

# LH AG

## LHAG INSIGHTS DISPUTE RESOLUTION

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### IMPOSITION OF PENALTY BY A REGULATOR CAN ONLY BE CHALLENGED BY JUDICIAL REVIEW, NOT COLLATERALLY IN A RECOVERY ACTION

by Lambert Rasa-Ratnam, Chia Oh Sheng & Lim  
Jun Xian

*Adnan Bin Yaakob v Securities Commission Malaysia  
[Court of Appeal Civil Appeal No. C-04(IM)(NCvC)-455-  
11/2023]*

Where a regulator, in the exercise of its public duties, imposes a penalty for breach of a statutory provision, the proper mode to challenge the imposition of the penalty is by way of judicial review. Failure to do so precludes the party upon whom the penalty is imposed from subsequently challenging the penalty in a recovery action.

On 31 July 2025, the Court of Appeal unanimously dismissed an appeal by Adnan bin Yaakob (“**Appellant**”) against the decision of the High Court. The High Court

## KEY LAWYERS

LAMBERT RASA-RATNAM  
Senior Partner  
[lr@lh-ag.com](mailto:lr@lh-ag.com)



CHIA OH SHENG  
Partner  
[cos@lh-ag.com](mailto:cos@lh-ag.com)



LIM JUN XIAN  
Associate  
[ljx@lh-ag.com](mailto:ljx@lh-ag.com)



had affirmed the summary judgment entered by the Magistrates' Court against the Appellant for the sum of RM84,000.00, being the penalty imposed by the Securities Commission Malaysia ("**SC**") pursuant to Section 354(1)(a) of the Capital Markets and Services Act 2007 ("**CMSA**"), read together with Sections 246(1)(b) and 367(1) of the CMSA.

### **Background**

The Appellant was a director of Pasdec Holdings Berhad ("**PASDEC**"). He was also Chairman and a director of Perbadanan Kemajuan Negeri Pahang ("**PKNP**"), the largest shareholder of PASDEC. On 16 May 2018, PASDEC issued an abridged prospectus ("**Abridged Prospectus**") for a renounceable rights issue of 114,391,200 new ordinary shares in PASDEC ("**Rights Shares**").

Following a review, the SC found that the Appellant, as a director of PASDEC, had authorised the issuance of the Abridged Prospectus, which contained a material omission. The Abridged Prospectus did not disclose the pending application by PKNP for the Ministry of Finance's approval to subscribe for PKNP's entitlement at the issue price of RM0.35 per Rights Share.

As a director of PASDEC, the Appellant had individually and collectively accepted full responsibility for the contents of the Abridged Prospectus, pursuant to PASDEC's Directors' Responsibility Statement dated 2 May 2018. As such, the Appellant was personally liable for the contents of the Abridged Prospectus pursuant to Section 246(1)(b) read with Section 367(1) of the CMSA.

By a Notice to Show Cause dated 15 November 2018, the SC notified the Appellant of its findings and gave him an opportunity to provide a written explanation as to why action should not be taken against him. The Appellant, in his reply, admitted that there was a material omission in the Abridged Prospectus and pleaded for leniency.

After considering the Appellant's reply, the SC notified the Appellant by a letter dated 22 July 2020 that he had breached Section 354(1)(a) of the CMSA, read together with Sections 246(1)(b) and 367(1). Consequently, the SC imposed a reprimand and a monetary penalty in the sum of RM84,000.00, to be paid within 14 business days.

On 19 August 2020, the Appellant appealed to the SC for the withdrawal of the sanctions imposed against him. By a letter dated 18 February 2021, the SC dismissed the appeal and maintained the sanctions. The Appellant failed to pay the penalty sum demanded by the SC.

On 11 February 2022, the SC commenced an action in the Magistrates' Court to recover the penalty sum from the Appellant.

### Magistrates' Court

On 25 August 2022, the Magistrates' Court<sup>1</sup> granted summary judgment against the Appellant in a written decision<sup>2</sup>.

### High Court

On 16 February 2023, the High Court dismissed the Appellant's appeal against the decision of the Magistrates' Court, and set out its reasoning in the Grounds of Judgment<sup>3</sup>.

### Court of Appeal

In dismissing the appeal, the Court of Appeal unanimously held that:

- (a) Firstly, the Appellant did not apply to the High Court for judicial review of the penalty. As such, he is bound to pay the penalty. On this ground alone, the appeal could and should be dismissed.
- (b) Secondly, it is trite law that the Appellant bore the evidential burden to raise a triable issue to enable the Court to allow the appeal. However, the Court of Appeal was of the considered view that the Appellant had failed to raise any triable issue, in light of his clear and unequivocal admission in his letters dated 4 December 2018 and 19 August 2020, which he wrote himself.

### Conclusion

This case serves as a reminder that a person aggrieved by a decision of a public authority imposing a penalty in the exercise of its statutory powers must act promptly in challenging the penalty by way of judicial review, within the time limit stipulated under Order 53 rule 3(6) of the Rules of Court 2012. Once the time limit for judicial review lapses, the door closes. The Court will not permit a collateral attack on the penalty in a subsequent recovery action.

Senior Partner Lambert Rasa-Ratnam represented the Securities Commission Malaysia in the appeal, together with Partner Chia Oh Sheng and Associate Lim Jun Xian.

*If you have any queries, please contact Partner **Chia Oh Sheng** (cos@lh-ag.com), or Associate **Lim Jun Xian** (ljx@lh-ag.com).*

#### Head Office

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia  
Tel: +603 6208 5888  
Fax: +603 6201 0122

#### Johor Office

Suite 21.01  
21st Floor, Public Bank Tower  
No.19, Jalan Wong Ah Fook  
80000 Johor Bahru, Johor  
Tel: +607 278 3833  
Fax: +607 278 2833

#### Penang Office

51-12-E, Menara BHL Bank,  
Jalan Sultan Ahmad Shah,  
10050 Penang  
Tel: +604 299 9668  
Fax: +604 299 9628

#### Email

enquiry@lh-ag.com

#### Website

[www.lh-ag.com](http://www.lh-ag.com)

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[1] <https://lh-ag.com/wp-content/uploads/2025/08/Suruhanjaya-Sekuriti-Malaysia-v-Adnan-bin-Yaakob-2022-Mg-Ct.pdf>

[2] *Suruhanjaya Sekuriti Malaysia v Adnan bin Yaakob* [2022] MLJU 2835

[3] <https://lh-ag.com/wp-content/uploads/2025/08/HC-Grounds.pdf>