



**Majlis Peguam
Bar Council Malaysia**

www.malaysianbar.org.my

15 Leboh Pasar Besar
50050 Kuala Lumpur, Malaysia
Tel : +603-2050 2050
Fax : +603-2026 1313, 2034 2825, 2072 5818
Email : council@malaysianbar.org.my

**Circular No 096/2018
Dated 6 Apr 2018**

To Members of the Malaysian Bar

**Update | Application for Declaratory Relief with regard to Legal Professional Privilege:
Malaysian Bar v Director General of Inland Revenue (6 Apr 2018)**

We refer to [Circular No 267/2017](#) dated 24 Nov 2017 entitled “Application for Declaratory Reliefs with regard to Legal Professional Privilege: Malaysian Bar v Director General of Inland Revenue”, informing Members that the Bar Council had received several complaints that Inland Revenue Board officers were undertaking tax audits on Members’ law firms and their client accounts, and issuing notices to be given access to, *inter alia*, all books and records pertaining to such client accounts. This raised concerns as to potential breaches of legal professional privilege.

In response to a letter issued by the Bar Council, the Director General of Inland Revenue (“DGIR”) insisted that the said audits were not contrary to privilege, as the DGIR took the view that sections 80 and 142(5) of the Income Tax Act 1967 (“ITA”) override the provisions of Chapter IX of Part III of the Evidence Act 1950 and the Legal Profession Act 1976.

In view of the above, the Malaysian Bar filed an application at the High Court of Malaya at Kuala Lumpur on 7 Mar 2017, to seek, amongst others, declaratory relief that privilege prevails over, amongst others, sections 142(5) and 80 of the ITA. The key prayers sought were as follows:

- “1. a Declaration that Section 142(5) of the Income Tax Act 1967 (“ITA”) does not entitle nor empower the Defendant to disregard the privilege under Malaysian law that protects all communications, books, objects, articles, materials, documents, things, matters or information passing between an Advocate and Solicitor and his/her client or advice given by an Advocate and Solicitor to his/her client, whether contained in any book, statement, account or other record of any description whatsoever (hereinafter collectively referred to as “Client Communications”), and which privilege is referred to variously under Malaysian law as “legal professional privilege”, “solicitor-client privilege” or “legal privilege” (hereinafter referred to as “Privilege”) by requesting or demanding access to, or disclosure of, such Client Communications from any Advocate and Solicitor, unless Privilege is waived by the client;



INTERNATIONAL
MALAYSIA
LAW
CONFERENCE
CREATING PRECEDENCE

RAISING THE BAR
Innovate • Integrate • Emulate
imlc2018@malaysianbar.org.my

INTERNATIONAL MALAYSIA LAW CONFERENCE 2018

14-17 August 2018 The Royale Chulan Kuala Lumpur



2. a Declaration that Part V of the ITA generally, and Section 80 of the ITA in particular, do not entitle nor empower the Defendant to disregard the Privilege that protects all Client Communications by requesting or demanding access to, or disclosure of, any such Client Communications from any Advocate and Solicitor, unless Privilege is waived by the client;
3. a Declaration that Privilege under Malaysian law generally, and as referred to in Sections 126, 127, 128 and 129 of the Evidence Act 1950 in particular, **require an Advocate and Solicitor to reject any request or demand of the Defendant for access to, or disclosure of, any Client Communications, unless Privilege is waived by the client** [emphasis added];”

In a decision delivered on 2 Apr 2018, Yang Arif Datuk Wira Kamaludin b Md Said in the High Court of Malaya at Kuala Lumpur allowed the application of the Malaysian Bar, with costs fixed at RM5,000.

At this juncture, it is not known what the DGIR’s next steps will be in this matter. The Bar Council is currently studying the judgment of the High Court with its counsel and, if necessary, information sessions may be held with Members.

Members are advised to read the judgment of the High Court — which is accessible [here](#) on the Malaysian Bar website — to better understand the decision and the relevant statutory provisions involved. Please refer to paragraph 56 of the judgment for a summary of the decision.

We will notify Members as and when there are developments.

Should you have any enquiries, please contact Anusha Gopala Krishnan, Officer, by telephone at 03-2050 2097 or by email at anusha@malaysianbar.org.my.

Thank you.

Anand Raj
Chairperson
Tax Subcommittee of the Corporate and Commercial Law Committee