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Leave of court required for post-winding-up matters involving value of less than RM250,000.00

In *CNLT (Far East) Berhad (In Liquidation) v Maybank Investment Bank Berhad & Anor*,¹ the Court of Appeal struck out a Notice of Appeal filed by the Liquidators of CNLT (Far East) Berhad (“**Company**”) on the ground that no prior leave of Court was obtained under *Section 68(1)(a) of the Courts of Judicature Act 1964 (“CJA”)*, when the value of the subject matter of the claim was less than RM250,000.00.

The Appeal arose from an application by Maybank Investment Bank Berhad, as Security Agent for a group of syndicated lenders, to inquire into the Liquidators’ conduct under *Section 510 of the Companies Act 2016*. At the conclusion of the proceedings, the High Court ordered that the Liquidators remit a sum of RM166,057.05 to the Security Agent, being the sale proceeds of a property charged by the Company to the Security Agent after deducting the costs and expenses incurred by the Liquidators in the sale of the property.

The Security Agent applied to strike out the appeal as the Liquidators failed to obtain leave of Court under *Section 68(1)(a) of CJA* which provides that no appeal shall be brought to the Court of Appeal when the value of the subject

¹ Court of Appeal Civil Suit No. W-01(A)-357-06/2021

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matter of the claim is less than RM250,000.00, except with leave of the Court of Appeal.

The Liquidators contended that leave of Court is not required pursuant to *Part VIII, para 18 of the Court of Appeal's Practice Direction No. 1 of 2017²* ("PD") because the subject matter involves a winding-up petition.

The Court of Appeal rejected the Liquidators' contention and allowed the Security Agent's striking out application. In its broad oral grounds, the Court of Appeal held that the exceptions to the leave requirement provided in the PD are not applicable to post-winding up matters. As such, the Liquidators ought to have applied for leave of Court under *Section 68(1)(a) of CJA* before filing the Notice of Appeal. As they have failed to do so, the appeal was struck out for its failure to comply with the mandatory leave requirement under *Section 68(1)(a) of CJA*.

Key Takeaway

This case serves as a timely reminder that parties pursuing an appeal should be mindful of the mandatory leave requirement under *Section 68(1)(a) of CJA* and the limited scope of application of the PD in winding-up matters.

Maybank Investment Bank Berhad was represented by Chia Oh Sheng and Lim Jun Xian of Lee Hishammuddin Allen & Gledhill.

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² *Part VIII para 18 of the PD provides that the following matters do not require leave to appeal –*

- (a) *Certiorari;*
- (b) *Declaration;*
- (c) *Injunction (except for action which originates from Sessions Court);*
- (d) *Bankruptcy proceedings;*
- (e) *Matters relating to matrimonial proceedings under the Law Reform (Marriage and Divorce) Act 1976 [Act 164];*
- (f) *Company winding-up petition; and*
- (g) *Judgment for unliquidated damages / unliquidated amount.*