage to a shareholder.
- In *Pioneer Haven Sdn Bhd v Ho Hup Construction Co Bhd & Anor and other appeals* [2012] 5 CLJ 169 (Court of Appeal), certain directors passed a board resolution to enter into a joint development agreement (which entailed a disposal of the company's land) on the eve of an extraordinary general meeting convened to remove the majority of the existing board.

While this article will not traverse the factual intricacies of each decision, these cases demonstrate a recurring tension in corporate governance: when does a commercial decision cross the line into a breach of duty, and to what extent does the business judgment rule shield directors from liability?

The Test

Judicial sentiment recognises that courts ought to refrain from substituting their own decisions for those of directors clothed with managerial powers over the company, merely because a decision appears, with the benefit of hindsight, to have been commercially unwise. In reality, the impugned acts and omissions of a director may more reasonably be attributable to inadvertence or unforeseen circumstances, and *bona fide* arrived at.

The test for a director's breach of fiduciary duty, as adopted in *Petra Perdana*, is well established: whether an intelligent and honest man in the position of the director concerned could, in the whole of the existing circumstances, have reasonably believed that the act or decision was in the interests of the company. This test is commonly referred to as the *Charterbridge* principle.

The following statutory provisions or common law principles further afford directors protection:

Section 214, CA 2016: Business Judgment Rule

The business judgment rule essentially provides that a director who makes a business judgment is deemed to meet his duty of care and such equivalent duties under the common law and in equity if he:

- (1) made the business judgment for a proper purpose and in good faith;
- (2) did not have a material personal interest in the subject matter of the business judgment;
- (3) was informed about the subject matter of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and
- (4) reasonably believed that the business judgment is in the best interest of the company.

The third requirement/that the director be properly informed must be assessed in light of Section 213, which measures the director's conduct against both the knowledge, skill and experience reasonably expected of him, and the actual knowledge, skill and experience he in fact possesses.

In addition, Section 215 recognises that a director may reasonably rely on professional or expert advice, opinions, reports or statements, provided that he has made an independent assessment of such information, having regard to his knowledge of the company and the complexity of its structure and operations.

In *Iris Corp*, the court considered the following:

Element	Consideration
Proper purpose and in good faith	The directors' long service on the board of directors and continued involvement even during the company's subsequent financial difficulties supported the inference that they were genuinely motivated by the company's interest.
Absence of material personal interest	The investment was within the company's core business, and the directors stood to gain no personal advantage from the decision.
Adequately informed	The directors had substantial prior knowledge of the investment through attending meetings and office visits, and were not making decisions in a vacuum but drawing upon their accumulated knowledge of the company's business and the specific project. They had reasonable grounds to believe they possessed adequate information to assess the investment's merits.

Best interest of the company	<p>The test is whether the director honestly believed that it was in the interests of the company, and the court must evaluate whether such belief was reasonable in the circumstances, considering factors such as:</p> <ul style="list-style-type: none">(a) the alignment of the investment with the company's core business,(b) scale of opportunity,(c) the directors' knowledge and assessment of whether the investment fitted within the company's strategic framework,(d) absence of any improper or self-serving purpose. <p>Where such act or omission resulted in substantial detriment to the company, the director will have a harder task persuading the court that he honestly believed it to be in the company's interest.</p>
-------------------------------------	--

Evidently, the elements are interconnected and point to one conclusion: the business judgment rule does not demand successful outcomes or infallible judgment. Rather, it focuses on the reasonableness of a director's honest belief at the time the decision was made, not on whether subsequent events vindicated that judgment.

The rationale? Risk is inherent in business. Legitimate and reasonable risk-taking is not only normal, but necessary for the growth and innovation of any business. Directors cannot be penalised merely because a decision, made *bona fide* with high stakes and under considerable time pressure, ultimately results in loss; albeit being a decision that may be unreasonable or imprudent in light of information that becomes available *ex post facto*. To hold otherwise would deter capable individuals from serving on company boards or compel directors to adopt an excessively conservative approach and undermine the very dynamism corporate governance seeks to foster.

Section 581, CA 2016: Relief

Even if a director's conduct constitutes a breach of duty, Section 581 empowers the court to relieve directors from liability where they have acted honestly, reasonably and ought fairly to be excused.

Element	Consideration
Honesty	Did the director act honestly, believing that his decision would benefit the company?
Reasonableness	Was the impugned action reasonable, given the director's knowledge of the company's business, his experience in the industry, and the information available to him?
Fairness of excuse	Would it be unfair to impose liability upon the director, considering all circumstances, including the director's term of service to the company, his expertise in the relevant field, the genuine commercial rationale for his decision, and the absence of any personal benefit?

It serves as an additional safety net, complementing the protection afforded under the business judgment rule.

Conclusion

While the business judgment rule and Section 581 provide directors with meaningful protection when their decisions come under scrutiny, they are not a licence for impropriety. The law shields honest and reasonable judgment, not fraud, bad faith, or self-interest.

In fact, the Companies Act 2016 draws a firm line at dishonesty. A director who was knowingly a party to the carrying on of the company's business for any fraudulent purpose may be held *personally liable* for fraudulent trading under Section 540, in which case the corporate veil offers no refuge.

The distinction is therefore clear. The law protects commercial risk-taking undertaken in good faith. It tempers liability where directors act honestly and reasonably. But it responds with severity where conduct is tainted by deceit.

Beneath the glamorous and fast-paced veneer of the corporate world, directors can therefore act with confidence, safe in the knowledge that honest, well-considered decisions will be respected by the law and that only misconduct, not misjudgement, attracts liability.

www.rdslawpartners.com

This publication is for educational and informational purposes only and is not intended and should not be construed as legal advice.

KUALA LUMPUR
Level 16, Menara 1 Dutamas No. 1, Jalan Dutamas 1,
Solaris Dutamas, 50480 Kuala Lumpur
T: +603 6209 5400
F: +603 6209 5411
enquiry@rdslawpartners.com

PENANG
Suite S-21E & F21st Floor, Menara Northam,
No. 55, Jalan Sultan Ahmad Shah, 10050
Penang
T: +604 370 1122
F: +604 370 5678
generalpg@rdslawpartners.com

JOHOR BAHRU
8-35, Menara Delima Satu, Jalan Forest City 1,
Pulau Satu, 81550 Gelang Patah, Johor Bahru
T: +607 585 6414
F: +607 509 7614
generaljb@rdslawpartners.com