

HAROLD TAN KOK LENG

Partner

Harold graduated from the University of New South Wales, Australia with a double LL.B (Bachelor of Laws) degree and BCom (Accounting) degree. He was called to the Malaysian Bar as an Advocate & Solicitor of the High Court of Malaya in June 2001 and is a member of the Law Society of New South Wales, Australia. Harold is a Fellow of the Chartered Institute of Arbitrators (U.K.), holds a Diploma in International Commercial Arbitration and is a Panel Arbitrator of the Asian International Arbitration Centre. Prior to setting up Messrs. Harold & Lam Partnership in 2015, Harold was a partner of one of the largest law firms in Malaysia.

Harold's main areas of practice are commercial and tax dispute resolution. His portfolio of dispute resolution work includes commercial and civil disputes, tax, shareholder disputes, corporate restructuring, banking and finance, recovery, professional negligence, defamation and contractual disputes. Harold has appeared at all tiers of the Malaysian courts, in arbitrations as well as hearings before the Special Commissioners of Income Tax and in disciplinary proceedings before the Malaysian Medical Council. Apart from dispute resolution, Harold also has experience in banking legal due diligence exercises.

HAROLD'S AREAS OF PRACTICE AND EXPERIENCE

Commercial Litigation and Shareholders Disputes

- Harold acted for the shareholders of a company involved in the manufacturing and distribution of toiletries products in an oppression action brought against them by a private equity fund arising from a series of rights issue exercises undertaken by the company, involving amongst other issues the rights of redeemable convertible preference shareholders, put option agreements, shareholder agreements with reserved matters clauses, and powers of corporate representatives.
- Acted in the defence of a group of former directors of a public listed company in a case involving allegations of breach of duties and conspiracy concerning a subject matter valued at RM2.5 billion.
- Acted as part of a team of lawyers engaged to advise and represent a statutory corporation in its disputes with its turnkey contractor and a former senior employee over various land purchase and development agreements with a value of few billion ringgit.
- Acted for an information technology company in its dispute with its former directors and senior employees involving allegations of breach of fiduciary duties, conspiracy and fraud. The litigation involved the application for a Mareva Injunction to freeze the defendants' assets, as well as obtaining and executing an Anton Piller Order.

- Advised and acted for a distributor in Malaysia of a world-renowned brand of luxury cars in a broad range of legal matters.
- Advised and acted for the former shareholders and directors of 2 companies involved in the manufacturing of sound boxes in their shareholding and directorial disputes with the new owner and management of the companies.
- Advised and acted for the minority shareholders of a timber company in a highly contested oppression petition which involved amongst others the calling of several emergency general meetings and an injunction application to restrain the majority shareholders from voting on various proposed resolutions to remove the old and appoint new directors.
- Acted for the owner and developer of a premier golf course in Malaysia in a class action brought by a group of its founding members involving allegations of misrepresentation and fraud.
- Acted for a Singapore consultancy company in its dispute with its Malaysian joint venture partner over the management of a 5-star hotel in Kuala Lumpur.
- Acted for and successfully recovered the land for an individual land owner whose landed property had been fraudulently transferred to a 3rd party through forgery and fraudulent conduct.
- Acted for the purchasers of a land in an action brought by the original owner who alleged that his land had been fraudulently transferred away by a third-party fraudster, in which the outcome of the case was that the full purchase price including interest were successfully recovered from the vendor by the clients.
- Acted for a group of minority shareholders in their dispute over the management and control of the company by the majority shareholder involving the application to court of a derivative action.

Corporate Recovery and Restructuring

- Harold acted for and assisted a public company formerly listed on Bursa Malaysia in its restructuring exercise. The case involved amongst others applications to court for a restraining order, resisting opposition to the proposed scheme by disgruntled creditors, holding of the Scheme Creditors Meeting and obtaining the sanction of the court to the scheme of arrangement.
- Acted for and assisted a public company in its capital reduction exercise.

Contractual Dispute

- Harold has advised and acted for a host of clients in various industries, including the manufacturing, information technology, transportation and freight forwarding, tyre and sports rim reselling, property development, medical services and other industries, in their contractual disputes.

- Acted for clients in land transaction and tenancy disputes.
- Acted for clients in their contractual disputes involving issues of money lending.
- Acted for clients in debt recovery actions.
- Acted for a company in an arbitration to enforce a director's guarantee given in respect of a building contract.
- Acted for a health service provider in its dispute with its supplier in relation to an Equipment Placement and Reagent Agreement that contained a minimum purchase requirement imposed on the client.
- Acted for a company in its contractual dispute with its joint venture partner in relation to a property development project that involved various interlocutory applications including interlocutory injunction, consolidation and discovery.
- Acted for a client in a share sale dispute which originated at the High Court that went all the way up to the Federal Court in a review application, and various execution proceedings along the way, which ended in the client successfully recovering the full sum claimed including interest.
- Acted for a company in its defence of a suit brought by a property developer of a stalled development involving allegations of breach of a bulk purchase agreement.

Tax Litigation

- Harold's tax advisory and litigation experience includes having advised and acted for an independent maritime foundation established in Norway with presence in over 100 countries pertaining to the chargeability of withholding tax in Malaysia and applicability of the Double Taxation Treaty between Malaysia and Norway on income derived from the provision of technical and management services rendered to the client's subsidiaries in Malaysia.
- Advised and acted for the developer of a high-end service apartment situated in the heart of Kuala Lumpur and also a major Malaysian palm oil producer on Real Property Gains Tax issues.
- Advised and acted for a medical equipment supplier in its income tax dispute with the Inland Revenue Board pertaining to the deductibility of fees paid to the company directors as an expense of the company.
- Advised and acted for a major international consultancy firm in an income tax dispute with the Inland Revenue Board. The case concerns the taxability or otherwise of foreign sourced employment income of the client's consultants.

- Advised a major and world-renowned packaging company on tax queries issued by the Inland Revenue Board on the company following an investigation conducted by the tax authorities.
- Advised and acted for a number of international and Malaysian oil and gas companies in their income tax disputes with the Inland Revenue Board arising from tax investigations and raids conducted by the tax authorities on the companies, their directors and senior employees.
- Advised and acted for a major developer in its income tax dispute with the Inland Revenue Board over the deductibility of certain bad and doubtful debts claimed by the company.
- Advised and acted for an established manufacturer of plastic containers in its dispute with the Inland Revenue Board over the deductibility of expenses related to dealers' incentive trips and gifts.
- Advised a Malaysian oil and gas company on the taxation and disclosure implications of a 'Key-Man' Insurance Policy proposed to be set up by the company for its Managing Director.
- Advised a Malaysian company on the tax consequences arising from a settlement agreement entered into between the client and its competitor.
- Advised a broad range of companies and individuals on the litigation aspect of their tax disputes with the Inland Revenue Board.
- Advised and assisted a wide range of businesses including those in the construction, oil and gas, insurance, manufacturing, international trading, and retail industries as well as SMEs on the implementation, enforcement and other legal matters concerning GST.
- Advised and acted for the director of a dredging and reclamation company in successfully opposing a claim brought by the Inland Revenue Board against the director for the recovery of outstanding tax payments owed by the company to the revenue.
- Advised and acted for a company in its income tax dispute over the chargeability of the sale of its real properties to income tax as opposed to real property gains tax.

Defamation and Tort Cases

- Harold has advised and acted for a client in a defamation claim and successfully obtained an interlocutory injunction order to restrain the other party from continuing to publish defamatory materials against the interest of the client.
- Advised and acted for a property developer in a tortious claim against a town council involving claims for trespass and nuisance.
- Advised and acted for a client in a case involving allegations of physical battery, mental and emotional abuse, duress and coercion.

- Acted for a law firm in a defamation action brought against a litigant who published defamatory statements against the firm to the judge of the case in which the law firm acted as solicitors.
- Acted for a logistic service provider in a case involving allegations of trespass.

Public and Administrative Law

- Harold has appeared as co-counsel before the Federal Court (our apex court) in an appeal that dealt with a novel point of law pertaining to the interpretation of various sections in the Employees Provident Fund Act 1991.
- Appeared as co-counsel before the Federal Court in an application by Bank Negara Malaysia (the Central Bank of Malaysia) to intervene and be added as a party to an appeal with serious repercussions to the insurance industry on grounds of public interest.

Construction Dispute Resolution and Advisory

- Harold has advised and acted for the owner of a mixed development project comprising of a high-end hotel and service apartments in its dispute with the main contractor, nominated sub-contractors and suppliers involving a host of construction issues, including liquidated and ascertained damages, extension of time applications, validity of architect instructions, defects, performance bonds and potential remedies.
- Advised and acted for a sub-contractor in a contractual claim against the main contractor for failure to pay the sub-contractor for certified works done in a slope stabilisation project.
- Advised and acted for a main contractor in its dispute with the employer, nominated sub-contractor and supplier of defective glass panels.
- Advised and acted for a main contractor in its dispute with owners of land affected by the main contractor's works.
- Advised and acted for a main contractor in seeking an injunctive order from the courts to restrain the employer from making a demand on a performance bond.
- Advised and acted for a sub-contractor in seeking an injunctive order from the courts to restrain the main contractor from dealing with the retention sum the main contractor had received and was then holding on trust for the sub-contractor upon the main contractor being wound up.
- Advised and acted for various stakeholders in arbitration and litigation in various kinds of construction works, including a transshipment hub and power plant.
- Advised and acted for a main contractor in its dispute with the employer involving the construction of a high-end condominium, involving amongst others, issues pertaining to unlawful termination, extension of time applications, liquidated ascertained damages, common law damages and evidence by delay and quantum experts.

Banking and Finance

- Harold acted for major banks in numerous debt recovery actions that generally include civil, foreclosure, execution, bankruptcy and winding up proceedings.
- Acted as part of a team of lawyers in 2 separate legal due diligence exercises pertaining to the sale of non-performing loans with values of over a billion ringgit.

Professional Liability and Negligence

- Harold acted for doctors in defending civil suits involving allegations of breach of contractual and tortious duties.
- Advised and represented doctors in various disciplinary proceedings before the Malaysian Medical Council as well as defending doctors in civil suits involving allegations of medical negligence.
- Acted for members of the legal profession in defending civil suits involving allegations of fraud, breach of contract and professional negligence.

Arbitrator

- Harold has acted in a number of arbitrations administered by the Asian International Arbitration Centre (AIAC) as sole arbitrator.

HAROLD'S OTHER PROFESSIONAL AFFILIATIONS AND PUBLICATIONS

- Harold has authored various legal articles and case commentaries for Legal Insights including:
 - ❖ Secrets of Bai Ajil Bithaman (BBA) Revealed.
 - ❖ What's in a Name?
 - ❖ Danaharta Immune from Injunctions.
 - ❖ Federal Court Affirms Conditions for Leave to Appeal.
 - ❖ That's Entertainment (guidance on deductibility of entertainment expenses).
 - ❖ Re Mohd Zuhri Mohd Idris; Ex Parte Bumiputra-Commerce Bank Berhad.
 - ❖ Teow Chuan & Anor v Dato' Anthony See Teow Guan.
 - ❖ To be or not to be (registered for GST), that's the question.

- Author of an article entitled “Taxation of the Property Development Industry” published in the inaugural issue of the Construction Law Digest.
- Author of an article entitled “Doctors With Sharp Scalpels Beware!” republished in the December 2013 issue of Berita MMA of the Malaysian Medical Association.
- Delivered a paper entitled ‘Fiduciary Duties and Board Members’ at a seminar organised by the Ministry of Transport in May 2011.
- Participated as a trainer at the “Training Course for Medical Experts” organised by the Medical Protection Society in July 2012.
- Participated as a presenter at the 2-days “Malay Reserved Land – Legal & Practical Issue” seminar organised by Bridge Knowle in July 2015.
- Participated as a presenter at the 2-days “GST Act 2014 + GST Audit & Investigation” seminar organised by Bridge Knowle in August 2015.
- Delivered various presentations on a wide range of legal topics including GST, income tax, file management, professional negligence and land law.
- Participated as a presenter in the L2 Construction Legal Online Series in 2020.
- Harold is a Fellow of the Chartered Institute of Arbitrators, (U.K).
- Harold is a Panel Arbitrator of the Asian International Arbitration Centre (AIAC).
- Harold was a Committee Member of the Silk Road Business Council (Malaysia).
- Harold was a Legal Advisor to the Federation of Chinese Associations Malaysia (Huazong).