

JURISDICTIONAL REPORT – MALAYSIA

(LAWASIA Annual Council Meeting 2022)

By: Malaysian Bar

A. Introduction – About Us

1. The Malaysian Bar is a creature of statute established under the Advocates and Solicitors' Ordinance 1947 which was subsequently repealed by the Legal Profession Act 1976. It is an independent Bar whose aim is to uphold the rule of law and the cause of justice and protect the interest of the legal profession as well as that of the public.
2. Pursuant to Section 42 of the Legal Profession Act 1976, the Bar has several objectives which includes, inter alia, to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour and to maintain and improve the standards of conduct and learning of the legal profession in Malaysia.
3. As at 31 August 2022, the Malaysian Bar has 21,926 members whereby 55.81% comprises of female lawyers and 44.19% of male lawyers.
4. The Bar Council comprises of forty-two members who are elected annually to manage the affairs and execute the functions of the Malaysian Bar. The Office Bearers, namely President, Vice-President, Secretary and Treasurer are elected annually by the Bar Council at its first meeting which is traditionally held immediately after the Annual General Meeting (AGM) of the Malaysian Bar.
5. Brief information of the Malaysian Bar are as follows: -

| Present Office Bearers 2022/2023 | |
|---|--|
| President | Karen Cheah Yee Lynn |
| Vice President | Mohamad Ezri b Abdul Wahab |
| Secretary | Anand Raj s/o R Balasupramaniam |
| Treasurer | Murshidah bt Mustafa |
| Secretariat's Contact Details | |
| Address | 2, Leboh Pasar Besar, City Centre, 50050 Kuala Lumpur, Wilayah Persekutuan, Malaysia |
| Phone Number | 03-2050 2050 |
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B. Issues pertaining to the Legal Profession in Malaysia

(i) Legislation Governing the Legal Profession

6. The Malaysian Bar has been in active engagement with the Attorney General's Chambers of Malaysia on the proposed amendments to the Legal Profession Act 1976 ("LPA"), including conducting stakeholder consultations. This is an ongoing process.

7. The draft Amendment Bill is focused on amendments to provisions concerning, among others, legal aid, pupillage and the ability of advocates and solicitors to practice through a Limited Liability Law Partnership.

(ii) Legal Research Tools

8. On 11 August 2022, the Malaysian Bar officially commemorated the signing of service agreements with three legal service providers — CLJ Legal Network Sdn Bhd, The Digital Library Sdn Bhd, and Thomson Reuters Asia Sdn Bhd for the provision of legal research products by each of the service providers to every Member of the Bar.
9. The signing of the service agreements follows the “*Resolution Regarding the Provision of Legal Research Products from CLJ Legal Network Sdn Bhd, The Digital Library Sdn Bhd, and Thomson Reuters Asia Sdn Bhd*” that was adopted at the 76th Annual General Meeting of the Malaysian Bar on 19 Mar 2022.
10. Negotiations with the service providers took place subsequently, where service-level agreements were signed with each of them to provide legal research products for Members of the Bar. A new three-year legal research product scheme began in July 2022, with a six-month subsidy by the Bar Council for the year. Members would only have to start paying an annual Legal Research Levy in 2023.
11. This initiative was a culmination of efforts that begin as early as 2018 and the detailed consideration of the best services for practitioners at the Malaysian Bar.
12. As we learn from the events of the pandemic where it may not be reasonable or convenient for lawyers to physically travel to a library for the purposes of conducting legal research, this initiative effectively brings legal resources to the footsteps of legal practitioners. The aim of this initiative is to enhance the knowledge and skills of lawyers, thereby raising the standards of the legal profession.

C. Rule of Law Issues

(i) Independence of the Malaysian Judiciary

13. On April 2022, the Malaysian Anti- Corruption Commission (“MACC”) had publicly named and announced that they were investigating a sitting Court of Appeal Judge for allegations of corruption based on a blog post.
14. The Malaysian Bar via a press statement dated 25 April 2022 took the position that while Judges are not above the law and may be investigated, the manner in which the investigations were made so publicly is tantamount to an intimidation against the judiciary.
15. The Malaysian Bar convened an Extraordinary General Meeting (“EGM”) on 27 May 2022 and resolved inter alia, to condemn the unprecedented manner in which the MACC had publicly announced the commencement of criminal investigation of a Superior Court Judge, and disclosed the name of the judge to the public, for an

indefinite period and without proper closure, which is tantamount to an act of intimidation against the Judiciary, and undermines confidence of the public in the institution.

16. The Malaysian Bar, at its EGM, had resoundingly resolved to hold a peaceful assembly as a form of protest against the interference with the independence of the Judiciary, and breaches of the fundamental principle of separation of powers.
17. The Walk for Judicial Independence was held on 17 June 2022 as a “black and white” march from Padang Merbok to Parliament, a peaceful protest against interference with the independence of the Judiciary, and breaches of the fundamental principle of separation of powers. The plan was to hand over the Malaysian Bar’s memorandum to YB Datuk Wira Mas Ermieyati binti Samsudin, Deputy Minister in the Prime Minister’s Department (Parliament and Law), who would receive the memorandum at Parliament on behalf of the Prime Minister.
18. As Members of the Bar gathered at the car park of Padang Merbok at 10:00 am on the day, it became clear from the heavy police presence and barricades set up around the car park that things would not go according to plan. After speeches by the Office Bearers of the Bar Council, Members of the Bar, led by the President of the Malaysian Bar, proceeded to make their way to Parliament. However, the police blockade prevented everyone from leaving and participants were essentially physically confined to the car park at Padang Merbok. In the end, the memorandum was handed over by the President to the Deputy Minister who made her way to Padang Merbok.
19. The Malaysian Bar had strongly condemned the actions of the police and stressed that the police had failed in their role to ensure that Members of the Malaysian Bar were able to exercise their constitutional right to peacefully assemble, as guaranteed in the Federal Constitution.
20. On the very same day of The Walk For Judicial Independence (*“the Walk”*), the police issued a media statement stating that investigations will be conducted pertaining to the Walk. Several members of the Malaysian Bar were issued notices under Section 111 of the Criminal Procedure Code to present themselves at the police station for questioning.
21. In response, the Malaysian Bar had initiated Judicial Review proceedings against the issuance of the said notices, as well as commencement of a civil suit to challenge the unlawful actions and conduct of the police during the Walk.

(ii) Laws on Political Financing

22. The Malaysian Bar continues to reiterate its call for the enactment of political financing laws without delay given the dire need for good governance and transparency in our country relating to activities carried out by political parties and politicians, especially in the process of handling political funds. The lack of a legislative framework in Malaysia has created an ecosystem ripe for corruption, cronyism, conflict of interest, and abuse of power, all of which have been difficult to curb.

23. In the aftermath of the 1Malaysia Development Berhad (“1MDB”) scandal that broke in 2015, it was revealed that money that was misappropriated from 1MDB was channeled to the personal bank account of former Prime Minister, Dato’ Sri Mohd Najib Razak, wherein a donation from a foreign source for the 13th general election campaign, was received. This scandal exposed the unsavory manner in which political parties can abuse such funds to secure support for elections, and is tantamount to subversion of the democratic process, which can destabilize our political system.
24. Talks about the enactment of laws to govern political financing have been in the works since 2009. In the wake of the 1MDB scandal, the Government established a National Consultative Committee on Political Financing, which subsequently recommended that a new Political Donation and Expenditure Act be introduced. However no concrete steps were taken to materialize this recommendation.
25. The Malaysian Bar had been working on a draft bill with the All-Party Parliamentary Group (APPG) on Political Financing since April 2022 with the hope that it will accelerate the realization of the country’s aspirations for better governance, especially before the next general election. The All-Party Parliamentary Group on Political Financing has just released the complete Bill on Political Financing on 5 August 2022. The Bill was submitted as a Private Member’s Bill to the Secretary of the Dewan Rakyat on 13 July 2022.

(iii) Anti-party Hopping Law

26. The Malaysian Bar provided its feedback on anti-defection laws to the Government of Malaysia upon request. We have been advocating such laws since 2018.
27. The Dewan Rakyat (House of Representatives) of the Malaysian Parliament passed the Constitution (Amendment) (No.3) Bill 2022 (‘the Bill’) on 28 July 2022 after a two-day debate. The Bill, which seeks to discourage Members of Parliament from switching political party allegiance, was passed by a unanimous vote of all 209 Members of Parliament present at the Dewan Rakyat, with 11 Members of Parliament absent.
28. The need for a law to stem party defections came into the spotlight in Malaysia following the collapse of the Pakatan Harapan (PH) government, led by Tun Dr Mahathir Mohamad, in 2020.
29. Introduction of section 7A into Part I of the Eighth Schedule of the Federal Constitution will require State Assemblies to adopt the anti-party hopping provisions into their State Constitutions. Further, Clause (4) of Article 71 of the Federal Constitution empowers Parliament to enact law to give effect in a State to these provisions. Thus, it is likely that over time, anti-party hopping laws that are identical or substantially identical to Article 49A of the Federal Constitution will apply to State Assemblies.
30. The Bill had obtained the consent of the Yang di-Pertuan Agong on 31 August 2022 and was gazetted as Act A1663 on 6 September 2022. The Act came into force on 5 October 2022.

(iv) Law Reforms

31. The Malaysian Bar had also been working with The All-Party Parliamentary Group (APPG) on Independence of the Judiciary with regard to several areas of law reform.
32. Primarily the APPG discussed on issues pertaining to the separation of powers between the Attorney General and the role of the Public Prosecutor as well as reforms relating to the Judicial Appointments Commission.

(v) International Obligations

33. On 21 March 2022, the Government of Malaysia deposited the instrument of ratification of the Protocol of 2014 to the Forced Labour Convention, 1930 with the Director-General of the ILO, thereby becoming the 58th country in the world, and the second ASEAN member State to ratify that Protocol. With this ratification, Malaysia has renewed its commitment to fight against forced labour in all its forms, including human trafficking.

(vi) Legal Aid

34. To assist the public in its access to justice, the Malaysian Bar has also implemented the The Bar Council Legal Aid Scheme, which is carried out by the Bar Council Legal Aid Centres through its staff members and volunteer lawyers at the State level in Malaysia.
35. Additionally, the Malaysian Bar has also implemented the Yayasan Bantuan Guaman Kebangsaan (National Legal Aid Foundation, “YBGK”) scheme. This is a comprehensive legal aid scheme that funds lawyers to do legal aid work in criminal matters.
36. Under this scheme, which began operating in April 2012, free legal assistance is provided to all Malaysians — irrespective of their financial means — at the police station, at remand hearings, and when they are charged in court.
37. The YBGK scheme has made access to legal representation and justice a reality for the several thousands of persons caught in the web of our criminal justice system.