



CASE STUDIES - LESSONS

MAICSA Annual Conference 2024

Presented by

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Objectives

1. Company Secretary under the **Law**
2. Company Secretary caught in **Crossfire**
3. Potential **Liabilities** in the light of statutory obligations & common law :
 - a. AML/CFT
 - b. MACC ACT
 - c. Constructive Trusteeship

The Legal Nature and Character of a Company Secretary (“Co Sec”)



For the purpose of **Subdivision 3** of CA2016
(Directors' Duties and Responsibilities)

*“ ... in addition to the definition of “director “includes Chief Executive Officer(CEO),Chief Financial Officer(CFO), Chief Operating Officer (COO) or **any other person** primarily responsible for management of the company.”*

Question

can a Co Sec be considered to be a person primarily responsible for **management** of the company ?

Important as if she is all fiduciary duties will be fastened on that Co Sec

Case Studies :

Industrial Concrete Products Bhd v Concrete Engineering Products Bhd [2001] 2 MLJ 332
(“*ICP v CEP*”)
... **Company Secretary Role in Boardroom Disputes and Governance Integrity**

Yee Teck Fah & Anor. v Wong Ngiap Lim & Anor [2020] MLJU 2088 (HC).
(“*Yee & Ors v Wong & Ors (HC)*”)
HC Decision was set aside by Court of Appeal and appeal discontinued at Federal Court
... **Company Secretary's Duties in Share Transfer Disputes and Fiduciary Responsibilities**

Abdul Ghani bin Tahir v Public Prosecutor [2017] SGHC 125
... **Court found director (cum co sec) criminally liable (attributable responsibility)**

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ICP v CEP [2001]

CEP



Choo
Nominee
Director

ICP v CEP [2001]



Ang
Director



**Retrenchment
Letter**



Ms. Chui
Co Sec

Choo
Nominee
Director

ICP v CEP [2001]



ICP v CEP [2001]

“because of this conflict, it is necessary to disclose in detail what transpired after the 9 May 1996 relating to the **minutes** of the board meeting.

Ms. Chui, the cosec, testified that after this meeting she prepared draft minutes of the meeting. This was handed over to Choo who made **extensive amendments** thereto by **deleting substantial recordings** of Tan Sri Stephen (a Non-executive director) and Ang’s protests over ICP’s appointment as manager of CEP’s core business.

When TS Stephen secured a copy of this amended signed minutes approved by Choo at end of May 1996 he was **dissatisfied**.

Immediately he wrote various letters to Ms. Chui **complaining** of its inaccuracies. Ms. Chui forwarded these letters to Choo but received no instructions to reply to them .” (James Foong J at pp 341,342)



The Hapless Co Sec

*“From the oral testimonies adduced by the parties concerned, there is a dispute as to what actually took place at the meeting of 9 May 1996. Tan Sri Stephen and Ang, who were at that meeting, deny the assertions of Choo. **Ms Chui, not wanting to get involved, decided to take a neutral stand claiming to a substantial part that, she ‘could not remember’.**”*

Faced with such a conflict of oral testimonies one of the means adopted to determine its accuracy is by referring to and relying on contemporaneous acts and deeds of witnesses to draw reasonable inferences.”



The pressures on the company secretary (“Ms Chui”)

1. Pressure of Accuracy and Integrity in Record-Keeping
2. Pressure from Conflicting Board Members
3. Involvement in Contentious Dismissals
4. Neutrality and Professionalism “*Could not remember*”



Case Studies :

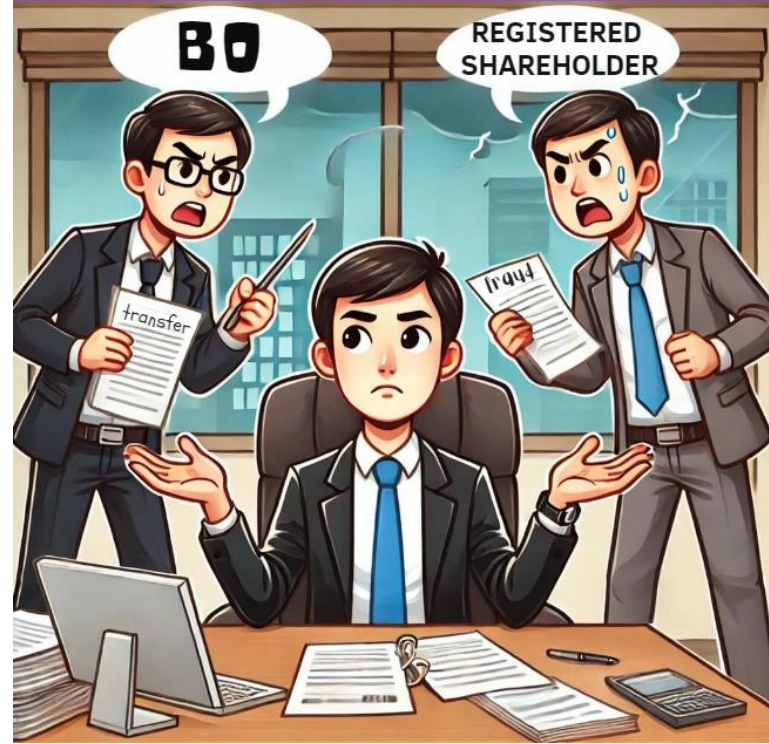
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The pressures on the company secretary (“Wong”)

1. Conflicting Instructions between “BO” and Registered Shareholder
2. Police Involvement
3. Legal Threats
4. Allegations of Negligence



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Lessons for Company Secretary

Your **Letter of Engagement** sets out contractual obligations and duties (query: disclaimer ? indemnity ?)

Your adherence to Code of professional conduct and ethics are **evidence** of meeting standard of care and skill but factual circumstances will determine Court Finding

Keeping a **full record of communications** : emails and Texts and documentation will provide basis for avoiding liability or allegations of partiality

Abundant caution in contested situations to follow instructions form board resolutions and not any one individual eg Managing director / Chairman

Familiar with the Law (CA2016 etc), the Case Laws, Company's Constitution, Guidelines or Code of Ethics by SSM, SC, Bursa or relevant professional bodies. Regular Updates & Training

THANK YOU