



**Majlis Peguam
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**Circular No 156/2021
Dated 6 May 2021**

To Members of the Malaysian Bar

Update | Legal Professional Privilege: Director General of Inland Revenue v Malaysian Bar

We refer to [Circular No 096/2018](#) dated 6 Apr 2018 and [Circular No 250/2019](#) dated 19 Nov 2019, both entitled “Update | Application for Declaratory Relief with Regard to Legal Professional Privilege: Malaysian Bar v Director General of Inland Revenue”.

The judgment of the High Court of Malaya at Kuala Lumpur in favour of the Bar is reported at *Bar Malaysia v Ketua Pengarah Hasil Dalam Negeri* [2018] 9 MLJ 557. This matter is in relation to legal professional privilege and clients’ accounts. To view the Order of the High Court dated 2 Apr 2018, please click [here](#) (see pages 2 to 7).

The Director General of Inland Revenue (“DGIR”)’s appeal to the Court of Appeal was heard in Putrajaya on 3 Mar 2021 via an open court paperless (e-Appellate) hearing. Upon the hearing of the legal arguments of counsel for the parties, the Court of Appeal unanimously dismissed the DGIR’s appeal, and affirmed the decision of the High Court. To view the Order of the Court of Appeal dated 3 Mar 2021, please click [here](#) (see pages 8 to 11).

The DGIR applied for leave to appeal to the Federal Court on 2 Apr 2021.

Unless the Federal Court holds otherwise, the decision of the Court of Appeal means that, unless expressly waived by clients in writing, Members cannot provide any information or documents relating to clients’ accounts to the DGIR / Inland Revenue Board.

We will notify Members as and when there are developments. We are in the midst of organising two webinars on the issues arising — on **4 June 2021 (in English)** and **11 June 2021 (in Bahasa Malaysia)**. Members who may have any concerns about these issues are urged to attend the webinars.

Thank you.

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

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN RAYUAN & KUASA-KUASA KHAS) 300.00 x 1
Jumlah RM*****300.00
H0272101_08/05/2018 09:58:06
WA-24-12-03/2017
TSP058

SAMAN PEMULA NO: WA-24-12-03/2017

Dalam perkara Seksyen 3 Akta Undang-Undang Sivil, 1956

Dan

Dalam perkara Seksyen-seksyen 126, 127, 128 dan 129 Akta Keterangan, 1950

Dan

Dalam perkara Akta Profesion Undang-Undang, 1976

Dan

Dalam perkara Seksyen-seksyen 80, 142(5) dan Bahagian V Akta Cukai Pendapatan, 1967

Dan

Dalam perkara, Perkara 5 dan 96 Perlembagaan Persekutuan

Dan

Dalam perkara Aturan 7, Aturan 15 kaedah 16 dan Aturan 28 Kaedah-Kaedah Mahkamah, 2012.

Antara

BAR MALAYSIA

PLAINTIF

Dan

KETUA PENGARAH HASIL DALAM NEGERI

DEFENDAN

DI HADAPAN HAKIM
KAMALUDIN BIN MD. SAID
PADA 2 APRIL 2018

DALAM MAHKAMAH TERBUKA

PERINTAH
(Lampiran 1)

ATAS PERMOHONAN pihak Plaintiff yang ditetapkan untuk keputusan pada hari ini DAN SETELAH MEMBACA Saman Pemula bertarikh 7 Mac 2017,

Afidavit-afidavit dan Hujahan-hujahan Bertulis pihak-pihak yang kesemuanya difailkan di sini **DAN SETELAH MENDENGAR** Anand Raj (Foong Pui Chi bersamanya), Peguambela bagi pihak Plaintif dan Ahmad Isyak Bin Mohd Hassan, Peguam Kanan Hasil (Ruzaidah bt. Yaacob, Peguam Hasil, bersamanya), bagi pihak Defendan, **ADALAH DIPERINTAHKAN:**

1. satu Deklarasi bahawa Seksyen 142(5) Akta Cukai Pendapatan 1967 ("ACP") tidak memberi hak atau kuasa kepada Defendan untuk mengetepikan hak keistimewaan ("privilege") di bawah undang-undang Malaysia yang melindungi kesemua komunikasi, buku, objek, artikel, material, dokumen, benda, perkara atau maklumat yang dihantar antara ("passing between") seorang Peguambela dan Peguamcara dan anakguamnya atau nasihat yang diberi oleh seorang Peguambela dan Peguamcara kepada anakguamnya, sama ada terkandung dalam mana-mana buku, pernyataan, akaun ataupun rekod lain yang merangkumi apa jua deskripsi (kemudian dari ini dirujuk secara kolektif sebagai "**Komunikasi Anakguam**"), dan yang mana hak keistimewaan tersebut dirujuk dengan pelbagai cara di bawah undang-undang Malaysia sebagai "hak keistimewaan profesional perundangan", "hak perlindungan profesional perundangan", "hak keistimewaan peguam-anakguam", "hak perlindungan peguam-anakguam", "hak keistimewaan perundangan" atau "hak perlindungan perundangan" (kemudian dari ini dirujuk sebagai "**Hak Keistimewaan**") dengan meminta atau menuntut akses kepada, atau pendedahan, Komunikasi Anakguam sedemikian daripada mana-mana Peguambela dan Peguamcara, kecuali jika Hak Keistimewaan itu dilepaskan oleh anakguam;
2. satu Deklarasi bahawa Bahagian V ACP secara umumnya, dan Seksyen 80 ACP secara khususnya, tidak memberi hak atau kuasa kepada Defendan untuk mengetepikan Hak Keistimewaan yang melindungi kesemua Komunikasi Anakguam dengan meminta atau menuntut akses kepada, atau pendedahan, sebarang Komunikasi Anakguam sedemikian daripada mana-mana Peguambela dan Peguamcara, kecuali jika Hak Keistimewaan itu dilepaskan oleh anakguam;

3. satu Deklarasi bahawa Hak Keistimewaan di bawah undang-undang Malaysia secara umumnya, dan sepertimana yang dirujuk dalam Seksyen-seksyen 126, 127, 128 dan 129 Akta Keterangan 1950 secara khususnya, mengkehendaki seseorang Peguambela dan Peguamcara untuk menolak mana-mana permintaan atau tuntutan Defendan untuk diberikan akses kepada, atau pendedahan, sebarang Komunikasi Anakguam, kecuali jika Hak Keistimewaan itu dilepaskan oleh anakguam; dan
4. kos sebanyak RM5,000.00 dibayar oleh Defendan kepada Plaintiff dan tertakluk kepada fi Alokatur.

Bertarikh 2 April 2018.



NORAZLIN BINTI OTHMAN

Timbalan Pendaftar

Mahkamah Tinggi Malaya

..... Kuala Lumpur.....

Timbalan Pendaftar

Mahkamah Tinggi Malaya

Kuala Lumpur

Perintah ini difailkan oleh Tetuan Shearn Delamore & Co., Peguamcara bagi Plaintiff yang alamat penyampaiannya di Tingkat 7, Wisma Hamzah-Kwong Hing, No. 1, Leboh Ampang, 50100 Kuala Lumpur. SD (TAX) 3471695 (AR) 1893193_1

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN RAYUAN & KUASA-KUASA KHAS)

SAMAN PEMULA NO: WA-24-12-03/2017

Dalam perkara Seksyen 3 Akta Undang-Undang Sivill, 1956

Dan

Dalam perkara Seksyen-seksyen 126, 127, 128 dan 129 Akta Keterangan, 1950

Dan

Dalam perkara Akta Profesion Undang-Undang, 1976

Dan

Dalam perkara Seksyen-seksyen 80, 142(5) dan Bahagian V Akta Cukai Pendapatan, 1967

Dan

Dalam perkara, Perkara 5 dan 96 Perlembagaan Persekutuan

Dan

Dalam perkara Aturan 7, Aturan 15 kaedah 16 dan Aturan 28 Kaedah-Kaedah Mahkamah, 2012.

Antara

BAR MALAYSIA

PLAINTIFF

Dan

KETUA PENGARAH HASIL DALAM NEGERI

DEFENDAN

BEFORE JUSTICE
KAMALUDIN BIN MD. SAID
ON 2 APRIL 2018

IN OPEN COURT

ORDER
(Enclosure 1)

UPON THE APPLICATION of the Plaintiff which was fixed for decision
on this day **AND UPON READING** the Originating Summons dated 7 March 2017, the

Affidavits and the Written Submission of the parties which have all been filed herein **AND UPON HEARING** Anand Raj (Foong Pui Chi with him) of Counsel for the Plaintiff and Ahmad Isyak Bin Mohd Hassan, Senior Revenue Counsel (Ruzaidah bt. Yaacob, Revenue Counsel, with him), for the Defendant, **THE FOLLOWING DECLARATIONS ARE ORDERED:**

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;
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; and

4. costs in the amount of RM5,000.00 be paid by the Defendant to the Plaintiff and subjected to an Allocatur fee.

Dated 2 April 2018.

.....
Deputy Registrar
High Court of Malaya
Kuala Lumpur

This Order is filed by Messrs Shearn Delamore & Co., Solicitors for the Plaintiff whose address for service is at 7th Floor, Wisma Hamzah-Kwong Hing, No. 1, Leboh Ampang, 50100 Kuala Lumpur. SD (TAX) 3471695 (AR) 1893186_1

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DALAM MAHKAMAH RAYUAN MALAYSIA

(BIDANG KUASA RAYUAN)

RAYUAN SIVIL NO. W-01(A)-304-05/2018

ANTARA

KETUA PENGARAH HASIL DALAM NEGERI

... PERAYU

DAN

BAR MALAYSIA

... RESPONDEN

[Dalam Perkara Mengenai Mahkamah Tinggi Malaya Di Kuala Lumpur

(Bahagian Rayuan & Kuasa-Kuasa Khas)

Saman Pemula No. WA-24-12-03/2017

Antara

Bar Malaysia

... Plaintiff

Dan

Ketua Pengarah Hasil Dalam Negeri

... Defendan]

KORAM :

YAACOB BIN HJ MD SAM, HMR

S NANTHA BALAN, HMR

DARRYL GOON SIEW CHYE, HMR

PADA 3 MAC 2021

DALAM MAHKAMAH TERBUKA

PERINTAH

RAYUAN INI ditetapkan untuk pendengaran pada hari ini dalam kehadiran Ahmad Isyak bin Mohd Hassan, Peguam Kanan Hasil (Mohammad Hafidz bin Ahmad, Peguam Kanan Hasil dan Mohammad Danial bin Ahmad, Peguam Hasil bersamanya) bagi pihak Perayu dan Anand Raj (Foong Pui Chi dan Abhilaash Subramaniam bersamanya), Peguam-Peguam bagi pihak Responden DAN SETELAH MEMBACA Rekod Rayuan dan kesemuanya yang



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difaikkan di sini **DAN SETELAH MENDENGAR** hujahan pihak-pihak yang tersebut **MAKA ADALAH DENGAN INI DIPERINTAHKAN DENGAN SEBULAT SUARA** bahawa:-

- (a) rayuan ini ditolak;
- (b) Perintah Mahkamah Tinggi Malaya di Kuala Lumpur bertarikh 2 haribulan April 2018 disahkan; dan
- (c) tiada perintah untuk kos diberikan.

DIBERI di bawah tandatangan saya dan Meterai Mahkamah pada 3 haribulan Mac 2021.

Bertarikh pada 23-Mac-2021



NUR SYAFAWATI ARIFIN
Penolong Kanan Pendaftar
Mahkamah Rayuan
Putrajaya

.....
**PENOLONG KANAN PENDAFTAR
MAHKAMAH RAYUAN MALAYSIA
PUTRAJAYA**

Perintah ini difaikkan oleh Tetuan Shearn Delamore & Co., Peguamcara bagi pihak Responden, yang alamat untuk penyampaianya ialah di Tingkat 7, Wisma Hamzah-Kwong Hing, No. 1, Leboh Ampang, 50100 Kuala Lumpur.

SD (TAX) 3471695 (AR) 2181820_1



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**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANG KUASA RAYUAN)
RAYUAN SIVIL NO. W-01(A)-304-05/2018**

ANTARA

KETUA PENGARAH HASIL DALAM NEGERI

... PERAYU

DAN

BAR MALAYSIA

... RESPONDEN

[Dalam Perkara Mengenai Mahkamah Tinggi Malaya Di Kuala Lumpur
(Bahagian Rayuan & Kuasa-Kuasa Khas)
Saman Pemula No. WA-24-12-03/2017

Antara

Bar Malaysia

... Plaintiff

Dan

Ketua Pengarah Hasil Dalam Negeri

... Defendan]

CORAM :

YAACOB BIN HJ MD SAM, HMR

S NANTHA BALAN, HMR

DARRYL GOON SIEW CHYE, HMR

ON 3RD MARCH 2021

IN OPEN COURT

ORDER

THIS APPEAL fixed for hearing on this day in the presence of Ahmad Isyak bin Mohd Hassan, Senior Revenue Counsel (Mohammad Hafidz bin Ahmad, Senior Revenue Counsel and Mohammad Danial bin Ahmad, Revenue Counsel, with him) for the Appellant and Anand Raj (Foong Pui Chi and Abhilaash Subramaniam with him) of Counsel for the Respondent **AND UPON READING** the Record of Appeal and all which have been filed herein



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AND UPON HEARING the submissions of the parties **IT IS HEREBY UNANIMOUSLY ORDERED** that:-

- (a) this appeal be dismissed;
- (b) Order of the High Court of Malaya at Kuala Lumpur made on the 2nd day of April 2018 be affirmed; and
- (c) no order as to costs be given.

GIVEN under my hand and Court seal on the 3rd day of March 2021.

.....
**SENIOR ASSISTANT REGISTRAR
COURT OF APPEAL OF MALAYSIA
PUTRAJAYA**

This Order is filed by Messrs. Shearn Delamore & Co., Solicitors for the Respondent, whose address for service is at 7th Floor, Wisma Hamzah-Kwong Hing, No. 1, Leboh Ampang, 50100 Kuala Lumpur. SD (TAX) 3471695 (AR) 2182509_1



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