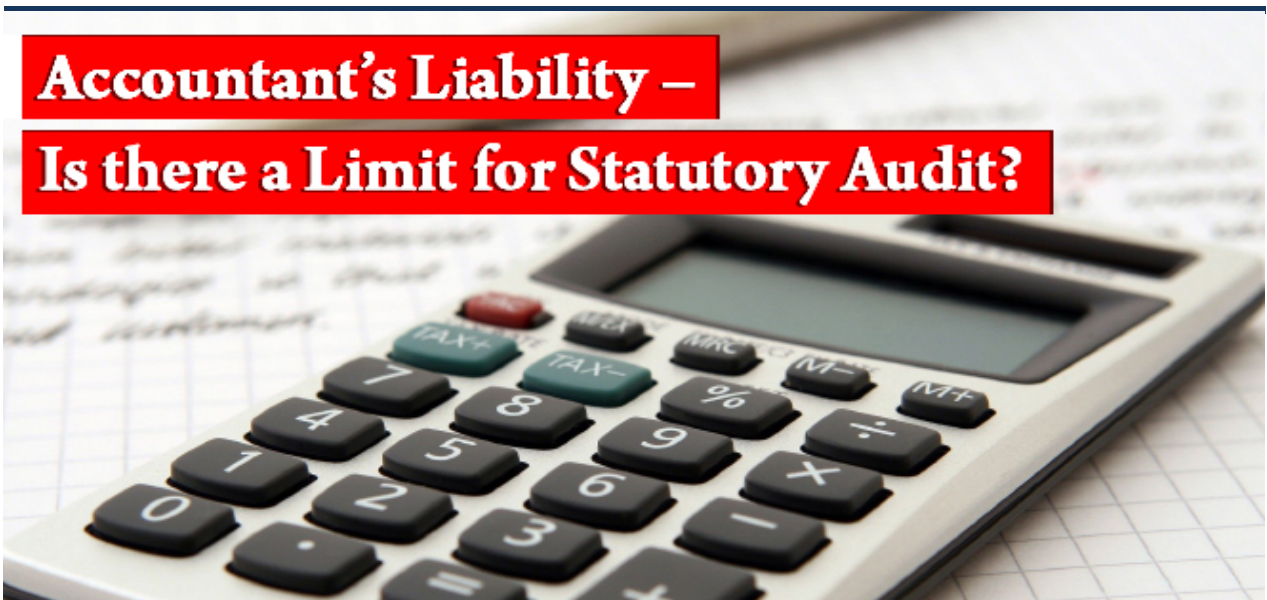


Accountant's Liability –

Is there a Limit for Statutory Audit?



In recent weeks, news outlets had reported high-profile legal suits filed against a leading accounting firm in respect of the statutory audits carried out by the said firm. The legal suits were filed pursuant to alleged negligence, breach of contractual duty and breach of statutory duties. The damages claimed in these legal suits amounted to billions of dollars, which may cause concerns to all auditors. Can the opinions expressed by auditors in statutory audits expose them to civil liabilities?

Roles and Duties of Auditors

The Companies Act 2016 (CA 2016) requires all companies to appoint an auditor for each financial year, where the auditor has a duty to report to the members of the company on his opinion on the financial statements prepared by the directors of the company. Auditors are required to form an opinion on whether the financial statements give a true and fair view of the company's financial affairs, whether there is any defect or irregularity in the financial statements and whether he has obtained all the information and explanations that he required. Auditors also have a duty to report any breach of the CA 2016 or any fraud or dishonesty that are being or have been committed against the company. Failure to do so may cause the auditors to be liable to imprisonment and/or fine.

A similar duty is also provided under section 128 of the Capital Markets and Services Act 2007 (CMSA 2007). Both the CA 2016 and CMSA 2007 provide for protection for auditors against any legal suit in respect of any statement made in good faith in discharge of their duties.

Can legal claims against auditors be successfully proven?

Auditors are afforded with privilege from legal suits under the statutes, but it is pertinent to note that such statutory privilege would only apply where the statements and reports are made by the auditors in good faith. Since auditors are subject to stringent statutory requirements and duties, it would be a challenge for a party to prove that reports lodged and statements made by auditors, in the performance of their statutory duties, were made in bad faith.

A legal claim may also arise from an auditor's failure to raise certain irregularities in a company's financial affairs, if such irregularities could reasonably be detected by auditors exercising reasonable skill and care. However, it is worth highlighting that an auditor's role under the statute is not to investigate fraud, but rather to express his opinion on a company's financial statement.

Limited Liability Partnership and Liability Limitation Agreement

Accounting firms may be registered with the Companies Commission of Malaysia as a Limited Liability Partnership (LLP), which has a different structure than conventional partnerships. While the partners in a LLP are still owners and managers of the LLP, the LLP is recognized as a separate legal entity on its own and the partners enjoy limited liability. This means that unlike a conventional partnership, an innocent partner will not be personally liable for the wrongdoings of the LLP or another partner in which he was not involved. However, a partner may still be personally liable for any of his own wrongful act or omission. Thus, a legal suit against auditors may be filed against the LLP itself or against the partners responsible for a particular matter.

It is worthy to note that in Malaysia, the statute does not make any provision for auditors to limit their liabilities in respect of any act or omission. This is in stark contrast with the position in the UK, where the UK Companies Act 2006 allows auditors to enter into Liability Limitation Agreements with companies in order to limit the amount of liability owed to a company by its auditor for one financial year.

Conclusion

It would definitely be interesting to watch how these recent legal suits will unfold and how the Malaysian courts will decide on these issues. The question of the extent of auditors' duties has not been rigorously tested in Malaysian courts since legal suits against auditors are rather rare given their statutory privilege against civil claims. In any event, auditors will have to keep in mind that as professionals, they would have certain duties and responsibilities which may also expose them to criminal and civil liabilities. Therefore, it is important to ensure that such duties are properly and professionally discharged with reasonable skill and care.

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