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The firm was established with two (2) main objectives; namely to enable the partners to have control over their professional career and to provide the best possible solution to our clients' legal requirements taking into account not only the law but also the commercial aspects of our clients' circumstances.

It is the firm's strong believe that lawyers, though professionals, are essentially service providers. Accordingly, we strive to provide our clients' with the best possible solution in the shortest time possible.

## AREAS OF PRACTICE

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## INTRODUCTION

First, we would like to wish you a Happy New Year and also we would like to take this opportunity to welcome you to our inaugural issue of our SGD Quarterly. As the name suggest, we will be issuing this review every three (3) months to our clients. Our intention is to update our clients on what is happening to the laws of Malaysia and legal cases or matters which we are of the view should be brought to our clients' attention. Further, we will try not to bore your with too many legal matters and we will also be providing in the future articles which are not legal related. Happy reading !!

## Conveyancing

“Caveats in drafting an Option in Land” by Dion Kor Shiang Hua, Partner

Generally an option is a right by the grantor, which is usually the vendor, to the grantee, which is the purchaser, to purchase the land within a stipulated time in a prescribed manner. All the essential terms of the contract must be contained in the option or it must be capable of being ascertained with certainty. If any of the terms are uncertain or meaningless so that an option cannot be exercised in accordance with the intention of the parties, no contract can come into existence event if the optionholder purports to exercise the option.

It is therefore important in drafting an option that the intention of the parties is clearly stated as to what exactly is being granted. Failure to do so may result in unnecessary litigation.

This issue was brought up in the case of *Soo Lip Hong v Tee Kim Hua* [2005] 4 CLJ. In this case, the appellant was an owner of a 3 storey shophouse and on 19<sup>th</sup> May 1990 signed an option with the respondent for the sale and purchase of the said property for the purchase price of RM400,000.00. The respondent claimed that he paid the option sum of RM1,000.00 to the appellant and deposited RM39,000.00, the purported balance of the deposit, with his solicitors. Despite 2 letters and several phone calls later by the respondent to the appellant, the latter failed to sign the sale and purchase agreement and to collect the balance of the deposit. In 1995, the respondent issued a 3<sup>rd</sup> letter insisting that the appellant sign the sale and purchase agreement. Subsequently, on 4<sup>th</sup> January 1996, the respondent filed an action for specific performance of the option.

It was held in the abovesaid case that the respondent action for specific performance failed because, amongst other reasons, the option did not set out the essential terms of the sale and purchase of the property e.g. what is the manner in which the balance purchase price is to be paid or the time frame in which the balance purchase price is to be paid. The court was of the view that what would be the terms and conditions to the transaction that remains uncertain and would largely be a matter of conjecture.

As a general rule, when drafting the option, the price of the property, the time frame for settling the purchase consideration, the manner in which the price is to be paid etc. should be stated in the option. It is best that the sample Sale and Purchase Agreement, to which all the terms and conditions have been agreed upon by the parties, be attached to the option. Though by attaching the Sale and Purchase Agreement to the option may avoid any ambiguity to the terms of the option, this mode of preparing the option is time consuming as essentially the parties have to agree to all the terms and conditions to the transaction.

## General Civil Litigation

### 1. Limitation of Action

The law of limitation is governed by the Limitation Act 1953.

Section 6(1) of the Limitation Act 1953 states as follows:

#### 6. Limitation of actions of contract and tort and certain other cases.

- (1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say-

- (a) actions founded on a contract or on tort;
- (b) ...
- (c) ...
- (d) ...

In most cases, actions for the recovery of a debt are founded on a contract. The six years is calculated from the date on which the cause of action accrued. The date on which the cause of action accrued is usually taken as the date on which the breach of contract occurred.

Accordingly, an action that is brought after 6 years from the date on which the cause of action accrued will be time barred and the defence of limitation raised by an opposing litigant will likely succeed.

### 2. Court Jurisdiction – Debt Recovery

The Magistrates' Court have jurisdiction to try actions for debt recovery involving a sum not exceeding RM25,000.00.

For claims involving a sum exceeding RM25,000.00 but not more than RM250,000.00, the Sessions Court will be the proper forum to commence the legal action.

For claims exceeding RM250,000.00, the action will commence in the High Court.

### 3. Sale of Goods

In this issue, we will discuss briefly the issue of compensation from the seller's perspective in a sale of goods transaction.

Compensation is usually awarded to a party for damage and loss suffered as a consequence of a breach of contract.

In a sale of goods transaction, a seller who has delivered goods to a buyer who has wrongfully neglects or refuses to pay for the goods in accordance with the terms of the contract may sue for the price of the goods – Section 55 (1) of the Sales of Goods Act 1957.

In instances where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance – Section 56 of the Sales of Goods Act 1957.

## Banking

“Importance of Verifying your Monthly Statement” by Gan Wee Howe

Even if you prove that your signature has been forged on your cheques by your accounts clerk you will not be entitled to recover the amount defrauded if you fail to verify your monthly current account statements and as a result fail to notify the bank of the forgery promptly.

It is inadequate for you to only verify your current account statements once every three (3) months. Under the terms of your checking account, you are under a duty to scrutinise your monthly current account statements and to notify the bank of any discrepancies or unauthorized cheques of which you became aware.

Under such circumstances, your bank will not be negligent in honouring the cheques as you would have failed in your duty to the bank.

The above was decided in the High Court case (on appeal from the Magistrates' Court) of *Public Bank Berhad v. Anuar Hong & Ong* [2005] 1 CLJ 289.

## Miscellaneous Matters

### Estate Planning

“Importance of a Power of Attorney in addition to a Will” by Dion Kor Shiang Hua, Partner.

When one is planning of drafting his will, it is often overlooked that a Power of Attorney should also be prepared in addition to a will. For people who are unmarried or do not have joint bank accounts with their spouses, it is in my opinion that it is imperative that such a person prepares a power of attorney in addition to a will.

The reason is that a will only comes into effect upon the death of a person. A contingency plan should be put in place if one does not die but is comatose or paralysed from the neck down.

The power of attorney should grant to the Attorney e.g. the right to sell his property or operate his bank account.

As such, should one be comatose or paralysed, the power of attorney would enable the Attorney to pay for the medical bills or living expenses of the donor.

The Power of Attorney should without saying be granted by the donor to a person who the he trusts explicitly. The Power of Attorney should be as explicit and clear as possible so as to avoid any ambiguity or uncertainty with regards to the powers of the Attorney.

### Estate Matters

#### *General Discussion of Estate Matters by Gan Wee Howe*

##### *Case 1*

The list of assets annexed to a grant of letters of administration (“LA”) serves the purpose of determining estate duty payable and also the amount of security (i.e. bond) to be given by the administrator as security for administering the deceased’s estate.

It does not, however, in law affect the title of the administrator to administer the estate including his status to sue in his capacity as administrator of the estate of the deceased.

As such, if a property and/or right is not set out in the list of assets, such property and/or right of the deceased will, upon the grant of the LA, still vest in the administrator named in the LA.

The above is supported by the Court of Appeal and Federal Court decisions in *Yong Siew Ajiing v. The Owners and The Persons Interested in the Vessel "ML SAGA 86" & Ors* [2005] 1 CLJ 487 and *Khoo Kay Hock v. E.J. Ketting & Ors* [1978] 2 MLJ 57 respectively.

(N.B. Estate duty was abolished effective 1 November 1991.)

## Case 2

The Court of Appeal in *Lau Yoke Hee & Anor v. Ting Liang Teng & Anor* [2005] 3 CLJ 770 held that the consent of beneficiaries is not necessary for the sale of the deceased's property by the administrator. What is required is the court's permission only.

This is consistent with earlier cases which were referred to and relied upon by the Court of Appeal in the above case.

## Updates

"Changes to the Moneylender's Act 1951" by Gan Wee Howe

As you may be aware, the amendments to the Act which became effective on 1 November 2003, amended the definition of "moneylender" to mean "any person who lends a sum of money to a borrower in consideration of a larger sum being repaid to him" and a "borrower" means "a person to whom money is lent by a moneylender".

Further, the amendments also removed the exemption afforded to "any person bona fide carrying on any business not having for its primary object the lending of money in the course of which and for the purposes whereof he lends money".

There is now relief to those who lend money to your related corporation as defined in the Companies Act or your directors, officer or employee as a benefit accorded to such person under his terms of employment.

This exemption was gazetted on 27 June 2005 but applies retrospectively to 1 November 2003 i.e. the same day as the earlier mentioned amendments to the Act took effect.

As you can see, a staff housing loan will now not contravene the Act i.e. lending money without a licence.

If your company provides such a benefit but your employment terms do not mention such benefit and you have no written policy of such benefit, you will be advised to come up with such policy if it applies to every employee or if otherwise, issue a letter incorporating such a benefit into the terms of employment of that particular employee.

*(N.B. Where a corporation (i) is a holding company of another corporation, or (ii) is a subsidiary of another corporation or (iii) is a subsidiary of the holding company of another corporation; then the first mentioned corporation and that other corporation are deemed to be related. )*

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