

Contact Persons:

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Lambert Rasa-Ratnam
Partner
DID: +603 6208 5859
Fax: +603 6201 0122
Email: lr@lh-ag.com

BANKING & INSOLVENCY

Kumar Kanagasingam
Partner
DID: +603 6208 5803
Fax: +603 6201 0122
Email: kk@lh-ag.com

Sean Yeow Huang-Meng
Partner
DID: +603 6208 5867
Fax: +603 6201 0122
Email: yhm@lh-ag.com

Andrew Chiew Ean Vooi
Partner
DID: +603 6208 5852
Fax: +603 6201 0122
Email: ac@lh-ag.com

Mong Chung Seng
Partner
DID: +603 6208 5864
Fax: +603 6201 0122
Email: mcs@lh-ag.com

Hoi Jack S'ng
Partner
DID: +603 6208 5908
Fax: +603 6201 0122
Email: hjs@lh-ag.com

CONSTRUCTION

Dato' Nitin Nadkarni
Partner
DID: +603 6208 5866
Fax: +603 6201 0122
Email: nn@lh-ag.com

Darshendev Singh
Partner
DID: +603 6208 5845
Fax: +603 6201 0122
Email: ds@lh-ag.com

CORPORATE & COMMERCIAL DISPUTES

Rosli Dahlan
Partner
DID: +603 6208 5804
Fax: +603 6201 0122
Email: rd@lh-ag.com

G Vijay Kumar
Partner
DID: +603 6208 5870
Fax: +603 6201 0122
Email: vkq@lh-ag.com

SM Shanmugam
Partner
Tel: +603 6208 5865
Fax: +603 6201 0122
Email: ssm@lh-ag.com

When an Islamic Financing Facility is Void

Bank Kerjasama Rakyat Malaysia Bhd v MME Realty & Management Sdn Bhd

| by Wong Te Jie |

In 2009 and 2012, MME Realty entered into contracts for Islamic financing facilities under the principle of *bai` inah* with Bank Kerjasama Rakyat. At the material time, the relevant resolution of the Shariah Advisory Council of Bank Negara Malaysia required that a *bai` inah* contract meet the following conditions (among others):

“(i) consisting of two clear and separate contracts, namely, a purchase contract and a sale contract;

“(ii) no stipulated condition in the contract to repurchase the asset;

“(iii) the sequence of each contract is correct, whereby, the first sale contract shall be completely executed before the conclusion of the second sale contract...”

On MME Realty defaulting and Bank Kerjasama Rakyat seeking to enforce the contracts for Islamic financing facilities, the court held that the contracts for Islamic financing facilities were void for breaching the conditions laid down by the Shariah Advisory Council of Bank Negara Malaysia.

Having held the contracts for Islamic financing facilities to be void, the court went on to hold that:

“... pursuant to section 66 of the Contracts Act 1950, the defendant having received the loans under the facilities agreement is to return the monies to the Plaintiff.”

[1]

This is the first application of s 66 of the Contracts Act 1950 to a void contract in an Islamic financing facility.

Wong Te Jie (wtj@lh-ag.com)

If you have any queries, please contact the author or his team partner

Mr [Kumar Kanagasingam \(kk@lh-ag.com\)](mailto:kk@lh-ag.com).

Ang Hean Leng
Partner
Tel: +603 6208 5809
Fax: +603 6201 0122
Email: ahl@lh-ag.com

Ho Ai Ting
Partner
Tel: +603 6208 5907
Fax: +603 6201 0122
Email: hat@lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

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[1]

"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it