

# LHAG Insights

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Corporate & Commercial Disputes



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### CA Affirms SC's Claim Against Former Deputy MD for Wrongful Loss

Last Thursday (3 March 2022), the Court of Appeal, in a unanimous decision, ruled in favour of the Securities Commission Malaysia (**SC**) and affirmed the decision of the High Court that a former Deputy Managing Director (**Deputy MD**) of a then-listed corporation had breached securities laws.

The decision was reported on the [SC website](#). The High Court's grounds can be viewed [here](#).

The SC's legal team was led by our partner, **SM Shanmugam**, together with **Hashley Tajudin** (SC), partner **CK Lung** and associate **Hooi Chung Wai**.

The decision is significant as it reaffirms the SC's powers to commence a civil claim against a director of a listed corporation for breaches of ss 179, 317A and 370 of the Capital Markets and Services Act 2007 (**CMSA**). In particular, s 317A of the CMSA reads:

"317A. Prohibited conduct of director or officer of a listed corporation

- (1) A director or an officer of a listed corporation or any of its related corporations shall not do or cause anyone to do anything with the intention of causing wrongful loss to the listed corporation or any of its related corporations irrespective of whether the conduct causes actual wrongful loss."



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At the High Court, the SC established that pursuant to “exclusive agency agreements” entered into between the listed corporation and 23 foreign companies worth a total of RM3.05 billion, the listed corporation paid a non-refundable deposit of RM11.59 million to “local representative companies” of the 23 foreign companies.

The SC led evidence to show that RM11.54 million out of the non-refundable deposit was subsequently transferred into the former Deputy MD’s personal bank accounts. Pending disposal of the trial, the SC had obtained an interim injunction to restrain the former Deputy MD from dealing with monies in her personal bank accounts up to the value of RM11.54 million.

In dismissing the appeal by the former Deputy MD, the Court of Appeal affirmed the High Court’s decision in that the conduct of the former Deputy MD had caused wrongful loss to the listed corporation and thus, in breach of, among others, ss 179 and 317A of the CMSA. The former Deputy MD was ordered to, among others, pay RM11.54 million and a civil penalty of RM1 million to the SC, and be barred from being a director of a public-listed company for five years.

The case has been reported in [The Edge Markets](#), [Bernama](#), [New Straits Times](#), [The Star](#) and [The Malaysian Reserve](#) as well as in the national-language [BH Online](#), [Malaysia Gazette](#) and [Sinar Harian](#).

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