

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](mailto:enquiry@lh-ag.com)  
W [www.lh-ag.com](http://www.lh-ag.com)

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### **Rule in Turquand's Case Revisited**

#### *Kang Hai Holdings Sdn Bhd & Anor v Lee Lai Ban*

The indoor management rule (also known as the rule in Turquand's case<sup>[1]</sup> or the Turquand Rule<sup>[2]</sup>) entitles an outsider dealing with a company to assume that all required internal procedures of the company have been complied with. The Turquand Rule was adopted, with some qualification, in *Pekan Nenas*,<sup>[3]</sup> where the Federal Court held that an outsider cannot avail himself of the Turquand Rule if he knows or ought to have known that there is some irregularity, or an internal procedure of the company has not been complied with at the time of entry into the transaction. And in the case where the outsider could or should in the given circumstances have discovered the irregularity by inspecting publicly available documents filed at the Registry of Companies,<sup>[4]</sup> the Turquand Rule would not be applicable, at least in Malaysia.

The Federal Court in the recent case of *Kang Hai Holdings*<sup>[5]</sup> held that the law imposes a minimum duty on outsiders who seek to rely on the Turquand Rule to, at the very least, conduct minimum checks and searches in ascertaining the actual position of the company.<sup>[6]</sup> The court went on to hold that the doctrine of constructive notice applies to public documents and an outsider is presumed to have knowledge of the information contained in such public documents, such as the register of directors, managers and secretaries and changes of particulars, more commonly known as the Form 49.

The *Kang Hai Holdings* case is a judgment based on the Companies Act 1965.

### **Companies Act 2016**

The Companies Act 2016 (which repeals and effectively replaces the 1965 Act) has introduced a new provision<sup>[7]</sup> as follows:

No person shall be deemed to have notice or knowledge of the contents of the constitution or any other document relating to a company, due to the fact —

(a) that the constitution or document has been registered

by the Registrar; or

(b) that it is available for inspection at the registered office of the company,

with the exception of documents relating to instrument of charges.

In light of the aforementioned provision that an outsider dealing with the company would not be deemed to have constructive notice or any duty to inspect such publicly available documents, it remains to be seen if the principle in *Pekan Nenas* and *Kang Hai Holdings* continues to be applicable. Until then, it appears that an outsider is not prevented from relying, in the absence of other circumstances, on the Turquand Rule even if he or she has not conducted any checks or searches which could reveal any internal irregularities.

**Christie Wong Yi Shen** (wys@lh-ag.com)

If you have any queries, please contact the author or her team partner Mr [Aaron Gerard Sankar](mailto:ags@lh-ag.com) (ags@lh-ag.com).

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- [1] From *Royal British Bank v Turquand* [1843-60] All ER Rep 435
- [2] This term is used in the *Pekan Nenas* case
- [3] *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen* [1998] 1 CLJ 793-856
- [4] *Ibid*, at 829. See also *Irvine v Union Bank of Australia* [1877] 2 App Cas 366.
- [5] *Kang Hai Holdings Sdn Bhd v Lee Lai Ban* [2018] 2 CLJ 550
- [6] *Ibid*, at 559
- [7] Companies Act 2016, s 39