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### Proposed New Section to Administration of Islamic Law (Federal Territories) Act 1993

The Administration of Islamic Law (Federal Territories) (Amendment) Bill 2016, read for the first time in Parliament on 17 October 2016, seeks to introduce a new section in the Administration of Islamic Law (Federal Territories) Act 1993 [Act 505]. The first part of the new section reads:

#### *Reciprocal action*

57A. (1) Where a Syariah Court in any State in Malaysia issues a warrant or summons, as the case may be, under any law of that State to be executed or served on any person who is or is believed to be in the Federal Territories, any Syariah Judge may endorse the warrant or summons by signing it and the warrant or summons may be executed or served on such person as if the warrant or summons had been issued by a Syariah Court in the Federal Territories according to the provisions of this Act.

(2) Where a Syariah Court in the Federal Territories issues a warrant authorising the arrest of any person or summons calling any person to appear in a Syariah Court, and such person is or is believed to be in another State in Malaysia and such warrant or summons is executed or served on such person in accordance with any law of that State, the warrant or summons shall, for the purpose of this Act, be deemed to have been duly executed or served as if the execution or service had been effected in the Federal Territories.

#### Objective

The new section intends to:

- validate the execution of warrants of arrest and services of summons issued by the Syariah Court in the Federal Territories against Muslims in other states;
- create uniformity between all Syariah laws in Malaysia as the Federal Territories are the only state without the corresponding provision;
- rectify and buttress the powers of the religious authorities in the Administration of Islamic Law (Federal Territories) Act 1993 [Act 505] (see *Kassim @ Osman Bin Ahmad v Dato' Seri Jamil Khir Bin Baharom Menteri Di Jabatan Perdana Menteri (Hal Ehwal Agama Islam) & Ors* [2016] 5 MLJ 258 (CA), which exposed the lack of powers and weaknesses in the Syariah enactments of the Federal Territories).

#### Analysis

The words “any person” in the new section can only refer to Muslims as it is beyond doubt that non-Muslims cannot be subject to Islamic law or even be compelled to appear before the Syariah Court. The Syariah Court has no jurisdiction over non-Muslims even by consent and a non-Muslim cannot be subject to and/or be the subject of enforcement actions by JAWI (see *Jabatan Agama Islam Wilayah Persekutuan & Ors v Berjaya Books Sdn Bhd & Ors* [2015] 3 MLJ 65 (CA)).

The service of summons outside the Federal Territories is permissible, provided that the summons is endorsed with the words “For service out of the jurisdiction” by a Syariah Court in the Federal Territories (see s 39 of the Syariah Criminal Procedure (Federal Territories) 1997 [Act 560]).

However, the execution of a warrant of arrest outside the Federal Territories may not be possible as the Syariah Court in the Federal Territories does not have the power to direct religious officers in other states to enforce its warrant of arrest. This applies also to JAWI, which would only have powers to enforce Syariah laws, including warrant of arrests, within the Federal Territories.

#### Conclusion

It is trite that under the Federal Constitution, Islamic law is a state matter and there are limits on the enactment and execution of these laws. As to whether the states can extend jurisdiction of the Syariah Court by reciprocal arrangement, the position is still unclear and left to be tested.

*Muhammad Faizal Faiz bin Mohd Hasani*

This e-Law Alert is brought to you by the Dispute Resolution Practice Group. If you have any queries, please do not hesitate to contact the team:

Lambert Rasa-Ratnam

**Partner**

DID: +603 2170 5859

Fax: +603 2161 3933

Email: [lr@lh-ag.com](mailto:lr@lh-ag.com)

#### **BANKING & INSOLVENCY**

Kumar Kanagasingam

**Partner**

DID: +603 2170 5803

Fax: +603 2161 3933

Email: [kk@lh-ag.com](mailto:kk@lh-ag.com)

Sean Yeow Huang-Meng

**Partner**

DID: +603 2170 5867

Fax: +603 2161 3933

Email: [yhm@lh-ag.com](mailto:yhm@lh-ag.com)

Andrew Chiew Ean Vooi

**Partner**

DID: +603 2170 5852

Fax: +603 2161 3933

Email: [ac@lh-ag.com](mailto:ac@lh-ag.com)

Mong Chung Seng

**Partner**

DID: +603 2170 5864

Fax: +603 2161 3933

Email: [mcs@lh-ag.com](mailto:mcs@lh-ag.com)

Loh Chu Bian

**Partner**

DID: +603 2170 5862

Fax: +603 2161 3933

Email: [lcb@lh-ag.com](mailto:lcb@lh-ag.com)

Hoi Jack S'ng

**Partner**

DID: +603 2170 5908

Fax: +603 2161 3933

Email: [hjs@lh-ag.com](mailto:hjs@lh-ag.com)

#### **CONSTRUCTION**

Dato' Nitin Nadkarni

**Partner**

DID: +603 2170 5866

Fax: +603 2161 3933

Email: [nn@lh-ag.com](mailto:nn@lh-ag.com)

## CORPORATE & COMMERCIAL DISPUTES

Rosli Dahlan

**Partner**

DID: +603 2170 5804

Fax: +603 2161 3933

Email: [rd@lh-ag.com](mailto:rd@lh-ag.com)

G Vijay Kumar

**Partner**

DID: +603 2170 5870

Fax: +603 2161 3933

Email: [vkg@lh-ag.com](mailto:vkg@lh-ag.com)

SM Shanmugam

**Partner**

Tel: +603 2170 5865

Fax: +603 2161 3933

Email: [ssm@lh-ag.com](mailto:ssm@lh-ag.com)

Ang Hean Leng

**Partner**

Tel: +603 2170 5809

Fax: +603 2161 3933

Email: [ahl@lh-ag.com](mailto:ahl@lh-ag.com)



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