

BANKING

Islamic Banking – *Al Bai Bithaman Ajil* – Whether sections 67 and 67A of the Companies Act 1965 were contravened – Whether dealing by a company in its own shares rendered transactions illegal and unenforceable

Low Chin Meng v CIMB Islamic Bank Bhd

[2015] 5 CLJ 324, Court of Appeal

Facts In order to secure an *Al Bai Bithaman Ajil* ("BBA")¹ ("the first BBA") from the respondent bank, LCL Corporation Bhd ("the Company") and the respondent entered into asset purchase and asset sale agreements using as security, 16 million shares of the appellant (who was a major shareholder the Company) which the appellant transferred to the Company by way of *hibah* (gift). Upon default of repayment by the Company, the respondent sold the shares, and sued the Company and appellant for the shortfall. The High Court decided in favour of the respondent. On appeal, the appellant claimed that the transactions were invalid and unenforceable as they contravened sections 67² and 67A³ of the Companies Act 1965.

Issue The issue was whether the dealing by the Company in its own shares, involving the execution of asset purchase and asset sale agreements under the BBA, contravened both sections 67 and 67A of the Companies Act 1965.

Held In dismissing the appeal, it was held that the execution of asset purchase and asset sale agreements did not infringe section 67 as they were a necessary part of the Islamic finance procedure for the purpose of granting the second BBA facility. As for section 67A, it was ruled that the purported purchase under the asset purchase agreement was not within the ambit of section 67A, as it was done pursuant to the requirement of an Islamic financing transaction that requires a sale and buy-back of the shares. Thus, the transactions under the BBA did not infringe sections 67 and 67A of the Companies Act 1965, and were therefore valid and enforceable.

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¹*Al Bai Bithaman Ajil* (BBA) is a contract of a deferred payment sale which is the sale of goods on a deferred payment basis at an agreed selling price, which includes a profit margin agreed by both parties.

² Dealing by a company in its own shares, *etc.*

³ Purchase by a company of its own shares, *etc.*