

8 days Journey - S 245 (4) Companies Act 2016

# Day 6

## Principles Right to Inspect Documents by Directors

A bronze statue of Lady Justice, blindfolded and holding scales of justice in her right hand and a sword in her left. The statue is positioned on the left side of the slide. The background is a blurred bokeh of light circles in shades of blue and white. A large white circle is overlaid on the right side of the slide, containing the section header.

# C. The Law

## INDEX

### PLAINTIFF'S BUNDLE OF AUTHORITIES

<u>No.</u>	<u>Authorities</u>	<u>Page No.</u>
1.	Section 245 of the Companies Act, 2016	3
2.	Dato' Tan Kim Hor & Ors v Tan Chong Consolidated Sdn Bhd [2009] 2 MLJ 527	4 – 12
3.	Dato' Seri Timor Shah Rafiq v Nautilus Tug & Towage Sdn Bhd [2018] 8 MLJ 394	13 – 34
4.	Soo Boon Siong @ Saw Boon Siong v Saw Fatt Seong and Soo Hock Seang (as estate representative Soo Boon Kooi @ Saw Boon Kooy (deceased) & Ors [2008] 1 MLJ 27	35 – 73
5.	Kwan Teck Hian v Insulflex Corporation Sdn Bhd [2017] MLJU 1300	74 – 94
6.	Ho Yee Chin v Ho Min Hao & Ors [2016] MLJU 318	95 – 101

### DEFENDANT'S BUNDLE OF AUTHORITIES

#### (ENCLOSURE 1)

## INDEX

<u>NO.</u>	<u>DOCUMENT</u>	<u>TAB</u>	<u>PAGE</u>
1.	Section 245 of the Companies Act 2016	A	1-3
2.	Tan Kim Hor & 3 Ors v. Tan Chong Consolidated Sdn Bhd (2009) 5 MLRA 424	B	4-10
3.	Liaw Yeou Huah v. Wong Kee Kian & Ors (Encl 1) (2016) MLRHU 1562	C	11-39
4.	Oxford Legal Group Ltd v. Sibbasbridge Services Ltd (2008) Bus L.R. 1244 (2008)	D	40-55
5.	Dato' Seri Timor Shah Rafiq v. Nautilus Tug & Towage Sdn Bhd (2017) MLRHU 381	E	56-79
6.	"PERINTAH" Mahkamah Tinggi Kuala Lumpur Rayuan Jenayah No. WA-42K-11-12/2020	F	80



## Case(s) referred to:

1. Dato' Seri Timor Shah Rafiq v. Nautilus Tug & Towage Sdn Bhd [2017] MLJU 540
2. Dato' Tan Kim Hor & Ors v. Tan Chong Consolidated Sdn Bhd [2009] 2 MLJ 527
3. Liaw Yeou Huah v. Wong Kee Kian & Ors [2016] MLJU 1589
4. Wu Khek Chiang George v. ECRC Land Pte Ltd [1999] 3 SLR 65



## S 245 of the Companies Act 2016: Accounts to be kept

- (1) A company, the directors and managers of a company shall –
- (a) **cause to be kept the accounting and other records** to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared; and
  - (b) cause the accounting and other records to be kept in a manner as to enable the accounting and other records to be **conveniently and properly audited**.
- (4) The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place as the directors think fit, **and shall at all times be open for inspection by the directors**.



# Summarizing the Principles on the Right to Inspect Documents by Directors of a Company

**01** S 245(4) CA 2016 imposes a **mandatory requirement** on a company to ensure that accounting and other records of the company are available for inspection by its directors.

**02** This requirement to **make available records for inspection** is in line with the fiduciary duties of directors of a company. These duties can only be carried out if directors are allowed **full access** to records of the company.

**03** Following from this, the right to access documents, though absolute, must be exercised for the **proper performance** of a director's duties. It should not be exercised for any purpose that **may be detrimental** to the company.

**04** If it is **clearly shown** that a director is using the right to inspect for an **improper** purpose, the court has no power to assist him to obtain access to the documents. The right is given to allow the proper performance of a director's duties, and the court should not facilitate the right being invoked for a **purpose** for which it **was not conferred**.

**05** In cases where the right to access documents is **refused**, all a director needs to show to enforce his right is that he is a director of the company, that he **has demanded inspection**, and that the right has been **refused**.

**06** The **burden** then **shifts to the company to rebut** the presumption that the request is being made in the discharge of the director's duties. The company must **show clear evidence of impropriety** in the director's purpose or that the purpose is **unrelated** to the discharge of the director's duties.

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