



**The Federal Court's Decision
in Havi Logistics (M) Sdn Bhd
v. Pemungut Duti Setem:
Stamp Duty for Asset
Purchase Agreements**

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The Federal Court's Decision in *Havi Logistics (M) Sdn Bhd v. Pemungut Duti Setem*: Stamp Duty for Asset Purchase Agreements

Introduction

The Malaysian Federal Court's landmark judgment in *Havi Logistics (M) Sdn Bhd v. Pemungut Duti Setem* [2025] MLJU 321 provides some clarity on the uncertainties surrounding the stamp duty payable on asset purchase agreements. This article aims to offer an overview of the key legal issues involved and the Federal Court's reasoning behind its decision.

Background facts

On 6 February 2020, Havi Logistics (M) Sdn Bhd ("**HVM**") entered into an Asset Purchase Agreement (the "**APA**") to acquire certain assets (the "**Assets**") from Martin-Brower Malaysia Sdn Bhd ("**MBM**"). The APA provides, amongst others, that title and risks associated with the Assets would transfer to HVM upon closing, with delivery deemed completed at the location of the Assets.

The Stamp Duty Collector ("**Collector**") adjudicated the APA with ad valorem duty amounted to RM399,196.00 on the basis that the APA constitutes a "contract

chargeable as conveyance on sale" under section 21(1) of the Stamp Act 1949 ("**Section 21(1)**") and hence subject to ad valorem stamp duty as set out in item 32(a) of the First Schedule of the Stamp Act ("**Item 32(a)**").

HVM paid the adjudicated sum of stamp duty under protest and appealed against the assessment of the Collector on the basis that the APA should be chargeable for stamp duty under item 4 of the First Schedule to the Stamp Act ("**Item 4**") as "an agreement or memorandum of agreement made under hand only, and not otherwise specifically charged with any duty", which carries a nominal stamp duty of RM10. The Collector dismissed the appeal and HVM appealed the Collector's decision to the High Court.

Decision of High Court

The High Court held that ad valorem stamp duty can only be imposed when a property is legally or equitably transferred by an instrument, referring to the case of *Commissioner of Inland Revenue v Angus* (1889) 23 QBD 579 which made a distinction between a contract and a conveyance. The facts of that case involved an agreement entered into by the liquidators for the sale and purchase of the assets (including goodwill) of a

company in liquidation. The agreement in **Angus** was held to be an agreement but not a conveyance on sale as the transfer was not completed at the time when the instrument/agreement was executed, and the completion date was a future date. As the property was not legally or equitably transferred pursuant to the agreement, ad valorem duty would not apply.

On the said basis, the High Court ruled in favour of HVM, holding that the APA should be assessed with nominal stamp duty (under Item 4) rather than ad valorem stamp duty (under Item 32(a)) as the APA did not operate to transfer any legal or equitable property to the purchaser.

Decision of Court of Appeal

The Collector appealed the High Court's decision to the Court of Appeal. The Court of Appeal reversed the High Court's decision and ruled in favour of the Collector.

Section 2 and item 32(a) of the Stamp Act – Conveyance on sale

The Court of Appeal held that, due to the deeming provision in the APA, the APA was the instrument by which title to the Assets passed. As the APA did not **contemplate any separate act** to be undertaken by the parties for the transfer of

legal title, the ATA must be the instrument by which title to the acquired assets passed, which makes the APA a "conveyance on sale" within the meaning of section 2 that is subject to ad valorem duty under Item 32(a).

The Court of Appeal highlighted that if the closing provision of the APA had not relied on the deeming provision, but simply stated that the property and risk in the Assets would pass to the purchaser upon the purchaser taking physical possession of the Assets, then the APA would not have constituted an instrument of conveyance which was subject to ad valorem duty. The Court of Appeal rejected HVM's argument that the APA could not be regarded as a conveyance because the title and risk to the Assets only passed to the purchaser upon the completion, rather than the execution, of the SPA. The Court of Appeal reasoned that allowing HVM's interpretation would enable parties to avoid ad valorem duty simply by deferring completion. The court cited **Ridge Nominees v. IRC** [1961] 2 All ER 354, affirming that an instrument can still be dutiable even if it is conditional and may never be completed. In short, the Court of Appeal took the view that, by virtue of the deeming provision in the APA which operates to transfer the title and risks

to the purchaser without the need for any separate act, the APA would constitute an instrument of conveyance regardless of *when* such transfer takes place.

Section 21(1) of the Stamp Act – Contracts/agreements chargeable as conveyances on sale

The Court of Appeal went on to discuss the application of Section 21(1). It highlighted that **Angus** was decided based on the old provision of the English Stamp Act under which an instrument would only be subject to ad valorem stamp duty if it constitutes a “conveyance on sale” and not an “agreement”. The decision in **Angus** has led to the enactment of section 59 of the English Stamp Act 1891 (which is in *para materia* with section 21(1) of the Malaysian Stamp Act). With the enactment of section 59, a contract or agreement for the sale of an estate or interest in property, *regardless of whether such contract or agreement operates as an instrument of conveyance*, would be subject to ad valorem stamp duty *as if* it were an actual conveyance on sale of the estate or interest in property. Likewise for Malaysia, a contract for the sale of an estate or interest in property would be subject to ad valorem stamp duty under Section 21(1) as if it were an actual conveyance of the estate or interest in

property, even if the contract does not amount to a conveyance on sale.

There are certain exceptions under Section 21(1) in cases where the property being sold involves lands, tenements, hereditaments, heritages, property locally situate outside of Malaysia, goods, wares or merchandise, stock, marketable securities, ships or vessels. The Court of Appeal clarified that Section 21(1) contains two distinct categories of contracts chargeable with ad valorem stamp duty as if they are conveyances on sale. First, contracts for the sale of any equitable estate or interest in property; second, contracts for the sale of any legal estate or interest in property. The Court of Appeal expressed the view that the second category of contracts (i.e. contracts for the sale of legal estate or interest) would be subject to the said exceptions.

The Court of Appeal found that the Assets fell within the meaning of “goods” under the exceptions of Section 21(1). “Goods” is not defined in the Stamp Act but the Court of Appeal took the view that “goods” includes both capital assets and inventory. Thus, the Assets would fall within the exception in Section 21(1) and would not be chargeable with ad valorem duty as a “contract chargeable as conveyance on sale”. However, as the Court of Appeal

had found that APA operates as a conveyance on sale, the APA would still be subject to ad valorem duty under item 32(a) of Schedule 1 of the Stamp Act even if the exceptions in Section 21(1) apply.

Decision of Federal Court

HVM appealed the Court of Appeal's decision to the Federal Court. The Federal Court upheld the Court of Appeal's decision that the APA was a conveyance on sale chargeable with ad valorem stamp duty under Item 32(a). The key points of the Federal Court's decision are outlined below:-

(i) While the Court of Appeal's decision was upheld by the Federal Court, the Federal Court departed from the Court of Appeal's reasoning that the APA became a conveyance on sale only by virtue of the deeming provision. The Federal Court held that the statutory definition of "conveyance on sale" made it clear that an *instrument* by which property or any interest therein is transferred on the sale of such property or interest would be regarded as a conveyance on sale. The Federal Court expressed the view that, in ascertaining whether an agreement

is a "conveyance on sale", the court must first determine whether it is the *intention* of the parties that the agreement is the instrument that operates to pass the title to the assets. Upon examining the APA as a whole (more particularly the language of Clause 2.1(a) of the APA which stated that the MBM was to "sell, transfer, convey, assign and deliver" to HVM all of MBM's right, title and interest in the Assets), the Federal Court ruled that the intention of the parties was clearly to transfer the Assets upon the sale ***without the need for any further acts on the part of the parties***. On that basis, the APA fell within the meaning of "conveyance on sale" in section 2 of the Stamp Act, with or without the contractual deeming provision, and would be chargeable with ad valorem stamp duty under Item 32(a).

(ii) On the question of whether the APA falls within Section 21(1) as a "contract or agreement chargeable as conveyance on sale", the Federal Court added that there is no requirement in Section 21(1) that an instrument must operate to convey or transfer property

and the fact that the sale transaction is not concluded on the date of the instrument or that it was to be completed at a future date is immaterial. The purpose of section 21(1) was intended make an exception to the requirement in section 2 of the Stamp Act that such instruments must convey or transfer the property before it can be chargeable with ad valorem duty. On that basis, the Federal Court held that Section 21(1) would be applicable to the APA.

- (iii) The Federal Court then turned to consider whether the Assets fell within the exceptions in Section 21(1). The Federal Court took the view that an ordinary everyday meaning must be given to the word “goods” and held that the “goods” falling within the exceptions under Section 21(1) are “trading goods” i.e. assets of a revenue nature and not capital assets. On that basis, the Federal Court took the view that the Assets being sold to the purchaser under the APA, being non-trading moveable assets, would not be excepted and would be chargeable with ad valorem duty

under Section 21(1) read together with Item 32(a).

Observations

The following are a few key takeaways from the Federal Court’s decision on *Havi Logistics*:-

1. Based on the construction of an asset purchase agreement, if the parties have a clear intention to transfer a property or any interest therein on the sale without any further act, the asset purchase agreement is an instrument of conveyance on sale which would be subject to ad valorem stamp duty under Item 32(a).
2. Unlike a sale and purchase agreement relating to shares or real properties where the ad valorem stamp duty is typically payable only at completion when a separate instrument of transfer (i.e. the transfer form for shares or memorandum of transfer for real properties, as the case may be) is executed and the sale and purchase agreement would attract a nominal stamp duty of RM10, an asset purchase agreement would be subject to ad valorem stamp duty at the outset on the

signing of the asset purchase agreement. To the extent that an asset purchase agreement is a conditional upon the fulfilment of any conditions precedent, the purchaser is required to bear the full ad valorem stamp duty at the outset before any of the conditions precedent are fulfilled. This may pose an issue especially for transactions which involve acquisition financing as a condition precedent where purchaser seeks to obtain external financing to fund the cost of acquisition (including the stamp duty). Notwithstanding the above, to the extent that the purchaser has paid the ad valorem stamp duty at the outset upon the signing of the agreement, section 21(7) of the Stamp Act provides that the stamp duty paid shall be returned by the Collector if the agreement is subsequently rescinded or annulled, or not substantially performed or carried into effect.

3. The exceptions in Section 21(1) for specified categories of properties and assets only apply to the sale of any legal estate or legal interest and do not apply to the sale of any

equitable estate or equitable interest. Further, only assets of a revenue nature would fall within the exception of “goods” in Section 21(1).

4. The Federal Court decision appears to have left a question open: *if* an asset purchase agreement contains an express wording that the transfer of movable assets would only take effect by physical possession, would that “further act” of physical possession mean that the asset purchase agreement does not constitute a “conveyance on sale”? While the Federal Court departed from the Court of Appeal’s reasoning on the ground that the contractual deeming provision does not *per se* make an asset purchase agreement a conveyance on sale (but rather the intention to transfer must be ascertained by looking at the agreement as a whole), it appeared to have endorsed the Court of Appeal’s view that if a further act is required to transfer the assets the asset purchase agreement would not amount to a conveyance on sale. Nevertheless, as the APA in

Havi Logistics does not contain any express wording that transfer of the Assets would only take effect by physical possession, the judicial observation and reasoning on this

issue appears to be *obiter* in nature and arguably this issue remains open.

This article was written by our Corporate and Commercial partners, Wong Chin Chin, How Tze Yen, with the assistance of Lucas Ng Teck Hian (Pupil). It contains general information only. It does not constitute legal advice or an expression of legal opinion and should not be relied upon as such.