

SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA

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DIRECTORS' APPEAL
AGAINST CONVICTION AND
ENHANCED THE SENTENCE
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COURT TO 18 MONTHS
IMPRISONMENT FOR
COMMITTING OFFENCES
UNDER THE COMPANIES ACT
1965

SHARE

THE HIGH COURT DISMISSED DIRECTORS' APPEAL AGAINST CONVICTION AND ENHANCED THE SENTENCE IMPOSED BY THE SESSIONS COURT TO 18 MONTHS IMPRISONMENT FOR COMMITTING OFFENCES UNDER THE COMPANIES ACT 1965

On Thursday, 4th July 2013, the High Court of Malaya in Kangar, Perlis affirmed the decision of the Kangar's Sessions Court in convicting Lee Yew Kay and Koo Kok Bun, the directors of Penasuria Corporation Sdn Bhd for committing offences under sections 132 (1) and 131(1) of the Companies Act 1965 ('CA 1965').

Previously on 7/5/2012, the Sessions Court Judge had convicted and sentence Lee Yew Kay and Koo Kok Bun for the commission of the above offence as follow:

- (a) Lee Yew Kay and Koo Kok Bun were convicted and fined RM15,000.00 each in default 15 months imprisonment for contravening section 132(1) CA 1965; and
- (b) Lee Yew Kay and Koo Kok Bun were also convicted and sentenced to two (2) months imprisonment and fined RM60,000.00 each in default 24 months imprisonment for contravening section 131(1) CA 1965.

Lee Yew Kay and Koo Kok Bun dissatisfied with the decision of the Sessions Court appealed to the High Court against their conviction and sentence, and the Prosecution cross-appealed on the adequacy of sentence.

On appeal, the High Court dismissed the appeal by Lee Yew Kay and Koo Kok Bun and allowed the Prosecution's appeal to enhance the sentence imposed against the two directors as follow:

- (a) Lee Yew Kay and Koo Kok Bun were sentenced to twelve (12) months imprisonment and fined RM50,000 each in default three (3) months imprisonment for contravening section 131(1) Companies Act 1965; and
- (b) Lee Yew Kay and Koo Kok Bun were were sentenced to six (6) months imprisonment and fined RM10,000 each in default one (1) month imprisonment for contravening section 132(1) Companies Act 1965 .

Deputy Public Prosecutor, Puan Normie Baizura Amiruddin and assisted by Mohamad Azies Han Bin Mohd Fadzil from Suruhanjaya Syarikat Malaysia ('SSM') appeared on behalf of the Public Prosecutor and Lee Yew Kay and Koo Kok Bun were represented by N. Ahilan.

The offence under section 132(1) CA 1965 is in relation to a director's breach of fiduciary duties and under section 131(1) CA 1965 a director of a company is required under the law to disclose his interest in a contract to the board of directors failing which it is an offence under the CA 1965.

The aforesaid decision by the High Court is a landmark custodial sentence imposed by Appellate Court against company directors who contravened the provisions of the Companies Act 1965. SSM hopes the sentence imposed will act as a deterrent and reminder to all directors in Malaysia that they have a great responsibility and an important role in promoting good governance.

ISSUED BY : SURUHANJAYA SYARIKAT MALAYSIA (SSM)
DATED : 8 JULY 2013

MAHKAMAH TINGGI MENOLAK RAYUAN PENGARAH SYARIKAT BERHUBUNG SABITAN KESALAHAN DI BAWAH AKTA SYARIKAT DAN MENGARAHKAN HUKUMAN YANG LEBIH BERAT DIKENAKAN TERHADAP PENGARAH SYARIKAT TERSEBUT

Pada Khamis, 4 Julai 2013, Mahkamah Tinggi Kangar, Perlis mengesahkan keputusan Mahkamah Sesyen Kangar, Perlis dalam mensabitkan Lee Yew Kay dan Koo Kok Bun, pengarah-pengarah syarikat Penasuria Corporation Sdn Bhd kerana melakukan kesalahan di bawah seksyen 132(1) dan seksyen 131(1) Akta Syarikat 1965 ('AS 1965').

Pada 7/5/2012 yang lalu, Mahkamah Sesyen Kangar Perlis telah mensabitkan dan menjatuhkan hukuman ke atas Lee Yew Kay dan Koo Kok Bun bagi kesalahan di atas seperti berikut:

- (a) Lee Yew Kay dan Koo Kok Bun telah disabitkan dan dijatuhkan hukuman denda RM15,000.00 setiap seorang jika gagal bayar 15 bulan penjara bagi kesalahan di bawah seksyen 132(1) AS 1965;
- (b) Lee Yew Kay dan Koo Kok Bun telah disabitkan dan dijatuhkan hukuman penjara dua (2) bulan dan denda RM60,000.00 setiap seorang jika gagal bayar 24 bulan penjara bagi kesalahan di bawah seksyen 131(1) AS 1965.

Lee Yew Kay dan Koo Kok Bun tidak berpuas hati dengan keputusan Mahkamah Sesyen tersebut telah memfailkan rayuan ke Mahkamah Tinggi terhadap perintah sabitan dan hukuman yang dikenakan. Manakala, pihak pendakwaan pula telah memfailkan rayuan ke Mahkamah Tinggi terhadap ketidakkucupan hukuman penjara/denda yang dikenakan terhadap Lee Yew Kay dan Koo Kok Bun.

Setelah mendengar rayuan pihak-pihak berkaitan, Mahkamah Tinggi telah menolak rayuan Lee Yew Kay dan Koo Kok Bun dan membenarkan rayuan pendakwaan seperti berikut:

- (a) Lee Yew Kay dan Koo Kok Bun dijatuhkan hukuman penjara enam (6) bulan dan denda RM10,000.00 setiap seorang jika gagal bayar satu (1) bulan penjara bagi kesalahan di bawah seksyen 132(1) AS 1965; dan

(b) Lee Yew Kay dan Koo Kok Bun dijatuhkan hukuman penjara dua belas (12) bulan dan denda RM50,000.00 setiap seorang jika gagal bayar tiga (3) bulan penjara bagi kesalahan di bawah seksyen 131(1) AS 1965.

Timbalan Pendakwa Raya, Puan Normie Baizura Amiruddin dibantu oleh Mohamad Azies Han Bin Mohd Fadzil, pegawai pendakwa daripada Suruhanjaya Syarikat Malaysia ('SSM') hadir bagi pihak Pendakwa Raya dan perayu Lee Yew Kay dan Koo Kok Bun diwakili oleh Encik N. Ahilan.

Kesalahan di bawah seksyen 132(1) AS 1965 ialah kesalahan berkaitan melanggar tanggungjawab fidusiar pengarah dan kesalahan di bawah seksyen 131(1) AS 1965 pula ialah berkaitan kegagalan pengarah mendedahkan kepentingan dalam kontrak yang dimasuki oleh pihak Syarikat dengan pihak ketiga.

SSM berharap hukuman pemenjaraan di atas dapat memberi peringatan yang jelas kepada pengarah-pengarah di Malaysia untuk mengamalkan budaya dan tahap tadbir urus korporat yang tinggi serta melaksanakan tanggungjawab fidusiar yang baik sebagai pengarah syarikat.

DIKELUARKAN OLEH : SURUHANJAYA SYARIKAT MALAYSIA (SSM)
TARIKH : 8 JULAI 2013

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