

LEGAL UPDATE

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CASE UPDATE

BANKS FACE CONSEQUENCES OF NON-COMPLIANCE WITH INTERNAL PRACTICES AND ACCEPTED BANKING PROCEDURES

Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd & Another and Another Suit [2009] SGHC 197

Executive Summary

The Singapore High Court has criticised the conduct of the Singapore branches of two foreign banks in failing to adhere to internal control mechanisms and accepted banking procedures in the verification of signatures on certified extracts of board resolutions. The court also provided valuable guidance on the steps banks could take to ensure the *bona fides* of such certified extracts.

Davinder Singh, SC, Hri Kumar, SC and **Yarni Loi** of Drew & Napier LLC acted for the successful defendants, Asia Pacific Breweries (Singapore) Pte Ltd ("**APBS**").

Background

For more than four years, Chia Teck Leng ("**Chia**"), who was employed as APBS' Finance Manager, deceived several international banks by using his employer's name to obtain substantial credit and loan facilities (the "**Credit Facilities**").

Chia's fraud was discovered in 2003. Civil proceedings were commenced by four of the banks, including Skandinaviska Enskilda Banken AB (Publ), Singapore Branch and Bayerische Hypo-und Vereinsbank Aktiengesellschaft (collectively, the "**Banks**") against APBS, to recover the sums outstanding under the Credit Facilities. The two other banks discontinued proceedings against APBS, and were ordered to pay costs.

One of the bases upon which the Banks founded their claims was that Chia had actual or ostensible authority to enter into the Credit Facilities on behalf of APBS. They argued that APBS was therefore liable to repay the outstanding sums due under the Credit Facilities.

Decision

Dismissing the Banks' claims against APBS, the court ruled that Chia had no actual or ostensible authority to enter into the Credit Facilities on behalf of APBS.

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Whether Chia had actual authority

The Banks sought to rely on two internal documents from APBS, namely, the “Position Description” for the job of Finance Manager and the Group Treasury Policy (collectively, the “**Internal Documents**”) to argue that Chia was authorised to accept the Credit Facilities without the sanction of the APBS’ board of directors.

The Banks also argued that Chia had actual authority to represent that the board resolutions and documents submitted to the Banks were genuine.

The court dismissed these arguments. It took the view that the Internal Documents did not bear out the Banks’ contentions.

Further, the Banks’ standard requirements for board resolutions covering the transactions and certified extracts of such resolutions negated their contentions that Chia, as Finance Manager, would have had the authority to open bank accounts or borrow on behalf of APBS without the sanction of APBS’ board of directors.

Whether Chia had ostensible authority

The Banks also submitted that Chia, by virtue of his position as Finance Manager, was held out by APBS as having ostensible authority to warrant the genuineness of the certified extracts of the board resolutions or to communicate board approvals to the Banks.

The Banks’ commercial expectations, therefore, were that a Finance Manager with ostensible authority to deal with banks on the financial requirements of APBS would ordinarily or necessarily have ostensible authority to warrant the certified extracts as genuine.

The court dismissed this argument. The furthest that APBS went, in relation to representing that Chia had some authority, was to appoint him Finance Manager. The Banks also failed to show that Chia, or someone in his position, was usually authorised to confirm the veracities of board resolutions and other relevant documents.

The Banks’ impression that the certified extracts of the board resolutions were genuine and properly executed “*was founded purely on the [Banks’] own narrow and limited verification of the board resolutions*”.

The Banks’ failure to abide by internal control mechanisms and normal banking practices

In the court’s view, “*the condition precedent calling for the certified extract of a board resolution in and of itself carries the implication ... that the [Banks] appreciated and knew that Chia had no actual authority to bind [APBS]*”. It also had “*the effect of ruling out [Chia’s] ostensible authority*”.

The Banks had, in their eagerness to secure and develop a banking relationship with APBS, failed to abide by their own internal control mechanisms and normal banking procedures. The Banks had willingly extended the Credit Facilities to Chia, choosing to overlook the *"multitude of discrepancies and irregularities"* in the documents.

For example, the fact that Chia was the same person who had returned to the Banks the documents authorising himself to sign the loan documentation and to operate the account singly *"contradicted the rudiments of internal control and corporate governance"*.

This, coupled with the need to ensure that the documentation was properly executed, should have prompted the Banks to make a *"reasonable inquiry"* into Chia's authority. Yet, the Banks chose to accept *"at face value"* the certified extracts of the board resolutions.

Verification of condition precedent documents

The court gave the following guidance on what verification of condition precedent documents entailed:

"A convenient starting point is the bank's manual which basically reminds the bank officers to ensure that important documents creating a legal relationship between the bank and customer like the contract and certified extract of the board resolution are "properly executed" by the authorised persons ... Verification of documents is simply a common sense principle to look after and safeguard the bank's own interest. It calls for the exercise of common sense and ordinary prudence of a reasonable person, rather than the skill of a signature expert ... This means that the bank has to check (i) the [Memorandum & Articles of Association] to ensure that the board resolution has been complied with, inter alia, the provisions on powers and duties of directors and proceedings of directors; and (ii) the identity, designation and signature of the signatories to the contract and certified extract of the board resolution."

Steps which may be taken to ensure the bona fides of certification

The court also suggested some steps which banks could take when verifying the authenticity of certified extracts of board resolutions. These include:

- contacting a third party, e.g. the company secretary, to confirm that a board resolution was passed;
- contacting the director who certified the document to confirm that he certified as true the extract of the relevant minutes that recorded the board resolution passed;

- verifying the signature on the document against the bank's record if the signature of the signatory is already on the bank's record; and
- checking the signature on the board resolution or certified extract against documents already filed with the Accounting & Corporate Regulatory Authority of Singapore.

If you would like more information about this case or wish to discuss how it may potentially affect you or your business, please feel free to contact the litigation and dispute resolution lawyers in Drew & Napier LLC (please refer to the Directors' profiles on our [website](#)), or:

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