Majlis Peguam
Bar Council Malaysia

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Agenda and Motions

77th Annual General Meeting of the Malaysian Bar ("AGM")
(18 March 2023)

Date:	**18 March 2023 (Saturday)**
Time:	**10:00 am**
Venue:	**Dewan San Choon, Level 2, Wisma MCA, Jalan Ampang, 50450 Kuala Lumpur**

The agenda for the AGM is as follows:

(1) To consider and, if approved, to adopt the minutes of the 76th AGM held on 19 March 2022;

(2) To discuss matters arising from the minutes of the 76th AGM held on 19 March 2022;

(3) To consider and, if approved, to adopt the minutes of the Extraordinary General Meeting of the Malaysian Bar ("EGM") held on 27 May 2022;

(4) To discuss matters arising from the minutes of the EGM held on 27 May 2022;

(5) To consider the President's Report, Chief Executive Officer's Report, Advocates and Solicitors Disciplinary Board's Report, committees' reports, and any other reports re activities of the Malaysian Bar for the year 2022/23;

(6) To consider and, if approved, to adopt the Audited Accounts of the Malaysian Bar for the year ended 31 December 2022;

(7) To consider the following motions proposed in accordance with section 64(6) of the Legal Profession Act 1976:

(7.1) "Motion Regarding the Enactment of Political Financing Laws", proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on behalf of the Bar Council, dated 10 March 2023 (**pages 4 to 6**);

(7.2) "Motion Regarding Remuneration of Judges and Establishment of Judges' Remuneration Commission", proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on behalf of the Bar Council, dated 10 March 2023 (**pages 7 to 12**);

(7.3) "Motion Regarding the Malaysian Bar Professional Indemnity Fund Scheme as an Alternative to the Present Professional Indemnity Insurance Scheme", proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on behalf of the Bar Council, dated 10 March 2023 (**pages 13 to 16**);

(7.4) "Motion Regarding Increasing the Mandatory Retirement Age of Judges", proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on behalf of the Bar Council, dated 10 March 2023 (**pages 17 to 23**);

(7.5) "Motion to Condemn the Royal Malaysia Police for Its Actions and Conduct during the Walk for Judicial Independence on 17 June 2022", proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on behalf of the Bar Council, dated 10 March 2023 (**pages 24 to 26**);

(7.6) "Motion Urging Bank Negara Malaysia to Review the Empanelment Procedures for Solicitors Adopted by the Banks", proposed by Lee Chong Hong, dated 22 February 2023 (**pages 27 to 28**);

(7.7) "Motion to Adopt the 2011 United Nations Guiding Principles on Business and Human Rights and Its Implementation in the Malaysian Legal Profession", proposed by Edmund Bon Tai Soon, Kwong Chiew Ee, Marieta Abdull Hamid, Weera Premananda, Faez Abdul Razak, Kiu Jia Yaw, Sharmila Sekarajasekaran, Raja Nadhil Aqran bin Raja Ahmad Aminollah, Vishnu Vijandran, Chang Lih Yik, Jacqueline Hannah Albert, Syuhada binti Mohd Soberi, dated 10 March 2023 (**pages 29 to 32**);

(7.8) "Motion to Establish an Independent Internal Inquiry into the Finding of Facts and Circumstances of the Signing of the LexisNexis Subscription Agreement dated 20 February 2019 and Its Termination", proposed by Surendra Ananth and Chin Yuen Xin, dated 10 March 2023 (**pages 33 to 36**);

(7.9) "Motion to Recognise Workplace Bullying as a Form of Misconduct", proposed by Goh Cia Yee, dated 10 March 2023 (**pages 37 to 41**);

(7.10) "Motion on the Right to Peaceful Assembly and Matters Related", proposed by Charles Hector Fernandez, dated 10 March 2023 (**pages 42 to 55**);

(7.11) "Motion on SOSMA and Related Matters", proposed by Charles Hector Fernandez, dated 10 March 2023 (**pages 56 to 58**);

(7.12) "Motion on Respect of Privacy & Communications and Multimedia Act", proposed by Charles Hector Fernandez, dated 10 March 2023 (**pages 59 to 62**);

(7.13) "Motion to Extend Safeguards for Independence of Judiciary to Session Court Judges", proposed by Charles Hector Fernandez, dated 10 March 2023 (**pages 63 to 64**); and

(7.14) "Motion to set TIME LIMITS for Minister to Decide on Appeals and Matters Related", proposed by Charles Hector Fernandez, dated 10 March 2023 (**pages 65 to 68**); and

(8) General.

Anand Raj
Secretary
Malaysian Bar

14 March 2023

Motion 7.1

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Secretary of the Malaysian Bar
Bar Council
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By Hand

Dear Secretary of the Malaysian Bar,

Submission of Motion for the 77th Annual General Meeting of the Malaysian Bar on 18 March 2023, entitled "Motion Regarding the Enactment of Political Financing Laws"

I refer to the above-captioned matter.

Please find enclosed a "Motion Regarding the Enactment of Political Financing Laws", which I wish to move, on behalf of the Bar Council, at the 77th Annual General Meeting of the Malaysian Bar on 18 March 2023.

Thank you.

Yours faithfully,

Karen Cheah Yee Lynn
Chairman
Bar Council

"Motion Regarding the Enactment of Political Financing Laws", Proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on Behalf of the Bar Council, Dated 10 March 2023

Whereas:

(1) There is currently no legislative framework on political financing in Malaysia except for the outdated provisions in the Election Offences Act 1954. The lacuna is exacerbated by the inadequacy of effective criminal laws, and insufficient enforcement powers of the Election Commission.

(2) The term "political financing" generally refers to the activity of sourcing funds for expenditure incurred during political party activities, and to sustain the party machinery such as fundraising, maintaining permanent offices, carrying out policy research, conducting polls, providing political education, running advertising campaigns for policies, and mobilising voters.

(3) While funding for political parties and politicians for the election process is needed, disclosure of the sources of funding, and of how the funds are channelled and utilised, must be properly regulated, with the view of being fully accountable to the public. Concerns surrounding this issue include foreign interference with domestic politics, funds being exchanged for political favours, and money being given out to the electorate to secure votes.

(4) Under the Societies Act 1966, political parties are required to submit their financial accounts to the Registrar of Societies. However, there is no requirement for political parties to reveal their sources of funding.

(5) In Australia, Germany, India, Japan, South Africa, and the United States, there are elaborate laws to regulate what conduct is permissible for politicians, and to curtail foreign interference that could affect the rights of citizens to democratically elect their leaders.

(6) The importance of enacting legislation to regulate political financing has been raised time and time again in Malaysia by various parties, including the following:

(a) Following the 1Malaysia Development Berhad ("1MDB") scandal, the Government formed the National Consultative Committee on Political Financing which suggested that a new Political Donation and Expenditure Act be introduced;[1]

[1] "Political Financing in Malaysia: Reinforcing Integrity". *National Consultative Committee on Political Financing*. 29 August 2016. Accessed at: http://transparency.org.my/filemanager/files/shares/LAPORAN-JKNMPP-ENGLISH.pdf.

(b) In 2018, the Pakatan Harapan administration included in its election manifesto its intention to introduce a political financing control act to ensure funding of politics in Malaysia is transparent and free from corrupt practices;[2] and

(c) In May 2022, the then-Prime Minister Dato' Sri Ismail Sabri Yaakob stated that the Government had agreed in principle to the proposed enactment of a political funding bill, and that the scope of the policy would be tabled to the Cabinet soon.[3] However, no concrete action has seemingly been taken to materialise political financing legislation.

(7) Without legislation to govern political financing in Malaysia, nebulous practices will continue unchecked within the domestic political scene.

(8) There is therefore an urgent need for a legislative framework in Malaysia to regulate public and private funding of political parties and the subsequent use of the funds, to combat corruption, cronyism, conflict of interest, and abuse of power.

Therefore, it is hereby resolved that the Malaysian Bar strongly calls for the immediate enactment of legislation to govern political financing, without further delay.

[2] "Buku Harapan Rebuilding Our Nation Fulfilling Our Hopes". *Pakatan Harapan*. 8 March 2018. Accessed at: https://dl.dapmalaysia.org/repository/Manifesto_PH_EN.pdf.

[3] "PM Ismail Sabri: Political funding bill's policy scope to be tabled to Cabinet". *Malay Mail*. 19 May 2022. Accessed at: https://www.malaymail.com/news/malaysia/2022/05/19/pm-ismail-sabri-political-funding-bills-policy-scope-to-be-tabled-to-cabinet/7694.

Motion 7.2

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By Hand

Dear Secretary of the Malaysian Bar,

Submission of Motion for the 77th Annual General Meeting of the Malaysian Bar on 18 March 2023, entitled "Motion Regarding Remuneration of Judges and Establishment of Judges' Remuneration Commission"

I refer to the above-captioned matter.

Please find enclosed a "Motion Regarding Remuneration of Judges and Establishment of Judges' Remuneration Commission", which I wish to move, on behalf of the Bar Council, at the 77th Annual General Meeting of the Malaysian Bar on 18 March 2023.

Thank you.

Yours faithfully,

Karen Cheah Yee Lynn
Chairman
Bar Council

"Motion Regarding Remuneration of Judges and Establishment of Judges' Remuneration Commission", Proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on Behalf of the Bar Council, Dated 10 March 2023

Whereas:

(1) Article 125(6) (read with sub-clause (9)) of our Federal Constitution provides that Parliament shall by law provide for the remuneration of judges of the Federal Court, Court of Appeal and High Court. Sub-clause (7) further provides that the remuneration and other terms of office (including pension rights) shall not be altered to the disadvantage of the judge after appointment.

(2) The Judges' Remuneration Act 1971 ("Act") currently provides for the remuneration of judges, including regarding pensions and other benefits. The salaries and allowances of judges are stipulated in accordance with section 2 and the First and Second Schedules, while section 19A and the Fifth Schedule provide for the same in relation to judicial commissioners.

(3) These Schedules are amended by way of Regulations made by the Yang di-Pertuan Agong ("YDPA") after consultation with the Chief Justice (section 19 of the Act). In practice, it is the Government who decides on these matters and advises the YDPA accordingly.

(4) Since the coming into force of the Act in 1971, several Regulations have been made amending the relevant Schedules (First, Second and Fifth). It is observed that these appear to be done on an *ad hoc* and irregular basis, and in particular, that there was a lapse of about 6.5 years (from 1 January 2009[1] to 1 July 2015[2]) before a fresh revision was effected.

(5) Moreover, there has been no revisions to the salaries of judges since 2015.

(6) This current state of affairs is unacceptable and flawed.

(7) Appropriate compensation of judges is a necessary component of judicial independence. The Commonwealth (Latimer House) Principles on the Three Branches of Government states that "[a]ppropriate salaries and benefits … are essential to the proper functioning of the judiciary".[3]

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[1] Judges' Remuneration (Amendment of First, Second and Fifth Schedules) Regulations 2009, in force from 1 January 2009 [PU(A) 194/2009].
[2] Judges' Remuneration (Amendment of First Schedule and Fifth Schedule) Regulations 2016, in force from 1 July 2015 [PU(A) 59/2016].
[3] Commonwealth (Latimer House) Principles on the Three Branches of Government (July 2008) | Latimer House Guidelines for the Commonwealth, paragraph II(2) on Preserving Judicial Independence in relation to Funding.

(8) Judicial remuneration (which necessarily includes pensions) should also be "regularly adjusted to account for price increases independent of executive control" (International Bar Association ("IBA") Minimum Standards of Judicial Independence).[4]

(9) Judicial salary has the potential to affect the quality of candidates attracted to the Bench and thereby the composition of the Bench as a whole.[5]

(10) It is recognised that good judicial salaries will enable the recruitment of competent and qualified candidates to the Bench, notably private practitioners. Thus, the level of compensation ought to be:

(a) high enough to attract a good pool of excellent candidates to seek judicial office; and

(b) reviewed and adjusted on a regular, periodic basis to ensure that it remains high enough to retain able and experienced judges on the Bench.[6]

(11) Secondly, financial security forms a key component of preserving judicial independence. Judicial remuneration ought to be sufficient to prevent any influence, pressure or temptation from, or dependence on, other parties.

(12) Judicial independence can be achieved from two angles: the independence of individual judges; and the independence of the Judiciary as a collective — ie institutional independence. The Canadian Supreme Court in *Valente v R*[7] observed as follows (emphasis added):

> It is generally agreed that judicial independence involves both individual and institutional relationships: the individual independence of a judge, as reflected in such matters as security of tenure, and the institutional independence of the court or tribunal over which he or she presides, as reflected in its institutional or administrative relationships to the executive and legislative branches of government. ...
>
> The relationship between these two aspects of judicial independence is that an individual judge may enjoy the essential conditions of judicial independence but if the court or tribunal over which he or she presides is not independent of the other branches of government, in what is essential to its function, he or she cannot be said to be an independent tribunal.[8]

[4] IBA Minimum Standards of Judicial Independence (Adopted 1982), paragraph 14.
[5] For example, in the experience of the United States of America ("USA") and Canada.
[6] American Bar Association, Judicial Division, Standards for Judicial Compensation. *American Bar Association*. 1990 — as cited in "Judicial Compensation in New York: A National Perspective — A Report to the Chief Judge of the State of New York". *National Center for State Courts*. May 2007. p 17.
[7] [1985] 2 SCR 673.
[8] Ibid., paragraph 20.

Independence of Individual Judges

(13) Martin L Friedland, in a report to the Canadian Judicial Council, remarked[9] (emphasis added):

> Just as we want good pensions for judges so that they are not worried unduly about their future financial state, we want good salaries so that judges are not unduly worried about their present financial state.

(14) Thus, judges ought to be sufficiently paid in order to minimise the risk of judges being distracted or influenced by financial or other inducements or gains in their decision-making. While such risks may be theoretical in nature, these measures are nevertheless necessary in order to preserve public confidence in the system, as it functions to guard against the public contemplating such situations as a possibility.

(15) In this manner, the setting of judicial remuneration ought to take into account the reward and risk factors which are at play, in addition to other considerations such as increases in cost-of-living — thus necessitating a periodic review of salaries — and other benefits including pension rights.

(16) As highlighted prior, since the passing of the Act, Regulations to regularly revise the salary of judges in Malaysia have only been made at certain periods[10]. The lapse of 6.5 years between the years of 2009 to 2015, as well as the current lapse of about another eight years since then, indicates a general lack of willpower and/or indifference towards ensuring the strengthening of the independence of the Judiciary, and currency of judicial salaries and its value, taking into account inflation and general wage rises.

Institutional Independence

(17) International standards[11] require that judicial remuneration ought to be determined by an independent body.

(18) A process that is ***dependent*** on the Executive, where negotiations are directly between the Judiciary and the Government, raises concerns (actual or perceived) as conflict of interest could arise in court cases involving the Government. As has been highlighted (emphasis added):

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[9] Friedland, Martin L. "'A Place Apart: Judicial Independence and Accountability in Canada'. A Report prepared for the Council". *Canadian Judicial Council*. 1995.

[10] The First Schedule was amended in years 1979, 1980, 1991, 1993, 1997, 2000, 2002, 2005, 2008, 2009, and 2016.

[11] Commonwealth (Latimer House) Principles on the Three Branches of Government (July 2008) | Latimer House Guidelines for the Commonwealth, paragraph II(2): "As a matter of principle, judicial salaries and benefits should be set by an independent body and their value should be maintained."

> The danger in more affluent countries is a system of remuneration (including pensions and other benefits) that subjects either the individual judge or the judiciary collectively to the unfettered discretion of political or judicial authorities.
>
> The possibility of undue influence opens up when judicial salaries and benefits are not set in a regularized manner according to established criteria but seen to depend on the whims of the paymaster.[12]

(19) Judicial independence is compromised as the Executive is placed in a position of power to determine "a man's subsistence"[13].

(20) Judges' financial security ought to be provided by law, and not be subject to arbitrary interference by the Executive in a manner that could affect judicial independence.[14]

(21) For these reasons, in several jurisdictions, the review of judicial salaries and benefits (including pensions) of judges is conducted by independent bodies, or by way of an objective and independent process.[15]

(22) Malaysia ought to adopt a similar approach. A statutory commission (ie a Judges' Remuneration Commission) should be constituted for these purposes.

(23) The setting up of an independent commission would, among others:

(a) preserve judicial independence and separation of powers (in which neither the Executive nor the Legislature determines the amount of remuneration);

(b) promote transparency and accountability in having regard to objective and relevant factors during the process of determining and reviewing of the amount of remuneration;

(c) preserve the value of the salary of judges by conducting regular, periodic reviews; and

(d) allow the receipt and consideration of submissions and views from relevant stakeholders and members of society.

(24) **Recognising** that judicial independence is a fundamental aspect of the rule of law;

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[12] Peter H Russell. "Toward a General Theory of Judicial Independence". *Judicial Independence in the Age of Democracy*. chapter 1, at p 18.
[13] As said by Alexander Hamilton: "…a power over a man's subsistence amounts to a power over his will."
[14] Supra, footnote 7, paragraph 40.
[15] Examples: Australia, Canada, Hong Kong, New Zealand, and the United Kingdom.

(25) **Recognising** that judicial remuneration forms an essential component of judicial independence;

(26) **Recognising** that judicial remuneration ought to commensurate with judges' public duties, responsibilities and dignity of the office*;*

(27) **Recognising** that the level and value of judicial remuneration ought to be sufficient and protected from reduction and erosion;

(28) **Recognising** that public confidence in the independence of the Judiciary would be undermined if judges are perceived as being susceptible to bias or influence through economic manipulation if they are paid too low;

(29) **Recognising** that a core element of judicial independence is freedom from Executive prerogative and control;

(30) **Recognising** that the establishment of an independent commission to review judicial remuneration on a regular basis holds the best prospect for achieving the desired ends of independence, objectivity, transparency and regularity, which will benefit judges, judicial aspirants, and ultimately, the public.

Therefore, it is hereby resolved that the Malaysian Bar:

(A) Calls upon the Government to forthwith establish an independent Judges' Remuneration Commission for the aims and purposes as described herein.

(B) Immediately conducts — as a ***short-term*** and ***temporary*** measure — a review of the salaries of judges by means of an objective and independent process, and to effect such regular and periodic reviews until the Judges' Remuneration Commission is constituted.

Motion 7.3

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By Hand

Dear Secretary of the Malaysian Bar,

Submission of Motion for the 77th Annual General Meeting of the Malaysian Bar on 18 March 2023, entitled "Motion Regarding the Malaysian Bar Professional Indemnity Fund Scheme as an Alternative to the Present Professional Indemnity Insurance Scheme"

I refer to the above-captioned matter.

Please find enclosed a "Motion Regarding the Malaysian Bar Professional Indemnity Fund Scheme as an Alternative to the Present Professional Indemnity Insurance Scheme", which I wish to move, on behalf of the Bar Council, at the 77th Annual General Meeting of the Malaysian Bar on 18 March 2023.

Thank you.

Yours faithfully,

Karen Cheah Yee Lynn
Chairman
Bar Council

"Motion Regarding the Malaysian Bar Professional Indemnity Fund Scheme as an Alternative to the Present Professional Indemnity Insurance Scheme", Proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on Behalf of the Bar Council, Dated 10 March 2023"

Whereas:

(1) At the 62nd Annual General Meeting of the Malaysian Bar ("AGM") on 15 March 2008, the floor adopted a resolution authorising the Bar Council to take all necessary steps towards **determining the viability of a fund** as an alternative to the present Professional Indemnity Insurance ("PII") Scheme ("2008 Resolution").

(2) At the 63rd AGM on 19 March 2009, the floor was presented with a working paper (published in the 2008/09 Annual Report of the Malaysian Bar) and motion regarding the **setting up of the fund**. The resolution was adopted by the House, authorising the Bar Council to proceed to implement the setting up of the fund if it remains viable, as an alternative to the current PII Scheme, at 1 January 2010 or at a time and date deemed appropriate, depending on economic and other related factors ("2009 Resolution").

(3) Arising from the 2008 Resolution, funds have been collected from Members' annual contribution as well as from the excess from the capping of the brokerage fees of the Malaysian Bar's appointed PII Scheme insurance broker, and from interest collected from fixed deposits. As at 31 December 2022, the total amount currently stands at RM37,253,929.

(4) Since then, and pursuant to the 2009 Resolution, the Bar Council has continued to study the insurance market, conducted engagements with the Attorney General's Chambers and Bank Negara Malaysia, as well as sought legal opinions on various aspects of regulatory compliance and good governance regarding the implementation and execution of the scheme.

(5) In July 2019, the Bar Council approved the name "Malaysian Bar Professional Indemnity Fund" ("MBPIF") in reference to the fund.

(6) The proposed MBPIF scheme would function as a mechanism for the Malaysian Bar to pay professional indemnity claims by setting aside funds in a segregated account dedicated for this purpose (ie the MBPIF). These funds would be collected from Members of the Malaysian Bar in much the same way as the current insurance premiums under the PII Scheme. However, rather than being completely passed to a third party (commercial insurers), the funds would be kept within a segregated fund, and professional indemnity claims will be made against the fund.

(7) In this manner, the setting up of a professional indemnity fund scheme is a natural progression that moves away from complete reliance on the commercial insurance market — which has historically imposed higher premiums due to external factors — in order to provide indemnity cover to Members of the Malaysian Bar.

(8) Thus, key objectives of the Bar Council in transitioning in this direction are to insulate against insurance market volatility, exert greater control over the administration of the scheme and its management and, over time, provide stable and affordable indemnity cover to Members of the Malaysian Bar.

(9) Noting that prior feasibility studies were conducted based on the claims climate and market information available at that time (2007–2008), the Bar Council decided to commission a fresh independent actuarial report in 2022 ("Actuarial Report")[1] which was a collaborative submission by independent third-party consultants Sime Darby Lockton Insurance Brokers Sdn Bhd and Actuarial Partners Consulting, Malaysia. The findings of the Actuarial Report included a definitive analysis on the viability of a professional indemnity fund scheme based on the Malaysian Bar's PII Scheme data of the last 10 years, peer comparison with other law societies on the vehicle and model adopted in those jurisdictions, and feedback on the draft Rules (pursuant to section 78A(1)(b) of the Legal Profession Act 1976) pertaining to the scheme which the Bar Council was working on.

(10) Some of the salient findings of the Actuarial Report are set out below.

Contribution/Premium Adequacy and Financial Sustainability of MBPIF	*As MBPIF [Malaysian Bar Professional Indemnity Fund] will be a new establishment, it is expected to register a deficit in the first year because of high initial reserves being set; but would turn to surplus in the second and subsequent years.*
Review on Mandatory Limit and Base Excess	*It is feasible to increase the existing mandatory limit and reduce the base excess without any increase in the premium. However, any revisions in the limits and base excesses should be implemented gradually to monitor any changes in claims behaviour. Any unfavourable changes in claims behaviour will have negative impact on the MBPIF.*

[1] The Actuarial Report was prepared based on a set of key assumptions, the structure that was envisaged in 2008 and the draft Rules which the Bar Council was working on.

Viability of Premium Rebate	*The projection shows a healthy financial position for the MBPIF from year three onwards. It is recommended that such a rebate feature be introduced after three years.*
Key Risks to MBPIF	*The MBPIF is exposed to several risks and the top risk identified is claims management. It is important for MBPIF to have oversight or a gatekeeper to ensure same or better system of processes, efficiency, protocols and approvals. Otherwise, it will have significant financial impact on the MBPIF.*
Claims	*An actuarial valuation on the reserves must be carried out at least once a year to monitor the claims development and to ensure the reserves are sufficient.* *Members must notify any significant or unusual events eg, large claim amount, large number of claims notification etc, so that remedial action can be undertaken immediately.*

(11) The Bar Council has determined that the setting up of a professional indemnity fund scheme is a viable alternative to the current PII Scheme, and is suitable to be implemented to provide indemnity cover to Members of the Malaysian Bar.

(12) Since the 2008 and 2009 Resolutions, the Bar Council has had the benefit of considering the Actuarial Report, opinions, and other relevant and current information, and is thus exploring various options on the model, implementation and execution of MBPIF scheme, in addition to considering good governance practices — fairness, transparency, accountability and responsibility — to be put in place to properly govern the scheme.

Therefore, it is hereby resolved that it is viable for the Bar Council to proceed with the implementation of the Malaysian Bar Professional Indemnity Fund scheme expeditiously **at a time and date it deems appropriate depending on economic and other related factors** and that the Bar Council be authorised to take all necessary or appropriate action including but not limited to obtaining requisite approvals (if any), creation of an autonomous body / board / entity, amending the regulatory and/or legislative framework (if necessary) towards the implementation, imposition, enforcement, administration, and any ancillary or incidental actions as a result thereof, in relation to the Malaysian Bar Professional Indemnity Fund scheme.

Motion 7.4

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By Hand

Dear Secretary of the Malaysian Bar,

Submission of Motion for the 77th Annual General Meeting of the Malaysian Bar on 18 March 2023, entitled "Motion Regarding Increasing the Mandatory Retirement Age of Judges"

I refer to the above-captioned matter.

Please find enclosed a "Motion Regarding Increasing the Mandatory Retirement Age of Judges", which I wish to move, on behalf of the Bar Council, at the 77th Annual General Meeting of the Malaysian Bar on 18 March 2023.

Thank you.

Yours faithfully,

Karen Cheah Yee Lynn
Chairman
Bar Council

"Motion Regarding Increasing the Mandatory Retirement Age of Judges", Proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on Behalf of the Bar Council, Dated 10 March 2023

Whereas:

(1) Article 125(1) (read with sub-clause (9)) of our Federal Constitution currently provides that the tenure of office for judges of the Federal Court, Court of Appeal and High Court, shall be until the judge attains the age of 66 years ("mandatory retirement age") or up to an additional six months therefrom, which may be approved by the Yang di-Pertuan Agong.

(2) The aforesaid Article, as first enacted, initially provided the age of 65 years, which was then amended in 2005 to the current 66 years.[1] It is further noted that during the debate in Parliament when the Constitution (Amendment) Bill 2005 ("Amendment Bill") was introduced, suggestions had already been raised then that the age should be raised to 70 years instead of 66 years. [2]

(3) In recent years, proposals to extend the mandatory retirement age have been advocated and supported by several parties, including:

(a) **former judges**: former Chief Justice of Malaysia, **Arifin Zakaria**[3]; retired Court of Appeal Judge, **Hishamudin Yunus**[4]; and former Federal Court Judge, the late **Gopal Sri Ram**[5]; and

(b) former Minister in the Prime Minister's Department (Law), the late **Liew Vui Keong**, who had announced in October 2018[6] that the Government intended to table a Bill to increase judges' retirement age to 70 years; Yang di-Pertua (President) of Dewan Negara and former Cabinet Minister (including as former *de facto* Law Minister), **Rais Yatim**.[7]

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[1] Constitution (Amendment) Act 2005.
[2] Penyata Rasmi Parlimen: Dewan Rakyat. Parlimen-11. Penggal Kedua. Mesyuarat Pertama. *18 Januari 2005*. ms 6 dan 7 (Tuan Wong Nai Chee).
[3] "Increase retirement age of judges to 70, says outgoing Chief Justice". *The Star*. 27 March 2017. Accessed at: https://www.thestar.com.my/news/nation/2017/03/27/increase-retirement-age-of-judges-to-70-says-outgoing-chief-justice/.
[4] "Timely to review judges' retirement age, say ex-judges". *FMT*. 31 December 2022. Accessed at: https://www.msn.com/en-my/news/national/timely-to-review-judges-retirement-age-say-ex-judges/ar-AA15OOzs.
[5] Ibid.
[6] "Minister moots constitutional amendment to let judges retire at 70". *Malay Mail*. 8 October 2018. Accessed at: https://www.malaymail.com/news/malaysia/2018/10/08/minister-moots-constitutional-amendment-to-let-judges-retire-at-70/1680624.
[7] "Rais Yatim: Extend retirement age of judges". *The Star*. 30 November 2016. Accessed at: https://www.thestar.com.my/news/nation/2016/11/30/rais-yatim-extend-retirement-age-of-judges/.

(4) In addition, the President of the Malaysian Bar recently proposed that the mandatory retirement age of judges be increased to 70 years.[8]

Age of Mandatory Retirement in Other Jurisdictions

(5) At the onset it is noted that Malaysia's mandatory retirement age of 66 years; while not the lowest among Commonwealth states[9], it still lags behind other democracies where the age of 70 years is more common. At the other spectrum, there are also jurisdictions which have implemented tenures for life — most notably, the Supreme Court of the United States.

(6) The following table provides examples of the mandatory retirement age in several jurisdictions:

Jurisdiction	Age of Mandatory Retirement
Australia	70 [10]
Canada	75 [11]
Hong Kong	70 [12]
Indonesia	70 [13]
Japan	70 [14]
New Zealand	70 [15]
Philippines	70 [16]
United Kingdom	75 [17]

[8] Speech by Karen Cheah Yee Lynn, President, Malaysian Bar. *Opening of the Legal Year 2023*. 9 January 2023. Accessed at: https://www.malaysianbar.org.my/article/news/speeches/speeches/speech-by-karen-cheah-yee-lynn-president-malaysian-bar-at-the-opening-of-the-legal-year-2023-putrajaya-international-convention-centre-9-jan-2023-.

[9] For example, the mandatory retirement age for judges in Singapore and India (Supreme Court) is 65 years old.

[10] The Australian Constitution, section 72.

[11] The Constitution Acts, section 99.

[12] High Court Ordinance, section 11A(5).

[13] Constitutional Court Law, revised 2020. Pasal 23(1)(c). Accessed at: https://peraturan.bpk.go.id/Home/Details/147335/uu-no-7-tahun-2020.

[14] "Judges and retirement". *China Business Law Journal*. 31 January 2023. Accessed at: https://law.asia/judges-retirement-age/.

[15] Senior Courts Act 2016, section 133.

[16] Section 11, Article VIII, The Constitution of the Republic of the Philippines.

[17] Public Service Pensions and Judicial Offices Act 2022.

Rationale for Increasing the Mandatory Retirement Age

(7) The recommendation to move for the increase of the mandatory retirement age is due to:

(A) Increase in Longevity / Life Expectancy

(8) Life expectancy has been on the rise since early 19th century, particularly in parts of the world that industrialised early. Since then, the global average life expectancy has more than doubled and now ranges above 70 years, with some countries[18] reporting life expectancies of over 80 years[19].

(9) In Malaysia, in 1957 — the year in which the Federal Constitution was first introduced, life expectancy then stood at 53.6 years. This has steadily increased over the years, reaching 74.9 years in 2021[20] — representing an increase of over 20 years comparing 1957 to today. This average life expectancy is comparable to that in developed countries[21].

(10) In contrast, the mandatory retirement age as stipulated in Article 125(1) of our Federal Constitution has only been amended once in 2005, which increased the age to the current 66 years.

(11) Increased life expectancy impacts several aspects of judicial tenure, including the potential for judges to serve for longer periods in judicial service, as well as an extension of their productive working lives outside of service. Both these aspects are elaborated further below.

(B) Judicial Expertise and Resources

(12) It is recognised that through the retention of experienced judicial office holders, particularly at the apex court, the Judiciary as an institution and the public will be able to benefit from the valuable wisdom, knowledge and experience that have been cultivated and honed by a judge throughout the judge's years in service.

[18] Examples include Switzerland, Australia, New Zealand, Japan, Canada, France, Spain.
[19] Max Roser, Esteban Ortiz-Ospina and Hannah Ritchie (2013; last revised in October 2019) — "Life Expectancy". Published online at OurWorldInData.org. Accessed at: https://ourworldindata.org/life-expectancy.
[20] Ibid.
[21] "Average life expectancy in industrial and developing countries for those born in 2022, by gender". *Statista.* Accessed at: https://www.statista.com/statistics/274507/life-expectancy-in-industrial-and-developing-countries/#.

(13) It has been remarked that:

> Length of service is especially important for [Australia] High Court judges because it can take a number of years for them to make their mark. They typically develop their views, not in one case, but during a succession of matters heard over years.[22]

(14) The setting of a low judicial mandatory retirement age may deprive the courts of judicial expertise and experience, as the opportunity for these judges to be able to contribute to the development of the law — particularly in matters that reach the Federal Court and that may therefore carry significant public interest — could be considerably limited.

(15) The current mandatory retirement age of 66 years may likely have the effect of preventing judges from being empowered to achieve their full potential on the Bench.

(16) Further, a higher retirement age would allow for a wider pool of experienced judges who are able to serve longer, and who would otherwise be made to retire solely for reaching a certain age. This includes being able to serve as Chief Justice, as judges are typically appointed to the highest court only towards the final decade of their careers.

(17) In addition, it would serve to augment the attractiveness of service on the Bench, and bolster recruitment of experienced and senior private practitioners to the Bench, which would lead to greater diversity in judicial decision-making, among other advantages.

(18) Raising the mandatory retirement age will thus promote the availability of a strengthened and more robust resource of experienced judges as well as potential legal talent, whose expertise will contribute immensely to the public interest.

(C) Judicial Independence

(19) The proposal for setting a higher mandatory retirement age, which may dissuade judges from actively pursuing undertakings outside the Bench post retirement, stems from the necessity to guard against situations of conflict of interest in order to ensure that the Judiciary is manifestly seen to be independent.

(20) The Commonwealth Compendium on 'The Appointment, Tenure and Removal of Judges under Commonwealth Principles' ("Commonwealth Compendium") recognises

[22] George Williams, "Bench Retirement Age Needs To Better Reflect Society". *The Sydney Morning Herald (Sydney)*. 9 February 2015.

that (emphasis added):

> Appointing judges until a mandatory age of retirement serves several purposes. Such security of tenure serves as a bulwark against external pressure and ensures that judges do not face conflicts of interest …[23]

(21) Similarly, the International Institute for Democracy and Electoral Assistance ("International IDEA") observes that:

> If it [retirement age] is too low, judges will only serve a relatively short term on the bench and will retire when they are still fit, able and seeking further employment, making them vulnerable to corruption by those who can offer such rewards.[24]

(22) These risks are increased bearing in mind higher life expectancies, as retired judges may opt to undertake active and public careers after retiring from the Bench, particularly in cases where the judge is made to retire only by reason of reaching the mandatory retirement age.

(23) Situations of conflict of interest may arise where:

(a) judges return to legal practice; or

(b) judges are eligible for lucrative corporate appointments and/or other positions, including those over which the Government exerts influence.

In the former, a retired judge appearing before a former colleague or junior on the Bench may have — or be perceived to have — an undue advantage and influence over other counsel and the outcome of the case.

In the latter, any issues that surface post-retirement may call into question the conduct of the retired judge whilst the judge was serving on the Bench, the manner in which cases were decided, or their outcome.

(24) On this note, it is emphasised that there is no suggestion or presupposition, in any particular case, of the actual existence of bias or impropriety in the conduct of judges, or undue advantage and influence, and that the concern lies in the perception that judicial independence may be adversely affected, thus impacting public confidence in the Judiciary and the administration of justice.

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[23] J van Zyl Smit, *The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice* (Report of Research Undertaken by Bingham Centre for the Rule of Law), 2015.

[24] Bulmer, Elliot, *Judicial Tenure, Removal, Immunity and Accountability* (International IDEA Constitution-Building Primer 5), 2017.

(25) It is noted that some of these concerns had been raised[25] by Members of Parliament during the debate in Parliament regarding the Amendment Bill.

(26) Security of tenure, in tandem with a high retirement age, provides a buffer against post-retirement positions, therefore promoting the independence of the Judiciary and strengthening the rule of law.

(27) **Notwithstanding the above**, it is recognised that the proposal to increase the mandatory retirement age to 70 years **should not** be prejudicial to judges who may prefer to retire at the current mandatory retirement age of 66 years, and who would be legally entitled to full pension rights and benefits arising from such retirement.

(28) In tandem with raising the mandatory retirement age to 70 years, judges should therefore also be provided with the option to **elect** to retire at the current mandatory retirement age, with full pension rights and benefits as entitled.

(29) **Recognising** that increasing the mandatory retirement age of judges will encourage judicial diversity, and the preservation of sufficient judicial expertise and resources in meeting the demands and workload of the courts; as well as protect the independence of, and public confidence in, the Judiciary.

(30) **Recognising** that the Commonwealth Compendium[26] recommends that the best practice in modern conditions is for the mandatory retirement age of judges to be set at 70 years[27].

(31) **Recognising** that the increase of the mandatory retirement age of judges to 70 years old would bring Malaysia in line with the benchmark in other jurisdictions.

(32) **Recognising** that in tandem with the proposal to increase the mandatory retirement age to 70 years, judges should also be provided with the option to elect to retire at the current mandatory retirement age (66 years), with full pension rights and benefits as entitled.

Therefore, it is hereby resolved that the Malaysian Bar calls upon the Government to increase the mandatory retirement age of judges of the Federal Court, Court of Appeal and High Court, and of judicial commissioners, to 70 years, while also ensuring that the judges and judicial commissioners are provided with the option to elect to retire at the current mandatory retirement age, with full pension rights and benefits as entitled.

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[25] Penyata Rasmi Parlimen: Dewan Rakyat. Parlimen-11. Penggal Kedua. Mesyuarat Pertama. *18 Januari 2005*. ms 96.

[26] J van Zyl Smit, *The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice* (Report of Research Undertaken by Bingham Centre for the Rule of Law), 2015.

[27] Ibid., paragraph 2.2.29, p 70.

Motion 7.5

Majlis Peguam
Bar Council Malaysia

www.malaysianbar.org.my

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Tel : +603-2050 2050
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BC/CEN/P/1/2023

10 March 2023

RECEIVED
10 MAR 2023
CEO'S OFFICE

Anand Raj
Secretary of the Malaysian Bar
Bar Council
Wisma Badan Peguam Malaysia
2 Leboh Pasar Besar
50050 KUALA LUMPUR

By Hand

Dear Secretary of the Malaysian Bar,

Submission of Motion for the 77th Annual General Meeting of the Malaysian Bar on 18 March 2023, entitled "Motion to Condemn the Royal Malaysian Police ("RMP") for its Actions and Conduct During the Walk for Judicial Independence on 17 June 2022"

I refer to the above-captioned matter.

Please find enclosed a "Motion to Condemn the Royal Malaysian Police ("RMP") for its Actions and Conduct During the Walk for Judicial Independence on 17 June 2022", which I wish to move, on behalf of the Bar Council, at the 77th Annual General Meeting of the Malaysian Bar on 18 March 2023.

Thank you.

Yours faithfully,

Karen Cheah Yee Lynn
Chairman
Bar Council

"Motion to Condemn the Royal Malaysia Police for its Actions and Conduct during the Walk for Judicial Independence on 17 June 2022", Proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on Behalf of the Bar Council, Dated 10 March 2023

Whereas:

(1) At the Extraordinary General Meeting of the Malaysian Bar ("EGM") on 27 May 2022, it was resolved that the Malaysian Bar organise and lead a peaceful protest against interference with the independence of the Judiciary and to uphold public confidence in the Judiciary.[1]

(2) In fulfilling the resolution, the Malaysian Bar organised the Walk for Judicial Independence ("WFJI"), which took place at 10:00 am on 17 June 2022, where approximately 500 participants — consisting of Members of the Bar, pupils in chambers and other individuals — assembled at Padang Merbok in Kuala Lumpur.

(3) There was a disproportionately large police presence at Padang Merbok during WFJI.

(4) Following a number of speeches from Members of the Malaysian Bar, the participants of WFJI attempted to walk to Parliament to hand over a memorandum entitled "Upholding and Protecting the Independence of the Judiciary and the Preservation of Public Confidence in the Judiciary" to the representative of the Prime Minister, YB Datuk Wira Mas Ermieyati bt Samsudin.

(5) However, approximately 300 officers of the Royal Malaysia Police ("RMP") equipped with full riot control gear unlawfully prevented the participants from walking to Parliament by forming "human chains" and barricading both entrances/exits of the Padang Merbok car park.

(6) The participants of WFJI were surrounded by police officers and were effectively prevented from leaving the Padang Merbok car park. All attempts to negotiate with RMP to proceed with the walk to Parliament that day proved unsuccessful.[2]

(7) After WFJI, notices under section 111 of the Criminal Procedure Code ("CPC") were served by RMP on the President of the Malaysian Bar, the Secretary of the Malaysian

[1] "Resolution Adopted at the Extraordinary General Meeting of the Malaysian Bar Held at Wisma MCA, Kuala Lumpur". *Malaysian Bar Website*, 27 May 2022. Accessed at: https://www.malaysianbar.org.my/article/news/agms-and-egms/resolutions/resolutions-adopted-at-the-egm-of-the-malaysian-bar-friday-27-may-2022-.

[2] "Press Release | The Walk for Judicial Independence — How the Police Had Failed", *Malaysian Bar Website*, 24 June 2022. Accessed at: https://www.malaysianbar.org.my/article/about-us/president-s-corner/pressstatements/press-release-the-walk-for-judicial-independence-how-the-police-had-failed-.

Bar, the Chief Executive Officer of the Bar Council Secretariat, and a member of the Bar Council.[3]

(8) Besides WFJI, it appears that there is a pattern of intimidation toward participants and organisers of public protests despite the protection afforded under the Peaceful Assembly Act 2012. For instance, on 3 July 2022, eight youths were summoned for questioning due to their participation in the "Turun" demonstration, which approximately 100 students attended. "Turun" was organised by a coalition of youth activist groups to protest the spike in the prices of goods.[4] Another incident occurred on 2 August 2021, when RMP personnel in full riot gear stopped opposition lawmakers from marching to Parliament to demand the resignation of the 8th Prime Minister of Malaysia, Tan Sri Muhyiddin Yassin, after he deferred a parliamentary sitting amidst political turmoil.[5]

Recognising that:

(9) The actions of RMP at WFJI amounted to wrongful confinement and intimidation, and a violation of the fundamental liberties of the participants of WFJI under Articles 5, 8, 9 and 10 of the Federal Constitution.

(10) RMP's actions and conduct during and after WFJI also amount to misfeasance in public office, and a breach of its statutory duty to protect and facilitate the exercise of constitutional rights by citizens under the Peaceful Assembly Act 2012.

Therefore, it is hereby resolved that:

(A) The Malaysian Bar condemns RMP in the strongest possible terms for its unwarranted and unlawful conduct at WFJI;

(B) The Malaysian Bar calls upon RMP to uphold the right of freedom of assembly as afforded to every citizen of Malaysia under Article 10(1)(b) of the Federal Constitution and section 4 of the Peaceful Assembly Act 2012; and

(C) The Malaysian Bar calls upon RMP to uphold and protect the fundamental rights and liberties afforded to the citizens of Malaysia under the Federal Constitution or any other written law.

---

[3] "Press Release | Update on the Malaysian Bar's Actions after the Walk for Judicial Independence", *Malaysian Bar Website*, 15 December 2022. Accessed at: https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-release-update-on-the-malaysian-bar-s-actions-after-the-walk-for-judicial-independence.

[4] "Cops haul in eight youths for questioning over Pasar Seni inflation protest", *The Vibes*, 3 July 2022.

[5] "Malaysian opposition marches on parliament, demands prime minister resigns", *CNBC*, 2 August 2021.

Motion 7.6

Ruhil Amal Abdul Razak <ruhil@malaysianbar.org.my>

Motion to be considered at the Malaysian Bar AGM 2023

Lee Chong Hong <leechonghong@gmail.com> Wed, Feb 22, 2023 at 3:32 PM
To: motions@malaysianbar.org.my
Cc: LAW HIENG HA <hiengha@gmail.com>

Dear Sirs,

Attached, please find a copy of the motion to be considered at the Malaysian Bar AGM 2023 for your attention.

--
Yours truly,

LEE CHONG HONG

2 attachments

Motion_.pdf
149K

Motion.docx
14K

Motion: Urging Bank Negara Malaysia to Review the Empanelment Procedures for Solicitors Adopted by the Banks

BE IT RESOLVED that the Annual General Meeting of the Malaysian Bar urges Bank Negara Malaysia to review the empanelment procedures for solicitors adopted by the Banks, with the aim of promoting a fair and transparent process that does not discriminate on the basis of seniority, race, or transaction history with banks.

WHEREAS, it is the belief that all lawyers should be given equal opportunities to represent banks, regardless of their seniority, race, or transaction history with the banks. The empanelment procedures currently in place may create barriers to entry for lawyers who are otherwise qualified and competent and can limit the diversity of representation available to banks.

WHEREAS, Article 8 of the Malaysian Federal Constitution guarantees every individual the right to equal protection under the law, and it is the belief that the current empanelment procedures may violate this principle by creating barriers to entry based on factors that have no bearing on a lawyer's qualifications or ability to perform their duties.

WHEREAS, the current empanelment procedures may be unfairly skewed in favour of certain groups and may not accurately reflect the diversity of the legal profession in Malaysia. This can create the appearance of bias and can erode public confidence in the impartiality and fairness of the banking sector.

THEREFORE, the Malaysian Bar calls upon Bank Negara Malaysia to review the empanelment procedures for solicitors adopted by the banks, with the aim of creating a process that is fair, transparent, and in line with the principles of equality and non-discrimination. The banks should abolish the requirements on seniority, race, and transaction history with the banks, and should provide clear and objective criteria for empanelment that are based solely on the qualifications and abilities of the lawyer in question.

In conclusion, the Malaysian Bar believes that a fair and transparent empanelment process is essential to the integrity and reputation of the banking sector, and that all lawyers should be given equal opportunities to participate in this process, regardless of their seniority, race, or transaction history with the banks.

Proposer:	Seconder:
……..	……
LEE CHONG HONG (BC/L/1955) Date: 22.02.2023	LAW HIENG HA (BC/L/2069)

AmerBON
ADVOCATES

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Motion 7.7

Date: 10 March 2023

By email only

Secretary
Malaysian Bar
c/o Bar Council of Malaysia

Dear Sir

MOTION TO ADOPT THE 2011 UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS AND ITS IMPLEMENTATION IN THE MALAYSIAN LEGAL PROFESSION

We write attaching our motion (in Word soft copy) for the 77th Annual General Meeting on the 18th of March 2023.

We would be glad if Council – as it thinks fit – adopts and moves the motion as its own. It is a matter of public interest, and it is nice if the Bar is seen as taking leadership on the issue.

Yours sincerely

Edmund Bon Tai Soon
attch.

And on behalf of the other proposers:
2. Kwong Chiew Ee
3. Marieta Abdull Hamid
4. Weera Premananda
5. Faez Abdul Razak
6. Kiu Jia Yaw
7. Sharmila Sekarajasekaran
8. Raja Nadhil Aqran bin Raja Ahmad Aminollah
9. Vishnu Vijandran
10. Chang Lih Yik
11. Jacqueline Hannah Albert
12. Syuhada binti Mohd Soberi

MALAYSIAN BAR AGM
MOTION TO ADOPT THE 2011 UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS AND ITS IMPLEMENTATION IN THE MALAYSIAN LEGAL PROFESSION

RECOGNISING THAT:

(A) Globally, business operations have negatively impacted human rights and the environment. The practices of some Malaysian corporations and businesses are no better:

- Although the Malaysian Federal Constitution prohibits slavery and forced labour, the practice still prevails in Malaysia. Numerous modern slavery cases have put Malaysia in a bad light resulting in bans on our exports.

- Environmental harms by companies continue to exacerbate the triple planetary crisis of climate change, biodiversity loss and pollution. With climate change, irregular, unusual and extreme weather events are increasingly being experienced, disproportionately affecting our society's poorest and most vulnerable groups.

- Further, poor governance, greed and corrupt practice in, for example, the infamous 1MDB misappropriation have seen multi-billion dollars being siphoned away to benefit certain individuals and companies at Malaysia's expense.

(B) Increasingly, these matters of labour, the environment and governance are viewed by governments, regulators, trade associations, chambers of commerce, corporations, trade unions, statutory bodies and civil society organisations, as serious human rights violations that must be addressed. An evolving framework that is commonly known as "ESG" (Environmental, Social and Governance) and "sustainability" is used to have businesses account for and address the impact of their operations on human rights.

(C) Human rights abuses and violations, including environmental harm and degradation caused by businesses, must be remedied, and the victims and survivors compensated. Perpetrators must also be punished and brought to justice.

CONSIDERING THE FOLLOWING:

(D) On 16 June 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (UNGPs) in its resolution 17/4. The UNGPs prescribe three core obligations and duties: for governments to protect human rights; for corporations to respect human rights; and for effective access to remedies for victims and survivors of business-related human rights abuses. The principles rest on international human rights standards and are widely adopted by governments and

businesses in their efforts to promote, protect and uphold the rule of law and human rights. In particular, the UNGPs call on businesses to identify, prevent, mitigate and account for how they address adverse human rights impacts by conducting human rights due diligence on their operations and those of their suppliers.

(E) On 9 June 2015, the Bar Council of Malaysia, among other Bar associations, signed the Law Association for Asia and the Pacific (LAWASIA) Joint Declaration of Commitment on the Development and Promotion of the Field of Business and Human Rights within the Legal Profession. Signatories committed themselves to promote the implementation of the UNGPs locally, regionally, nationally, and globally, and to educate lawyers on human rights in the business context while developing and implementing policy initiatives to promote the realisation of human rights in businesses across diverse sectors and industries.

(F) On 8 October 2015, the International Bar Association (IBA) Council adopted the IBA Business and Human Rights Guidance for Bar Associations to equip and enable bar associations around the world to increase awareness and understanding of lawyers who advise business clients on the relevance of business and human rights, and particularly of the UNGPs, and the various laws, policies, and standards that promote business respect for human rights.

(G) The IBA Council then, on 28 May 2016, adopted the IBA Practical Guide on Business and Human Rights for Business Lawyers to guide lawyers on how the UNGPs can be relevant to the advice provided to clients by lawyers subject to our professional standards and rules, and their potential implications for law firms as business enterprises with a responsibility to promote and respect human rights.

(H) In 2019, LAWASIA published its Toolkit on Business and Human Rights: A Guide for Lawyers in the Asia Pacific. The document provides lawyers with guidance on complying with the UNGPs in legal practice. It also assists them in advising business clients to fulfil their human rights and environmental obligations and addressing any adverse impacts arising from their business operations.

GIVEN THE ABOVE, IT IS RESOLVED AS FOLLOWS:

[1] That the Malaysian Bar endorses the United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (UNGPs) and strongly encourages members of the Bar and law firms to implement and integrate the UNGPs in their practice following the IBA Practical Guide on Business and Human Rights for Business Lawyers and the LAWASIA Toolkit on Business and Human Rights: A Guide for Lawyers in the Asia Pacific.

[2] That the Bar Council of Malaysia takes all the necessary steps to robustly promote and effectively advocate for the compliance of the United Nations Guiding Principles on

Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (UNGPs) with the Government of Malaysia, regulators, trade associations, chambers of commerce, corporations, trade unions, statutory bodies and civil society organisations.

[3] That the Malaysian Bar calls on the Government of Malaysia to expedite the adoption of the National Action Plan on Business and Human Rights and immediately legislate for mandatory human rights due diligence and grievance mechanisms in all business operations that impact human rights, including but not limited to the areas of labour, governance and the environment.

Proposers:

1. Edmund Bon Tai Soon
2. Kwong Chiew Ee
3. Marieta Abdull Hamid
4. Weera Premananda
5. Faez Abdul Razak
6. Kiu Jia Yaw
7. Sharmila Sekarajasekaran
8. Raja Nadhil Aqran bin Raja Ahmad Aminollah
9. Vishnu Vijandran
10. Chang Lih Yik
11. Jacqueline Hannah Albert
12. Syuhada binti Mohd Soberi

SURENDRA ANANTH
Advocates & Solicitors

Member of the MIS Group Law Practice

Motion 7.8

Your Reference : -
Our Reference : -

10th March 2023

Bar Council Malaysia ***BY EMAIL***
Wisma Badan Peguam Malaysia
2 Leboh Pasar Besar
50050 Kuala Lumpur

Dear Sirs/Mesdames,

MOTION TO ESTABLISH AN INDEPENDENT INTERNAL INQUIRY INTO THE FINDING OF FACTS AND CIRCUMSTANCES OF THE SIGNING OF THE LEXISNEXIS SUBSCRIPTION AGREEMENT DATED 20 FEBRUARY 2019 AND ITS TERMINATION

1. We refer to the matter above.

2. Kindly find enclosed the motion proposed by Mr Surendra Ananth and Ms Chin Yuen Xin for the 77th Malaysian Bar Annual General Meeting.

Yours faithfully,

Surendra Ananth
.....
Messrs Surendra Ananth
Encl.

A: No.4, Dalaman Tunku,
Bukit Tunku, 50480 Kuala Lumpur.
T: 603-6211 3883; **F**: 603-6211 0883
E: surendra@surendraananth.com

Surendra Ananth
L.B (Hons) UKM, MSt (Oxon)

Motion to establish an independent internal inquiry into the finding of facts and circumstances of the signing of the LexisNexis Subscription Agreement dated 20 February 2019 and its termination

Whereas:

1. On 20 February 2019, the Malaysian Bar entered into a Subscription Agreement which comprised (i) a document entitled 'Exhibit A General Terms and Condition (Global Platform)' and (ii) a document entitled 'Exhibit B Terms of Trade General' (referred to collectively as 'the LexisNexis Agreement') with LexisNexis Malaysia Sdn Bhd ('LexisNexis').

2. A Writ and Statement of Claim dated 12 September 2019 were filed by LexisNexis against the Malaysian Bar for breach of contract with claims for, among others, RM3,539,072.00 as general damages and RM237,174.00 as special damages (the "**Suit**").

3. A Defence was been filed by the Malaysian Bar on 19 November 2019, which among others, stated that the LexisNexis Agreement was not approved by the Bar Council at a formal meeting.

4. On 21 November 2022, LexisNexis withdrew the Suit with no orders as to cost and without liberty to file afresh. This was in light of a settlement reached between the parties on 17 November 2022.

5. The Malaysian Bar has always been a proponent of accountability and transparency, and good governance in public administration.

6. Given that:

6.1. Under Section 56 of the Legal Profession Act 1976, the management of the Malaysian Bar and of its funds shall be vested in the Bar Council;

6.2. The LexisNexis Agreement concerns the material use of the funds of the Malaysian Bar in that the subscription price is RM1,330,000.00 a year, for a period of 5 years;

6.3. It is of grave concern that such material use of the Malaysian Bar funds, vis-à-vis the signing and subsequent termination of the LexisNexis Agreement, did not have the prior approval of the Bar Council at a formal meeting;

6.4. The facts and circumstances leading to the signing of the LexisNexis Agreement have not been disclosed to the members of the Malaysian Bar and there is a need for members to be informed of what transpired leading to the signing of the LexisNexis Agreement and of the specific terms thereof;

6.5. The facts and circumstances leading to the termination of the LexisNexis Agreement have not been disclosed to the members of the Malaysian Bar and there is a need for members to be informed of what transpired leading to the termination of the LexisNexis Agreement;

6.6. The Malaysian Bar has released a number of circulars disclosing the fact of the Suit, the pleadings filed and the settlement. However, nothing has been disclosed on the matters stated in paragraphs 6.4 and 6.5 above.

6.7. Although the Suit has been withdrawn, members of the Malaysian Bar nevertheless have a right and are fully entitled to know of the matters stated in paragraphs 6.4 and 6.5 above internally.

It is hereby resolved that:

The Malaysian Bar Council shall immediately take all necessary steps to establish an independent internal inquiry into the finding of facts and circumstances leading to the absence of approval by the Bar Council before the signing of the LexisNexis Agreement and the subsequent termination thereof without the approval of the Bar Council, with the view of making recommendations for a written standard operating procedure for the execution and termination of any agreements having a material impact on the funds of the Malaysian Bar.

Dated this 10th day of March 2023

Proposed by Surendra Ananth (BC/S/2982) and Chin Yuen Xin (BC/C/2296)

Seconded by:

1. **Joshua Wu Kai-Ming (BC/J/821)**
2. **Ooi Jia Liang (BC/O/485)**
3. **Shugan Raman (BC/S/3126)**
4. **Omar Kutty (BC/O/454)**
5. **Kuhan Manokaran (BC/K/1515)**
6. **Tishondra Puspanathan (BC/T/1842)**

Motion 7.9

Date : 10th March 2023
Sent by: Email / Hand

Mr. Anand Raj
Secretary of the Malaysian Bar
Malaysian Bar Council
Bar Council
Wisma Badan Peguam Malaysia
2 Leboh Pasar Besar 50050 Kuala Lumpur

Dear Sir,

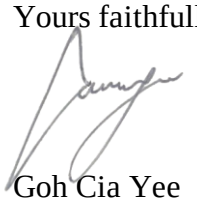
Motion to Recognise Workplace Bullying as a Form of Misconduct

I refer to the Notice of the 77th Annual General Meeting of the Malaysian Bar ("AGM") issued via Malaysian Bar Circular No 043/2023 dated 22nd February 2023.

Pursuant to Section 64(6) of the Legal Profession Act 1976, I hereby give notice that I propose to move the enclosed Motion at the AGM.

Thank you.

Yours faithfully,



Goh Cia Yee
BC/G/661

Motion to recognise workplace bullying as a form of misconduct

Whereas:-

1. This motion is calling for the classification of workplace bullying as a misconduct under Section 94(3) of the Legal Profession Act 1976, which states the following:-

> *"(3) For the purposes of this Part, "misconduct" means conduct or omission to act in Malaysia or elsewhere by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety and includes –*
>
> *…*
>
> *(k) the breach of any provision of this Act or of any rules made thereunder or any direction or ruling of the Bar Council;"*

2. Workplace bullying is a serious issue in the legal profession as evident by the numerous complaints from lawyers, pupils, and legal staff in Malaysia. The Instagram account @malaysianlawyerstories, which has been gaining traction recently, has contributed to the discourse regarding this issue by providing a platform for lawyers and pupils to anonymously share their experiences at the workplace with its audience of more than 3,000 followers. While we are unable to comment on the veracity of the stories that have been shared by this account, some of the stories that have been shared there are deeply concerning and highlights a serious problem with workplace bullying in the legal profession.

3. Examples of workplace bullying in the legal profession include persistent and recurring acts of:

    a. Harassment;

    b. Verbal abuse, such as shouting, belittling, or insulting language directed towards an employee;

    c. Threats, such as making intimidating or hostile statements towards an employee or their family;

    d. Excessive criticism, such as unfairly and persistently criticizing an employee's work or performance;

    e. Isolation, such as excluding an employee from work-related social activities or communications;

    f. Undermining, such as sabotaging an employee's work or withholding important information from them;

    g. Physical intimidation, such as pushing, shoving, or other forms of physical violence;

4. It is important to take steps to prevent and address workplace bullying as it can have a wide range of negative effects on the mental wellbeing of its victims such as anxiety, depression, Post-Traumatic Stress Disorder (PTSD) and other mental health issues. This can in turn lead to reduced job satisfaction, decreased productivity, and even long-term disability. There are physical issues that can also arise from workplace bullying and the stress caused by it such as difficulty sleeping, headaches, etc.

5. Workplace bullying can have a significant impact on employers as well as employees. Here are some of the ways that workplace bullying can also affect employers:

    a. Decreased productivity: Workplace bullying can lead to decreased productivity as employees who are bullied may experience stress, anxiety, and other negative emotions that can interfere with their ability to perform their job duties effectively.

    b. Increased absenteeism: Employees who are bullied may choose to take time off work to avoid the abuse, leading to increased absenteeism and reduced productivity.

    c. Higher turnover rates: Workplace bullying can also lead to higher turnover rates, as employees who are bullied may choose to leave the firm rather than continue to endure the abuse. This can be costly for employers, as it can result in the loss of valuable talent and the need to recruit and train new employees.

    d. Negative impact on organizational culture: Workplace bullying can create a toxic organizational culture, where bullying is normalized and accepted. This can make it more difficult to attract and retain top talent and can even damage the firm's reputation.

    e. Legal implications: Employers who fail to take action to prevent or address workplace bullying can be held liable for damages. This can result in costly legal fees and settlements.

    f. Legal and reputational risks: Firms that fail to address workplace bullying can face legal and reputational risks, which can harm their ability to attract and retain clients and employees.

6. Recently, the Malaysian Bar Council took a step towards addressing another form of misconduct, by recognising sexual harassment as a misconduct. There is no reason why the same should not be done for workplace bullying. As a form of guidance as to how workplace bullying may be classified as a misconduct via Section 94(3) of the Legal Profession Act 1976, we refer to Ruling 14.29 of the Rules and Rulings of the Bar Council, which states the following:-

    "14.29. Sexual harassment constitutes misconduct under section 94(3) of the Act

(1) Any act of sexual harassment by an Advocate and Solicitor or a pupil in a professional capacity or in a professional setting amounts to misconduct.

(2) Sexual harassment means any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, made directly or indirectly at a person or physically communicated in person or through the use of any medium or physical conduct, which a reasonable person would consider to be offensive or humiliating or a threat to their well-being or comfort."

7. We believe that the Bar Council's ruling on sexual harassment is precedent that can be followed in setting out workplace bullying as a form of misconduct.

8. We suggest that the ruling can be worded in the following manner:-

"Any persistent and repeated pattern of mistreatment from an Advocate and Solicitor or a pupil in a professional capacity in a professional setting that causes either physical or emotional harm to another Advocate and Solicitor or a pupil in a professional capacity amounts to a misconduct. This includes, but is not limited to:-

a. Verbal abuse, such as shouting, belittling, or insulting language directed towards an employee.

b. Threats, such as making intimidating or hostile statements towards an employee or their family.

c. Excessive criticism, such as unfairly and persistently criticizing an employee's work or performance.

d. Isolation, such as excluding an employee from work-related social activities or communications.

e. Undermining, such as sabotaging an employee's work or withholding important information from them.

f. Physical intimidation, such as pushing, shoving, or other forms of physical violence."

It is hereby resolved that:

The Malaysian Bar shall immediately and without further delay take all necessary steps to:-

A. Issue a new ruling under the Rules and Rulings of the Bar Council to include workplace bullying (as defined in open consultation with Members of the Bar) as a form of misconduct under Section 94(3) of the Legal Profession Act 1976;

B. Implement confidential and independent support systems for victims of workplace bullying;

C. Implement annual training sessions by experts for law firms relating to workplace bullying, its detrimental effects and the necessary policies needed at law firms to avoid and prevent workplace bullying; and

D. Include sexual harassment and workplace bullying as mandatory topics to be discussed in introductory sessions for Pupils

Dated this 10th day of March 2023.

Proposed by

Goh Cia Yee (BC/G/661)

Seconded by:

Haziq Abdullah bin Abdul Aziz (BC/H/1214)

Tan Hoo Seh (Vince Tan) (BC/T/1856)

Motion 7.10 **Bar Council <council@malaysianbar.org.my>**

MOTION ON THE RIGHT TO PEACEFUL ASSEMBLY AND MATTERS RELATED

Charles Hector <easytocall@gmail.com> Fri, Mar 10, 2023 at 12:48 PM
To: Bar Council <council@malaysianbar.org.my>, ceo@malaysianbar.org.my, Rajen - Bar Council <rajen@malaysianbar.org.my>, President of Malaysian Bar <president@malaysianbar.org.my>

Charles Hector Fernandez

Lot 3585, Kampung Lubuk Layang,

Batu 3, Jalan Mentakab,

28000 Temerloh, Pahang

9 March 2023

Secretary
Malaysian Bar

Bar Council Malaysia,

Wisma Badan Peguam Malaysia,

2 Leboh Pasar Besar,

50050 Kuala Lumpur, Malaysia

RE: MOTION TO BE CONSIDERED AT THE MALAYSIAN BAR AGM

Pursuant to section 64(6) of the Legal Profession Act 1976 ("LPA"), please find enclosed motion entitled,

MOTION ON THE RIGHT TO PEACEFUL ASSEMBLY AND MATTERS RELATED

to be considered during the upcoming Annual General Meeting.

In solidarity,

Charles Hector (BC/C/712)

MOTION ON THE RIGHT TO PEACEFUL ASSEMBLY AND MATTERS RELATED

1. The right to peaceful assembly is a fundamental human right, which is also acknowledged in our Federal Constitution.

2. The use of this right is a means in which persons use to highlight issues and demands not just to the state, but also to others, not just in Malaysia.

3. This right to peaceful assembly has existed since Independence, but at the same time the gathering of 3 or 5 or more was also criminalized in law. Irrespective of that, there has been many peaceful assemblies over the years.

4. With the advent of the Peaceful Assembly Act 2012, sadly the Act, in fact, deterred and/or violated the exercise of the right of peaceful assembly. It gave the police too much powers including the ability to deny the right or 'control' the right with conditions, sometimes unreasonable. A right is automatic, with no one having the power to deny or restrict the right.

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4. With the advent of the Peaceful Assembly Act 2012, sadly the Act, in fact, deterred and/or violated the exercise of the right of peaceful assembly. It gave the police too much powers including the ability to deny the right or 'control' the right with conditions, sometimes unreasonable. A right is automatic, with no one having the power to deny or restrict the right.

5. The Malaysian Bar, when the Bill tabled, spoke out. On 29/11/2011, the Malaysian Bar organized the "Walk for Freedom 2011: Peaceful Assembly Bill Cannot and Must Not Become Law!", which reportedly was attended by about 1,500 in protest against the government's Peaceful Assembly Bill which was said to have clauses that were too restrictive on the constitutional right to assemble peacefully. Lawyers and others walked from the Royal Lake Club to Parliament, and handed over the Bar's proposed alternative Peaceful Assembly Bill to the then deputy minister in the Prime Minister's Department Datuk Liew Vui Keong. [See enclosed Malaysian Bar's Memorandum on Peaceful Assembly Bill, and Letter by then President Lim Chee Wee dated 24/11/2011}

6. The issues and concerns of the Bar, SUHAKAM, civil society and others sadly have still not been taken into account and incorporated in the Act to enable the REAL right to peaceful assembly.

7. Sadly, when the Pakatan Harapan led government amended the Act after GE14, whereby it essentially just reduced notice period from 10 to 5 days, and other small amendments – that failed to bring the needed reforms, and we still suffer the denial of our full right of peaceful assembly.

8. Some of the rights violating concerns about the FOA is as follows: -

   … The ability to exercise the right by persons in Malaysia is most difficult, as FOA now requires person/s to pre-identify themselves as organizers, and comply with onerous conditions even names of 'person appointed by the organizer to be in charge of the orderly conduct of the assembly'. In many a peaceful assembly, as the REFORMASI protest that happened on several Saturdays, there were really no identifiable organizer. People from all walks of life on becoming aware of a peaceful assembly on a particular issue just comes, gathers and exercise their right to peaceful assembly. After the FOA Act, only bigger organizations and political parties may have the capacity or ability to organize and fulfil the various pre-requisites in FOA. The ordinary people on their own find it most difficult to exercise their right to peaceful assembly.

- … The act wrongfully denies children (despite Malaysia being a signatory of the Child Rights Convention), foreign nationals and even youth below 21 the right to peaceful assembly. It is wrong that, for example, Palestinians or other foreigners, have no right to protest injustices happening in or to their country through peaceful assemblies.

- … It denied Malaysians the ability to have speedily exercise the right to peaceful assemblies. It is absurd that we now cannot immediately protest, for example, protesting Israel's bombing of Palestine. The Act makes us wait for at least 5 days, and as such, it may be too late or the issues is old and may not even receive media attention. Even when a bad law is tabled in Parliament, we simply do not have time to assemble peacefully protesting the bad law or certain bad provisions in it. Important, when laws in Malaysia can also get passed very fast. When Members of Parliament 'obey' directives of the party whips, some concerns or views of the people may never even be expressed in Parliament.

- … The Act brings in onerous obligations like having to get 'consent of the owner or occupier of the place of assembly' even when it is public property. Consent, if it was within private properties is reasonable – but there must be no requirement of consent when it comes to public areas and spaces. There should be no consent requirement unless within business or private premises, more so, when such actions are already trespass.

- … The exercise of the right of peaceful assembly, cannot or should not be denied, simply because opponents and others are opposed to it. The right must be respected, noting the fact that different persons have different views, but everyone has their right to express their views.

9. Even if one were to follow the Act, and get the needed 'permission', the police can still at the eleventh hour block the exercise of this right, something which the Malaysian Bar lawyers experienced on 17/6/2022 when about 500 members of the Malaysian Bar assembled peacefully at Padang Merbok for the 'Walk for Judicial Independence', where they planned to march to Parliament to submit a memorandum to the then deputy minister (Parliament and Law) in the Prime Minister's Department, Datuk Mas Ermieyati Samsudin.

10. On or about 20/10/2022, the Malaysian Bar and office bearers commenced a legal suit against the police and the government. This motion is NOT about the legal proceedings, now in court, but about the issue of the right to peaceful assembly and the draconian FOA Act.

11. On October 16, 2014, the Malaysian Bar held the "Walk for Peace and Freedom" to condemn the use of the Sedition Act 1948 and to protest the multiple arrests, investigations and charges made under that law. In the march from Padang Merbok to Parliament, which was estimated to be attended by between 1,000 and 2,000 lawyers.

12. There was no prevention of participating lawyers marching to Parliament in 2014 as what happened in 2022. Hence, the ability to exercising the right to peaceful assembly is deteriorating.

13. A right requires no permission by the police or the government. The police may be informed merely to protect those exercising the right of peaceful assembly. The police protect them from others who try to interfere with the exercise of the right. The police help in directing traffic. If any offence is committed, the police can take action against the alleged offenders only, not on the persons who initiated the assembly.

Therefore, the Malaysian Bar resolves

A. That the Peaceful Assembly Act 2012 be repealed. An Act can always be later be enacted recognizing and defending the right to peaceful assembly, not an Act that denies the real exercise of the right of peaceful assembly by all persons.

B. That the Malaysian Bar and its member lawyers will never be succumbed by fear, and will continue exercising the right to peaceful assembly. We would continue to uphold the cause of justice without fear or favour

Proposed by:
Charles Hector Fernandez
BC/C/712

ENCLOSURES

Malaysian Bar
Badan Peguam Malaysia

(index)

Walk For Freedom 2011: Peaceful Assembly Bill Cannot And Must Not Become Law!

25 Nov 2011 12:00 am

Dear Members of the Malaysian Bar

Walk For Freedom 2011: Peaceful Assembly Bill Cannot And Must Not Become Law!
Tuesday, 29 Nov 2011 at 11:30 am, From Royal Lake Club to Parliament

Martin Luther King Jr once said that "the ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."

The Malaysian Bar and indeed Malaysia is now facing such a moment of challenge and controversy — an objectionable Bill, being rushed into law with unseemly haste without adequate public consultation, which effectively robs the rakyat of our constitutional right to freedom of assembly.

This Peaceful Assembly Bill ("Bill") is far more restrictive than the current law. It is not a piece of legislation which we, as lawyers, can watch enter our statute books without standing up against it. It is not a piece of legislation which we want future generations to inherit, without us walking, and spending every ounce of our energy to oppose. If this piece of legislation makes it to the statute books, future generations would inherit a nation that is far from modern and progressive.

Members of the Bar are now called upon to march to object to this Bill. The walk will take place next **Tuesday, 29 Nov 2011**, from the entrance of the Royal Lake Club to Parliament House, to deliver the Bar's Proposed Amendments to the Peaceful Assembly Bill to YB Datuk Liew Vui Keong, Deputy Minister in the Prime Minister's Department. Members are advised to gather in their court attire at **11:30 am outside the Royal Lake Club entrance.**

The Prime Minister, in his eve of Malaysia Day 2011 speech, had promised that:

> ... long gone is the era in which the government knows everything and claims monopoly over wisdom ...
>
> The Government will also review section 27 of the Police Act 1967, taking into consideration Article 10 of the Federal Constitution regarding freedom of assembly and so as to be in line with **international norms on the same matter** ... (emphasis added)
>
> ... a Malaysia that practices [sic] a functional and inclusive democracy ... in accordance with the supremacy of the Constitution, rule of law and respect for basic human rights and individual rights.

This Bill is not in line with international norms because of, amongst others:

(1) Prohibition of street protests (defined widely as "open air assembly which begins with a meeting at a specified place and consists of walking in a mass march or rally for the purpose of objecting to or advancing a particular cause or causes");
(2) Prohibition of organisation of assemblies by persons below the age of twenty one years;
(3) Prohibition of participation in peaceful assemblies of children below the age of fifteen years;
(4) Unduly onerous responsibilities and restrictions on organisers and assemblies; and
(5) Excessive fines for non-compliance of the Bill.

Therefore this Bill is not "in accordance with the supremacy of the Constitution, rule of law and respect for basic human rights and individual rights", which the Prime Minister promised it would be.

The Bill is in its second reading in the Dewan Rakyat, and in all likelihood it will be passed after the third reading. We must remain hopeful that we can make a difference, through our Walk for Freedom. We must urge the Prime Minister to amend the Bill by way of public consultation to ensure that Malaysia will have a legislation in the public interest, which truly upholds, protects and promotes our constitutional right to freedom of assembly.

We feel let down by how far short this Bill falls in relation to what the Malaysian people were promised in the Prime Minister's Malaysia Day 2011 message. In short, the Prime Minister must walk his own talk.

Please click on the links below to view the:

(1) Bar Council press release entitled "Peaceful Assembly Bill is more restrictive than present law and must be improved (/article/news/press-statements/press-statements/press-release-peaceful-assembly-bill-is-more-restrictive-than-present-law-and-must-be-improved)" issued on 22 Nov 2011;
(2) Bar Council press release entitled "Broken promise: Prime Minister has not lived up to Malaysia Day 2011 pledge (http://www.malaysianbar.org.my/press_statements/press_release_broken_promise_prime_minister_has_not_lived_up_to_malaysia_day_2011_pledge_.html)" issued on 24 Nov 2011;
(3) Malaysian Bar's Memorandum on Peaceful Assembly Bill (/article/news/bar-news/news/malaysian-bar-s-memorandum-on-peaceful-assembly-bill) dated 24 Nov 2011; and
(4) Peaceful Assembly Bill 2011 (/document/com_docman/gid?rid=18056).

Please contact Gayathiri Paneerselvam, Officer, by telephone at 03-2050 2089 or by email at gayathiri.p@malaysianbar.org.my (mailto:gayathiri.p@malaysianbar.org.my), should you have any queries.

I call on all Members to support us in this crucial initiative. See you on Tuesday, let's walk!

Lim Chee Wee
President
Malaysian Bar

25 Nov 2011

This circular and the attachment may also be accessed here (/document/members/circulars/2010-2014?rid=6122).

Malaysian Bar
Badan Peguam Malaysia

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News (https://www.malaysianbar.org.my/news) Bar News

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Malaysian Bar's Memorandum on Peaceful Assembly Bill

24 Nov 2011 12:00 am

The Peaceful Assembly Bill (/document/com_docman/gid?rid=18056) ("**the Bill**") was tabled in Parliament for its first reading on 22 November 2011. It must be noted that advance notice was not given save for speculation in the media that it would be tabled on 24 November 2011. There appears to be unseemly haste in introducing this far-reaching and crucial legislation without adequate public consultation[1].

This Bill in replacing the present legislative provision in section 27 of the Police Act 1967, introduced several controversial and objectionable provisions for instance,

1. prohibition of street protests (defined widely as open air assembly which begins with a meeting at a specified place and consists of walking in a mass march or rally for the purpose of objecting to or advancing a particular cause or causes);
2. prohibition of organisation of assemblies by persons below the age of twenty one years;
3. prohibition of participation in peaceful assemblies of children below the age of fifteen years;
4. unduly onerous responsibilities and restrictions on organisers and assemblies; and
5. excessive fines for non-compliance of the Bill.

These restrictive provisions in the Bill stand in stark contrast to the words of the Honourable Prime Minister in his eve of Malaysia Day speech which was widely applauded by the Malaysian Bar ("**the Bar**") and Malaysians in the honest belief that there will be real and genuine reforms. The relevant excerpt of the speech is as follows:

"I often opine that long gone is the era in which the government knows everything and claims monopoly over wisdom. ...

*The Government will also review section 27 of the Police Act 1967, taking into consideration Article 10 of the Federal Constitution regarding freedom of assembly and so as to be **in line with international norms on the same matter**. ... (emphasis added)*

The decisions we make today will determine the fate and shape Malaysia as it will be in the future, the homeland that we will pass on to our children and future generations. The question is, are we capable of surpassing and challenging the common suspicion that Malaysians with their diverse backgrounds, varying socioeconomic statuses and political understandings which are typical of human nature, can arrive at a consensus to not bow or surrender to the trappings of hate and distrust which would certainly drag us down into a valley of disgrace. Instead, let us all brave a future filled with hope and nobility together. ...

Be confident that it is a strength and not a weakness for us to place our trust in the Malaysian people's intelligence to make decisions that will shape the path of their own future. ...

It is absolutely clear that the steps I just announced are none other than early initiatives of an organised and graceful political transformation. It stands as a crucial and much needed complement to the initiatives of economic transformation and public presentation which the government has outlined and implemented for over two years in the effort to pioneer a modern and progressive nation. ...

It is neither too early nor too late, but this is the most suitable and precise time for such major estimations to be made and implemented. Though some parties opine that this is too risky, we will proceed with it for the sake of survival, as it has been fifty years since our nation achieved independence, and and nearly five decades since Malaysia was formed. Thus, we stand at the threshold of a vehicle that speeds towards its destination as a fully developed nation.

In closing, I wish to emphasise that free of any suspicion and doubt, the Malaysia that we all dream of and are in the process of creating is a Malaysia that practices a functional and inclusive democracy where public peace and prosperity is preserved in accordance with the supremacy of the Constitution, rule of law and respect for basic human rights and individual rights."

The Bar has expressed its view in its Press Release issued on 22 November 2011[2] and objects to some of the provisions of the Bill[3]. It recommends that this Bill be referred to a Parliamentary Select Committee which would engage in a public consultation process consistent with the Honourable Prime Minister's promise of "a Malaysia that practices a functional and inclusive democracy". In addition, the Bar will introduce draft amendments to the Bill which will be ready by Tuesday, 29 November 2011.

This Report seeks to demonstrate that the Bill is not "in line with international norms" by identifying several key differences of the Bill with other jurisdictions' assembly acts. The extracts of Suhakam's recommendations in its Report on Freedom of Assembly are set out in Annexure 3.

These differences are categorised and summarised as follows:

1.

Prohibition of Assembly

The Bar is stunned and strongly objects that "street protest" (which is a form of assembly in motion or procession already legally recognised in section 27 of the Police Act 1967) is prohibited. Such an assembly in motion is permitted in most if not all of the jurisdictions which we would consider as having a model piece of legislation. There have been several street protests which were peaceful in Malaysia, for instance, the Bar's Walk for Justice in 2007 and the recent Bersih 2.0 rally.

The Bar is also concerned that the wide definition given to "street protest" as provided for under the

Bill can and shall be used to curtail assemblies which may fall under the definition.

2.

Prohibited Places

The Bill provides for an outright prohibition against an assembly held at any "prohibited place" and within fifty metres from the said prohibited place. No such prohibition appears in other jurisdictions which we consider as having a model piece of legislation.

3.

Children's participation in or organisation of assembly

Section 4 of the Bill prohibits a person below the age of twenty one years to organise an assembly and the participation of a child below the age of fifteen years in an assembly other than an assembly specified in the Second Schedule.

The regulation of the participation of children is restrictive and contrary to our international obligations under the Convention of the Right of the Child ("**CRC**") where Malaysia is a signatory. On 6 June 2010, Malaysia withdrew its reservations to Articles 1, 13 and 15 of the CRC, thus allowing children "*the freedom to have their say, and the right to form associations and assemble peacefully*".

Minister of Women, Family and Community Development, Datuk Seri Shahrizat Abdul Jalil had said on the same day that the government would give children the freedom to have their say and the right to form associations and to assemble peacefully. She said the move was in line with the recognition given to children's rights as they would be the future leaders of the nation.

4.

Restrictions of Assembly

The Bar acknowledges that in other jurisdictions, restrictions and conditions may be imposed on public assemblies. In the UK, even though the words '*as appear to him necessary to prevent such disorder, damage, disruption or intimidation*' are stated in the Act, the police may only impose conditions based on date, time and duration, place and manner. In Finland and Queensland, conditions may be placed on payment of clean–up costs, any inherent environmental factor, and cultural or religious sensitivity.

However, in the Bill, the police can also impose other conditions or restrictions not found in other jurisdictions. Further, the OCPD is given wide discretionary powers to impose any restrictions other than those specifically mentioned above as he deems necessary or expedient.

5.

Notification of Assembly

In the UK, notification is not needed for a public assembly. Notification is required for a public procession in which 6 days notice is to be given before the date of the procession. In Queensland, the arranger of an assembly shall notify not less than 5 business days. In Finland, the arranger of an assembly shall notify the local police at least 6 hours before the meeting. The Act further provides for late notification if the arrangement of the meeting does not cause significant disruption to public order.

The notification period of 30 days is unduly long and not in line with international norms. Further, the Bill ignores the possibility of an immediate public assembly or a spontaneous assembly.

6.

Powers of the Police

In Finland, the powers of the police are spelt out extensively in the Assembly Act. Section 20 states where necessary, the police may, before or during the event, issue orders or instructions on the arrangement of a public meeting or a public event for the purpose of maintenance of public safety or security; the prevention of damage to health, property or the environment or the reduction of the damage to the environment; the safeguarding of the rights and interests of bystanders; and the ensuring of the free flow of traffic. Furthermore, in sections 4 and 19, it clearly provides for the positive obligations of the police in promoting and safeguarding the exercise of freedom of assembly.

In Queensland, the powers of the police are spelt out in the Police Powers Responsibilities Act 2000, where the police may give directions requiring a person to either leave the regulated place or be within the regulated place for a reasonable time limit or move from a particular location for a specified period of time.

In the UK, the powers of the police to arrest without warrant subject to certain circumstances are stated in sections 12(7) and 14(7) of the Public Order Act 1986. The powers of the police are spelt out clearly and published to the public. The UK Human Rights Act 1998, particularly section 3 requires the police to interpret and apply their powers in a manner which is compatible to the European Convention on Human Rights.

Section 21(2) of the Bill provides that the police officer, in exercising the power to disperse an assembly may use all reasonable force. The lack of public disclosure of the standard operating procedure employed by the police, such as how it handles crowd control or demonstrations evokes distrust in the public as to how it will apply this provision. The extent of the exercise of the police's reasonable force should be clearly identified. It is also important to establish the positive obligations of the police in promoting and facilitating all peaceful assemblies.

7.

Non citizens

In the UK, Queensland and Finland, the legislation that govern public assemblies do not make a distinction between the right accorded to citizens and non citizens. In the Bill, however, is clearly stated that the right to organise or participate in an assembly does not extend to a non citizen. The Bar recognises that Article 10(1)(b) of the Federal Constitution guarantees freedom of assembly by citizens only. However, section 27 of the Police Act does not distinguish between citizens and non citizens. The Bill therefore takes away the right of peaceful assembly from non citizens which was recognised by section 27 of the Police Act.

Conclusion

This Bill is not "*in accordance with the supremacy of the Constitution, rule of law and respect for basic human rights and individual rights*" as stated in the speech of the Prime Minister.

The Bar is hopeful that the Honourable Prime Minister will now reconsider this Bill and amend it by way of the process of public consultation, to ensure that Malaysia will have a legislation which truly enforces, protects and promotes freedom of assembly as guaranteed by the Federal Constitution.

Dated this 24th day of November 2011.

[1] The Bar was consulted by the Honourable Attorney General on only certain provisions of the Bill and had made known its views.
[2] Annexure 1.
[3] Further recommendations are contained in Annexure 2.

Annexure 1

Press Release: Peaceful Assembly Bill is more restrictive than present law and must be

improved

While the Malaysian Bar welcomes the Peaceful Assembly Bill ("Bill"), which recognises the freedom of assembly as guaranteed by Article 10(1)(b) of the Federal Constitution1 , the Bar is surprised that a "street protest"2 is prohibited, as it is a form of assembly in motion, or procession, that is already legally recognised in section 27 of the Police Act 1967. Such an assembly in motion is also permitted in most, if not all, of the jurisdictions that we would consider as having a model piece of legislation.3 Furthermore, there have been several peaceful "street protests" in Malaysia.4

This prohibition as well as certain other provisions were not disclosed to us as being part of the contents of the Bill, during the consultation process between the Malaysian Bar and the Attorney General's Chambers.

In its present form, the Bill is more restrictive than present law, and must be improved. The Malaysian Bar proposes that the provisions of the Bill be amended, including:

(1) Allow "street protests", which the Bill recognises – in the definition of an "assembly" – as including a moving assembly. The prohibition of a "street protest" is inconsistent with section 10(e)(viii) of the Bill itself (regarding the notification process), which refers to an assembly in procession;

(2) Permit spontaneous assemblies, following the United Kingdom example, where no advance notice is required where it is not reasonably practicable to give such notice (such as protests against declarations of war);

(3) Impose a statutory obligation on the police and government (namely the Minister of Home Affairs, in the Bill) to promote freedom of assembly. The model to emulate is Finland, where the government is required to promote the exercise of freedom of assembly by protecting the right to assemble without hindrance and by providing for the necessities of the assembly, and the police is under a duty to safeguard the exercise of the freedom of assembly;

(4) Omit certain conditions that the police may impose under section 15(2), namely "the conduct of participants during the assembly" and "any inherent environmental factor, cultural or religious sensitivity and historical significance of the place of assembly". The objectives of these restrictions have already been catered to in existing law such as the Penal Code, and the First Schedule of the Bill, but in a less restrictive form;

(5) Delete the presumption in section 19 regarding who is deemed to be an organiser, because it is an overreaching provision and goes too far;

(6) Omit paragraph (c) of section 21(1), which empowers the police to arrest "any person at the assembly [who] does any act or makes any statement which has a tendency to promote feelings of ill–will, discontent or hostility amongst the public at large or does anything which will disturb public tranquility"; and

(7) Remove the prohibition on the participation of, and organisation by, children, as it is restrictive and contrary to our international obligations under the Convention of the Rights of the Child ("CRC"), which Malaysia acceded to in 1995. On 6 June 2010, Malaysia withdrew its reservations to Articles 1, 13 and 15 of the CRC, thus allowing children "the freedom to have their say, and the right to form associations and assemble peacefully".

On the same day, Dato' Sri Shahrizat Abdul Jalil had said that the government would give children the freedom to have their say and the right to form associations and to assemble peacefully. She added that the move was in line with the recognition given to children's rights, as they would be the nation's future leaders. In Finland, a person who is without full legal capacity but who has attained 15 years of age may arrange a public meeting, unless it is evident that he/she will not be capable of fulfilling the requirements that the law imposes on the arranger of a meeting, while other persons without full legal capacity may arrange public meetings together with persons with full legal capacity.

This Bill, like section 27 of the Police Act, vests wide powers in the police, who are empowered to impose restrictions and conditions, and to disperse assemblies and arrest participants. The police's past consistent and atrocious conduct in suppressing assemblies shows that it is crucial that the police change their mindset and abandon the culture of impunity in managing freedom of assembly. In other jurisdictions, the power to impose restrictions and conditions vests in the local authority or a procession commission.

Finally, the Minister of Home Affairs is empowered by the Bill to make regulations for the better carrying out of the provisions of the Act. It is important that these regulations facilitate freedom of assembly, instead of further restricting it.

Only when the improvements outlined above are implemented, would we begin to have a legislation in the public interest, which truly upholds, protects and promotes freedom of assembly.

Lim Chee Wee
President
Malaysian Bar

22 November 2011

[1] Article 10(1)(b) provides that all citizens have the right to assemble peaceably and without arms, subject only to such restrictions as Parliament may impose by law as it deems necessary or expedient in the interest of security of the country or public order.
[2] Defined in section 3 of the Bill as "an open air assembly which begins with a meeting at a specified place and consists of walking in a mass march or rally for the purpose of objecting to or advancing a particular cause or causes".
[3] Examples include the United Kingdom, Finland and Queensland.
[4] For instance, the Bar's Walk for Justice in 2007, to demand a Royal Commission of Inquiry and the BERSIH 2.0 rally in July 2011. Most recently, a number of peaceful protests against the amendments to the Employment Act 1955 were held nationwide on 3 Nov 2011. It was reported in the media that "[s]everal police officers were seen directing traffic and assisting protesters" at one such protest, in Petaling Jaya, Selangor.

Annexure 2

The Bar's further recommendations of amendments are as follows:

1.

The 1st Schedule should be abolished and replaced with the words 'suitable place', followed by several characteristics in establishing a suitable place for peaceful assemblies.

2.

Section 6 requires the organiser to ensure that he or any other person at the assembly does not commit any offence under any written law. This is an unfair restriction. The duty in ensuring a peaceful assembly falls upon the police and not upon the organisers. Hence, this section should be revised.

3.

The imposition of excessive fines should be reviewed.

Annexure 3

Extracts of Suhakam Recommendations in Report on Freedom of Assembly

"b. Amendments under 2.2.a to also provide for following:

Organisers of assemblies to notify the Police of the proposed assembly at least 48 hours before the assembly is due to start. This is to enable the Police to arrange for traffic and crowd control.

Assemblies never to be prohibited but conditions may be imposed on organisers to prevent any public disorder, damage to public property or disruption to community life if there is any real threat. Such conditions may relate to the place at which the assembly may be held, its maximum duration or the maximum number of persons who may constitute it. Conditions should not restrict freedom of expression.

If there is opposition to the assembly or a counter–demonstration, the original assembly should not be stopped or prevented from taking place. The opposing assembly or counter–demonstration to be allowed to be present, within sight and sound of the original demonstration, but kept apart to maintain public order.

A distinction to be drawn between static assemblies and processions as processions require greater effort in traffic and crowd control and may result in disorder in some neighbourhoods such that the Police may wish to prohibit the procession from passing through that area.

Organisers of a procession to notify the Police at least ten days before the procession is scheduled to be held.

Similar conditions may be imposed on organisers of processions as for assemblies.

Subject to the above provisions being implemented, processions may be prohibited if the police officer–in–charge applies to the district council for an order prohibiting the holding of any procession in that district for a period of up to three months, on the ground that particular circumstances existing in that district may result in serious public disorder."

- Please click here (/document/com_docman/gid?rid=18080) to download a copy of the memorandum
- Press Release – Broken promise: Prime Minister has not lived up to Malaysia Day 2011 pledge (24 Nov 2011)
  (http://www.malaysianbar.org.my/press_statements
  /press_release_broken_promise_prime_minister_has_not_lived_up_to_malaysia_day_2011_pledge_.html
- Press Release – Peaceful Assembly Bill is more restrictive than present law and must be improved (22 Nov 2011)
  (/article/news/press-statements/press-statements/press-release-peaceful-assembly-bill-is-more-restrictive-than-present-law-and-must-be-improved)

Motion 7.11 **Bar Council <council@malaysianbar.org.my>**

MOTION on SOSMA and related matters

Charles Hector <easytocall@gmail.com> Fri, Mar 10, 2023 at 3:19 PM
To: Bar Council <council@malaysianbar.org.my>, ceo@malaysianbar.org.my, Rajen - Bar Council <rajen@malaysianbar.org.my>, President of Malaysian Bar <president@malaysianbar.org.my>, Charles Hector <easytocall@gmail.com>

Sorry missed the name of proposer in the earlier version

On Fri, Mar 10, 2023 at 2:11 PM Charles Hector <easytocall@gmail.com> wrote:

> Charles Hector Fernandez
>
> Lot 3585, Kampung Lubuk Layang,
>
> Batu 3, Jalan Mentakab,
>
> 28000 Temerloh, Pahang
>
> 9 March 2023
>
> Secretary
> Malaysian Bar
>
> Bar Council Malaysia,
>
> Wisma Badan Peguam Malaysia,
>
> 2 Leboh Pasar Besar,
>
> 50050 Kuala Lumpur, Malaysia
>
> **RE: MOTION TO BE CONSIDERED AT THE MALAYSIAN BAR AGM**
>
> Pursuant to section 64(6) of the Legal Profession Act 1976 ("LPA"), please find enclosed motion entitled,
>
> ## MOTION on SOSMA and related matters
>
> to be considered during the upcoming Annual General Meeting.
>
> In solidarity,
>
> Charles Hector (BC/C/712)
>
> ## MOTION on SOSMA and related matters
>
> 1. On 6/3/2023, Home Minister Datuk Seri Saifuddin Nasution Ismail was reported stating that 'A total of 624 individuals were detained under the Security Offences (Special Measures) Act (Sosma) last year…).The Home Minister added that 140 of these detainees had already been released."Of those detained, 71 were charged in court, **401 were punished**, 140 were

MOTION on SOSMA and related matters

1. On 6/3/2023, Home Minister Datuk Seri Saifuddin Nasution Ismail was reported stating that 'A total of 624 individuals were detained under the Security Offences (Special Measures) Act (Sosma) last year…).The Home Minister added that 140 of these detainees had already been released."Of those detained, 71 were charged in court, **401 were punished**, 140 were released and 12 are still under investigation," he said in a written reply to a question by Chow Yu Hui (PH-Raub) in the Dewan Rakyat yesterday.(Star,6/3/2023).

2. **The admission by the Minister that SOSMA was used to punish 401 is most shocking**. Under Malaysian law, persons arrested are detained prior being charged in court is for **ONLY the purpose of investigation**, and thereafter they may be charged, tried and if convicted, sentenced. No 'punishment' until a fair trial and conviction.

3. Persons are arrested, investigated, charged and tried for offences under the Penal Code and other laws, not SOSMA. Without SOSMA, there is nothing stopping arrest, investigation, prosecution and fair trials.

4. However, if any of these offences under the Penal Code or any other laws are listed as 'SOSMA offences', then the police and others can resort to use 'special' procedures, evade the requirements of Evidence Act and Criminal Procedure Code.

5. SOSMA, like Essential (Special Cases) Regulations 1975 (ESCAR), is an 'An Act to provide for special measures relating to security offences…'. It is not a Detention Without Trial law like the then ISA, and now POCA, POTA and Dangerous Drugs (Special Preventive Measures) Act.

6. SOSMA violates Article 5(4) of the Federal Constitution, that says that the police shall not detain any person beyond 24 hours of arrest, and that no person 'shall not be further detained in custody without the magistrate's authority'.

7. Under SOSMA, there is no need to bring the suspect within 24 hours before the Magistrate or for the police to apply and obtain remand orders for further detention for the purposes of investigation.

8. In SOSMA, after 24 hours in custody after arrest, all that is needed is that 'a police officer of or above the rank of Superintendent of Police may extend the period of detention for a period of not more than twenty-eight days, **for the purpose of investigation.**'

9. Hence, the important role of the Magistrate to ensure that the suspect's rights is not abused by the police or detaining authority is removed. Note that the concern about police abuse and torture, led to the amendment that came into force in 2007. Now, the maximum remand period on the first application for offences punishable with imprisonment of less than fourteen years was 4 days, and for more serious offences was 7.

10. If the government deems that there is need for a longer period of detention for investigation purposes, then there can be a law that extends remand period beyond

the current maximum of 14 days. However, the requirement of application for remand orders before the Magistrate must never be excluded, and these application for remand ought to happen at the very least every 4 to 5 days.

11. Bail should be under the jurisdiction of judges and courts. However, in SOSMA, Parliament ousted the court's jurisdiction, where section 13(1) SOSMA states, '(1) Bail shall not be granted to a person who has been charged with a security offence…'

12. However, there are exceptions to the non-granting of bail for certain offences, where bail can be granted to '…(a) a person below the age of eighteen years; (b) a woman; or (c) a sick or an infirm person,..'. This is certainly DISCRIMINATORY in terms of age and gender. Why is a man not accorded the same right as a women? Why is a 22 year old denied bail? What about a senior citizen?

13. Noting the presumption of innocence, the detention of suspects and/or accused persons prior to conviction and sentencing is grossly UNJUST. It impacts employment, business or income generation which impacts not just the suspect/accused but also the family including children.

14. SOSMA allows evidence not admissible in criminal trials as stated in our Evidence Act. SOSMA allows procedures in our Criminal Procedure Code to be violated.

15. During trial, accused and his/her lawyers rights can be denied. It allows for procedures to be conducted proceedings in the absence of the accused and his/her lawyer. It also allows for restriction of the questions that can be asked to a witness. How can an accused and lawyer effectively cross examine a witness without knowledge of his/her identity, without the right to even pre-trial interviews and the ability to investigate about the witness.

Therefore, the Malaysian Bar resolves

A. **That Security Offences (Special Measures) Act (SOSMA) be repealed;**

B. **That no laws be used to 'punish' suspects/accused persons prior to the conviction after the completion of a fair trial;**

C. **That we are disappointed with Home Minister Datuk Seri Saifuddin Nasution Ismail and the government for the use of SOSMA to <u>PUNISH</u> 401 last year.**

D. **That innocent suspects/accused be compensated by the State for the loss of liberty and other losses suffered by reason of detention under SOSMA and other laws.**

Proposed by:

Charles Hector Fernandez

BC/C/712

Motion 7.12 **Bar Council <council@malaysianbar.org.my>**

MOTION ON RESPECT OF PRIVACY & COMMUNICATIONS AND MULTIMEDIA ACT

Charles Hector <easytocall@gmail.com> Fri, Mar 10, 2023 at 3:34 PM
To: Bar Council <council@malaysianbar.org.my>, ceo@malaysianbar.org.my, Rajen - Bar Council <rajen@malaysianbar.org.my>, President of Malaysian Bar <president@malaysianbar.org.my>, Charles Hector <easytocall@gmail.com>

Charles Hector Fernandez

Lot 3585, Kampung Lubuk Layang,

Batu 3, Jalan Mentakab,

28000 Temerloh, Pahang

9 March 2023

Secretary
Malaysian Bar

Bar Council Malaysia,

Wisma Badan Peguam Malaysia,

2 Leboh Pasar Besar,

50050 Kuala Lumpur, Malaysia

RE: MOTION TO BE CONSIDERED AT THE MALAYSIAN BAR AGM

Pursuant to section 64(6) of the Legal Profession Act 1976 ("LPA"), please find enclosed motion entitled,

MOTION ON RESPECT OF PRIVACY, END OF 'SPYING' AND INTERVENTION OF INTERNET WITHOUT DUE NOTICE, AND REPEAL OF SECTION 233, 263, 252 AND SUCH DRACONIAN PROVISIONS IN THE COMMUNICATIONS AND MULTIMEDIA ACT 1998[CMA]

to be considered during the upcoming Annual General Meeting.

In solidarity,

Charles Hector (BC/C/712)

MOTION ON RESPECT OF PRIVACY, END OF 'SPYING' AND INTERVENTION OF INTERNET WITHOUT DUE NOTICE, AND REPEAL OF SECTION 233, 263, 252 AND SUCH DRACONIAN PROVISIONS IN THE COMMUNICATIONS AND MULTIMEDIA ACT 1998[CMA]

1. The Malaysian Bar in 2014 adopted the Resolution on Internet Censorship, The Malaysian Insider, and Freedom of Expression and Opinion, whereby, amongst others, it was resolved that 'C. That we, the Malaysian Bar calls for the repeal of section 263, section 233 and such vague provisions in the Communications and Multimedia Act 1998[CMA].'

2. The Bar in a statement December 2015 said, amongst others that '…Section 233(1)(a) of the CMA is a serious encroachment on the freedom of speech and expression guaranteed by Article 10(1)(a) of our Federal Constitution. …Section 233(1)(a) of the CMA is also repugnant to the rule of law, as it is broad in scope, vague and ambiguous, with entirely subjective terms such

MOTION ON RESPECT OF PRIVACY, END OF 'SPYING' AND INTERVENTION OF INTERNET WITHOUT DUE NOTICE, AND REPEAL OF SECTION 233, 263, 252 AND SUCH DRACONIAN PROVISIONS IN THE COMMUNICATIONS AND MULTIMEDIA ACT 1998[CMA]

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2. The Bar in a statement December 2015 said, amongst others that '…Section 233(1)(a) of the CMA is a serious encroachment on the freedom of speech and expression guaranteed by Article 10(1)(a) of our Federal Constitution. …Section 233(1)(a) of the CMA is also repugnant to the rule of law, as it is broad in scope, vague and ambiguous, with entirely subjective terms such as "offensive" and "annoy". It can easily be misused to stifle speech and expression, to shut out contrary views, to quash dissent, to deny democratic space, and to suppress Malaysians. It is this imprecision that gives rise to the perception that the provision is yet another dressed–up political weapon in the armoury of the Government…'

3. Disappointingly this draconian law continues to be used by the Malaysian government, now being the Pakatan Harapan led government under Prime Minister Anwar Ibrahim. It is used not just for law-breakers, but also to 'threaten' internet users. Thinking about or talking about a crime is not a crime. It becomes a crime when there actual planning and when it is committed.

4. Thus, the having of laws for preventing commission of crimes is DRACONIAN, more so when the alleged suspect has yet to do anything in preparation to commit the crime. Intercepting or blocking internet communication/activities of a person because Malaysian Communications and Multimedia Commission (MCMC)] or any other authority believes or suspects the person MAY commit a crime is totally unreasonable.

DISRUPTING OUR INTERNET/COMMUNICATION RIGHTS WITHOUT NOTICE

5. Anyone's internet access, website/blog and application's access can be blocked by the government and/or Malaysian Communications and Multimedia Commission (MCMC)] or any other authority, without the alleged suspect or law-breaker knowing WHY or who is behind this.

6. Section 263(2) states, '(2) A licensee shall, upon written request by the Commission[Malaysian Communications and Multimedia Commission(MCMC)] or any other authority, assist the Commission or other authority as far as reasonably necessary in **preventing** the commission or attempted commission of an offence under any written law of Malaysia or otherwise in enforcing the laws of Malaysia,

including, but not limited to, the protection of the public revenue and preservation of national security.

7. Justly, the suspect or alleged law-breaker, must be given notice with the reasons immediately, preferably prior to action of blocking or depriving access. The right of the aggrieved to be heard and appeal must also be given. Naturally also the right to judicial review.

SPYING ON OUR PRIVATE COMMUNICATION AND INTERNET ACTIVITY

8. Section 252 CMA '…. authorise the officer to intercept or to listen to any communication transmitted or received by any communications….' . CMA says, "interception capability" means the capability of any network facilities or network service or applications service to intercept communications under section 265;

9. Section 265(1) states, 'The Minister may determine that a licensee or class of licensees shall implement the capability to allow authorised interception of communications…'

10. All that is needed now is the authorization of the Public Prosecutor, and justly, it is better that the requirement be a Court order made by a Judge, who will have to consider our right to privacy before allowing for any such 'spying'. It could be an interim ex-parte order, where the aggrieved will have the right to be heard in the inter-parte hearing.

11. Interception means just not listening in or spying but also the capacity to block communication to all, or maybe a certain group of individuals. Is that why some of our communication to a group reaches some but not others?

12. How many persons are being 'spied' on? Are they opposition politicians, lawyers, human rights defenders, etc?

13. For lawyers, privacy is crucial – no one is supposed to listen into or spy into the **communications between lawyer and client**, more so when most are today being done through the internet or over phones. It makes a mockery of solicitor-client privilege.

Therefore, the Malaysian Bar resolves

A. **Reiterate the call for the repeal of section 263, section 233 and such vague provisions in the Communications and Multimedia Act 1998[CMA].**

B. **Call for the respect of PRIVACY and an end of 'spying', interception and listening in on our communication over the internet or phones;**

C. **Call for the end of blocking or interruption of internet communication or activity without according due notice including reasons to the alleged suspect or law-breaker, with the right to be heard or right to appeal. The right to judicial review must be accorded.**

D. **Call for the repeal of Section 252 and other rights-violating provisions in the Communications and Multimedia Act 1998[CMA].**

E. **Call for a moratorium on the use of section 233, 263, 252 and such provisions in CMA pending repeal;**

F. **Call for the acknowledgement of the RIGHT OF PRIVACY, which best to be included and recognized in our Federal Constitution;**

G. **Call for the respect of human rights and justice for all.**

10/3/2023

Proposed by:

Charles Hector Fernandez

BC/C/712

Motion 7.13 **Bar Council <council@malaysianbar.org.my>**

MOTION TO EXTEND SAFEGUARDS FOR INDEPENDENCE OF JUDICIARY TO SESSION COURT JUDGES

Charles Hector <easytocall@gmail.com> Fri, Mar 10, 2023 at 4:31 PM
To: Bar Council <council@malaysianbar.org.my>, President of Malaysian Bar <president@malaysianbar.org.my>, ceo@malaysianbar.org.my, Rajen - Bar Council <rajen@malaysianbar.org.my>, Charles Hector <easytocall@gmail.com>

Charles Hector Fernandez

Lot 3585, Kampung Lubuk Layang,

Batu 3, Jalan Mentakab,

28000 Temerloh, Pahang

9 March 2023

Secretary
Malaysian Bar

Bar Council Malaysia,

Wisma Badan Peguam Malaysia,

2 Leboh Pasar Besar,

50050 Kuala Lumpur, Malaysia

RE: MOTION TO BE CONSIDERED AT THE MALAYSIAN BAR AGM

Pursuant to section 64(6) of the Legal Profession Act 1976 ("LPA"), please find enclosed motion entitled,

MOTION TO EXTEND SAFEGUARDS FOR INDEPENDENCE OF JUDICIARY TO SESSION COURT JUDGES

to be considered during the upcoming Annual General Meeting.

In solidarity,

Charles Hector (BC/C/712)

MOTION TO EXTEND SAFEGUARDS FOR INDEPENDENCE OF JUDICIARY TO SESSION COURT JUDGES

1. The safeguards for the independence of the Judiciary is now provided for High Court judges and above in the Federal Constitution and law.

2. Session Court judges' jurisdiction today have significantly been increased, and they can now hear matters and give orders that previously was under the jurisdiction of the High Court or High Court judges.

3. As such, it is time to extend the safeguards for the independence of the Judiciary to Session Court Judges. Consideration should also be given as to whether the safeguards should be extended to Magistrates and other judges.

MOTION TO EXTEND SAFEGUARDS FOR INDEPENDENCE OF JUDICIARY TO SESSION COURT JUDGES

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2. Session Court judges' jurisdiction today have significantly been increased, and they can now hear matters and give orders that previously was under the jurisdiction of the High Court or High Court judges.

3. As such, it is time to extend the safeguards for the independence of the Judiciary to Session Court Judges. Consideration should also be given as to whether the safeguards should be extended to Magistrates and other judges.

4. Amongst these safeguards in Malaysia are remuneration, security of tenure and prohibition of Parliamentary discussion on conduct of judges.

5. Today, Session Court judges come under the Judicial and Legal Service Commission, whose jurisdiction shall extend to all members of the judicial and legal service. The Chairperson is the Chairman of the Public Services Commission, and the Secretary is secretary to the Public Services Commission. The Attorney General is also in this Commission.

6. Hence, Session Court judges should be now under the Judiciary under the Chief Justice of Malaysia – no more under the Judicial and Legal Service Commission.

7. The practice that today's Session Court Judge may become a Deputy Public Prosecutor or Federal Counsel must end. A Session Court judge, on appointment be possibly by the independent Judicial Appointment Commission, must remain a judge until retirement or resignation.

Therefore, The Malaysian Bar resolves

A. That Safeguards for Judicial Independence be extended to Session Court Judges;

B. That Session Court Judges come directly under the Chief Justice of Malaysia or the Malaysian Judiciary, and no more be under the Judicial and Legal Service Commission to ensure independence of the judge.

10/3/2023

Proposed by:
Charles Hector Fernandez
BC/C/712

Motion 7.14 **Bar Council <council@malaysianbar.org.my>**

Motion to set TIME LIMITS for Minister to decide on Appeals and matters related

Charles Hector <easytocall@gmail.com> Fri, Mar 10, 2023 at 6:01 PM
To: Bar Council <council@malaysianbar.org.my>, ceo@malaysianbar.org.my, Rajen - Bar Council <rajen@malaysianbar.org.my>, President of Malaysian Bar <president@malaysianbar.org.my>, Charles Hector <easytocall@gmail.com>

Charles Hector Fernandez

Lot 3585, Kampung Lubuk Layang,

Batu 3, Jalan Mentakab,

28000 Temerloh, Pahang

9 March 2023

Secretary
Malaysian Bar

Bar Council Malaysia,

Wisma Badan Peguam Malaysia,

2 Leboh Pasar Besar,

50050 Kuala Lumpur, Malaysia

RE: MOTION TO BE CONSIDERED AT THE MALAYSIAN BAR AGM

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Motion to set TIME LIMITS for Minister to decide on Appeals and matters related

to be considered during the upcoming Annual General Meeting.

In solidarity,

Charles Hector (BC/C/712)

###

Motion to set TIME LIMITS for Minister to decide on Appeals and matters related

1 When there is **NO TIME LIMIT** stipulated in laws for the decision of Appeals to the Minister, it creates great injustice. The right to Judicial Review cannot be exercised until the Minister makes and conveys his appeal decision. If a person is dissatisfied with the Minister's decision, then he/she can go to court for Judicial Review.

2. As an example, in Immigration Act 1959/63 Section 9(8), which states

*(8) **Any person who is dissatisfied with any order** made against him under paragraph (1)(a), or the holder of any Pass or Permit cancelled under paragraph (1)(b) or (c) respectively, who is dissatisfied with the cancellation, or any person as is referred to under paragraph (a), (b) or (c) of subsection (6) who is dissatisfied with the application of subsections (4) and (5) to him under subsection (6) **may appeal to the Minister** within seven days of the publication of the order in the Gazette under*

Motion to set TIME LIMITS for Minister to decide on Appeals and matters related

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>
> *Provided that notwithstanding any appeal under this subsection, pending the determination of such appeal, the order of the Director General under paragraph (1)(a), or the cancellation of the Pass or Permit under paragraph (1)(b) or (c) respectively, or the application of subsections (4) and (5) to any person under subsection (6), shall have full force and effect as provided under subsection (2) or (3), as the case may be, and, where accordingly the person appealing is outside Malaysia, or has left Malaysia or been removed from Malaysia before its determination he may be permitted to enter or re-enter Malaysia if his appeal is allowed and the order under paragraph (1)(a) is revoked, or the Pass or Permit is restored to him, as the case may be.*

3. Note, that although the time for making the appeal is stipulated, there is **no provision as to amount of time the Minister has to decide on the appeal and convey his/her decision**.

4. On 19/4/2022, Sabri bin Umar, a migrant worker from Indonesia, was wrongly charged, convicted and sentenced to 11 months imprisonment and 5 strokes of the whip for being illegally present in Malaysia when he was in fact a properly documented migrant worker with a valid Social Visit (Temporary Employment) Pass [PLKS}. On 23.06.2022, despite pending Appeal, Sabri was wrongfully whipped 5 times.

5. When the High Court or the High Court Judge at Tawau became aware of the miscarriage of justice that had occurred, the High Court called up the Plaintiff's case for revision on 22/7/2022 and released him.

6. To remain in Malaysia, he needed to apply and obtain a Special Pass for his quest for justice against all perpetrators including police, Deputy Public Prosecutors, Immigration Department and others. The Immigration Department however gave him a 2-week Special Pass(not the usual 1 month Pass) on 28/7/2022 for making preparation to return to Indonesia.

7. Aggrieved with the Immigration decision, Sabri appealed to the Minister on 5/8/2022 in accordance with the law.

8. On 11/8/2022, on his next application for another Special Pass for his quest for justice, the Immigration, on his issued again a 2-weeks Pass for making preparation to return to Indonesia.

9. Aggrieved with the Immigration's decision, he appealed again to the Minister on 14/8/2022.

10. When the Minister failed to respond, he had no choice but to commence court action on or about 22/8/2022 primarily to get a Court order that the Minister makes and gives his decision of the Appeal. Note that without the Minister's decision on appeal, one's right to go to court for Judicial Review cannot be exercised.

11. As of 10/3/2023, the Minister has yet to revert with a decision on the 2 appeals of Sabri. There was even no letter from the Minister acknowledging the receipt of the appeal and saying that the appeal will soon be considered and the decision made. Even the new Home Minister of the PH-led government had yet to respond.

12. The Minister's failure to consider and make a decision on appeal brings about great injustice, more so for foreign nationals who may be forced to leave the country if the Minister delays. Once, out of Malaysia, things become most difficult as most avenues of justice are in Malaysia, and only Malaysia has jurisdiction.

13. For cases of foreign nationals especially, there must be provisions in law that allows for them to stay in Malaysia until the Minister's appeal decision is made and conveyed to the appellant. Preferably the right to remain in Malaysia ought to be justly at least about 14 days after the receipt of the appeal decision, giving them time to prepare and file for Judicial Review if they so desire.

14. Minister's delay may be because of negligence or intentional. A delay will deter the person who appealed to the Minister. For a foreign national, especially the poor migrant worker, it can mean that they will be forced to leave Malaysia, and thus it becomes near impossible to even commence Judicial Review in Malaysian courts.

Therefore, the Malaysian Bar resolves

A. Calls on Malaysia to ensure that all laws clearly state the TIME LIMITS for the Minister to consider and decide on appeals made to him.

B. Call on Malaysia to allow foreign nationals including migrant workers, be allowed to remain in Malaysia pending the appeal decision by the Minister, or preferably be allowed to stay in Malaysia at least a further 2 weeks – being time for them to consider and go for Judicial Review.

C. Criminalize delays by Ministers in considering and deciding on appeals to Minister; and

D. Call on incompetent and inefficient Ministers to resign, or be removed from Cabinet.

E. Calls for Malaysia to ensure that the access to justice be speedy and efficient.

10/3/2023

Proposed by:

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