To Members of the Malaysian Bar and pupils in chambers

69th Annual General Meeting of the Malaysian Bar

Date: 14 Mar 2015 (Saturday)
Time: 10:00 am
Venue: Grand Ballroom, Level 1, Convention Centre, Renaissance Kuala Lumpur Hotel, 50450 Kuala Lumpur

The agenda for the 69th Annual General Meeting of the Malaysian Bar (“AGM”) is as follows:

(1) To consider and, if approved, to adopt the minutes of the 68th AGM held on 15 Mar 2014;

(2) To discuss matters arising from the 68th AGM (please refer to the AGM Update Sheet on pages 79 to 84 of the 2014/2015 Annual Report);

(3) To consider and, if approved, to adopt the minutes of the Extraordinary General Meeting of the Malaysian Bar (“EGM”) held on 19 Sept 2014;

(4) To discuss matters arising from the EGM;

(5) To consider the President’s Report and committees’ reports re: Activities of the Malaysian Bar for the year 2014/2015;

(6) To consider and, if approved, to adopt the Audited Accounts of the Malaysian Bar for the year ended 31 Dec 2014;

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

(7.1) “Motion against Shafee Abdullah”, proposed by Tommy Thomas and seconded by V C George, dated 28 Feb 2015 (pages 3 to 5);

(7.2) “A Motion to call upon Mr Christopher Leong to retract the Press Release dated 11 February 2015 titled “Press Release: Dato’ Seri Anwar Ibrahim: Prosecuted or Persecuted?” issued by him as President of the Malaysian Bar and to further call upon him to tender a Public Apology to the Judiciary in respect thereof for bringing the Judiciary into contempt and misleading the Malaysian public”’, proposed by Faidhur Rahman Abdul Hadi and seconded by Aidil bin Khalid, dated 6 Mar 2015 (pages 6 to 8);

(7.3) Motion regarding the Sedition Act 1948, proposed by Ambiga Sreenevasan and seconded by Ragunath Kesavan, dated 6 Mar 2015 (pages 9 to 13);
(7.4) “A Motion to revoke the Resolution proposed by Christopher Leong, as Chairman of the Bar Council and on behalf of the Bar Council in relation to the Sedition Act 1948 passed and adopted by the Malaysian Bar at its Extraordinary General Meeting on 19 September 2014”, proposed by Faidhur Rahman Abdul Hadi and seconded by Nurrul Nadia binti Norrizan, dated 6 Mar 2015 (pages 14 to 15);

(7.5) “A motion to call upon the Malaysian Bar for transparency in respect of the election of the Bar Council members pursuant to sections 49, 50 and 51 of the Legal Profession Act 1976”, proposed by Hanif Abdul Rahman and seconded by Azril Mohd Amin, dated 6 Mar 2015 (pages 16 to 17);

(7.6) “Motion for the Provision of Legal Aid and Assistance to Workers”, proposed by Charles Hector Fernandez, dated 5 Mar 2015 (pages 18 to 19);

(7.7) “Motion on Royal Pardon and the Death Penalty”, proposed by Charles Hector Fernandez, dated 6 Mar 2015 (pages 20 to 21);

(7.8) Motion “regarding the Monopoly of the Provision of the Professional Indemnity Insurance by Jardine Lloyd Thompson Sdn Bhd (Underwritten by Pacific & Orient Insurance Co. Berhad)”, proposed by Steven Hoe and seconded by Vengetraman Manickam, dated 6 Mar 2015 (pages 22 to 25);

(7.9) “Motion on the Bar Council’s Proposed Legal Profession (Group Practice) Rules 2013”, proposed by Edmund Bon Tai Soon and seconded by Amer Hamzah bin Arshad, Foong Cheng Leong, Yudistra Darma Dorai, Abdul Rashid bin Ismail, Ong Yu Jian and Jamie Wong Siew Min, dated 6 Mar 2015 (pages 26 to 41);

(7.10) Motion “regarding the minimum standards and fair remuneration for Chambering Students / Pupils in Chambers”, proposed by Steven Hoe and seconded by Ashwin Kumar, dated 6 Mar 2015 (pages 42 to 45);

(7.11) “Motion on TPPA and ‘Investor-State Dispute Settlement’ (ISDS) Provisions”, proposed by Charles Hector Fernandez, dated 4 Mar 2015 (pages 46 to 48); and

(7.12) “Motion to increase Building Fund levy from RM100 to RM250 per annum for a period of 15 years”, proposed by Christopher Leong (Chairman, Bar Council), on behalf of the Bar Council, dated 6 Mar 2015 (pages 49 to 50); and

(8) General.

Richard Wee Thiam Seng
Secretary
Malaysian Bar

9 Mar 2015
MOTION AGAINST SHAFFEE ABDULLAH

A. WHEREAS barristers are members of a noble and honourable profession, and are expected to behave honourably at all times;

B. WHEREAS barristers are prohibited from conducting themselves in any manner which would bring the legal profession into disrepute or which is likely to diminish public confidence in the legal profession;

C. WHEREAS barristers must not permit their absolute independence and integrity to be compromised nor are they permitted to compromise their professional standards in order to please clients or for any other reason;

D. WHEREAS in total violation of these long established and cherished principles and values, Shafee Abdullah has, from the time the Federal Court delivered its decision to convict Anwar Ibrahim on 10th February 2015, behaved in a repugnant and obnoxious manner which has brought the legal profession into disrepute;

E. WHEREAS since 10th February 2015, Shafee Abdullah, as lead prosecuting counsel, has wilfully and with impunity: -

(i) held press conferences condemning Anwar Ibrahim who cannot respond as a convicted prisoner serving time;

(ii) drawn attention to his prowess, allegedly as a top rate prosecutor;

(iii) demeaned the accused Anwar Ibrahim and his legal team and the defences that were relied upon by them in court proceedings;
(iv) given interviews to the traditional and on-line media concerning his performance as prosecutor; and

(v) organized and participated in nationwide road shows, with a political party, for the purposes of insulting a convicted prisoner and bringing attention to his role in the conviction.

F. WHEREAS such extreme and outrageous conduct, unprecedented in the annals of the common law, cannot be allowed to continue and must receive strong condemnation from his peers;

G. WHEREAS a former Attorney General, Abu Talib, was quoted online on 16th and 17th February as stating that Shafee was advertising and promoting himself in the media, and called on Attorney General Gani Patail to revoke Shafee Abdullah’s appointment;

H. WHEREAS the totality of Shafee Abdullah’s conduct since 10th February 2015 has been morally reprehensible and legally unacceptable, crossing all lines of decency;

I. WHEREAS Shafee Abdullah, although supported by forces of the state, is not above the law, as Lord Denning reminded the Attorney General of the United Kingdom in 1977:-

“To every subject in this land, no matter how powerful, I would use Thomas Fuller’s words over 300 years ago: ‘Be you ever so high, the law is above you’”;

J. WHEREAS Shafee Abdullah’s conduct is in clear breach of Rules 5(a), 31, 32, 33 and 49 of the Legal Profession (Practice and Etiquette) Rules, 1978;
K. WHEREAS Rule 33 of the *1978 Etiquette Rules* which reads:

"An advocate and solicitor shall treat adverse witnesses and parties with fairness and due consideration and shall not minister to the malevolence or prejudices of a client in the conduct of a case;"

has particularly been breached by Shafee Abdullah; and

L. WHEREAS Shafee Abdullah has violated the *Legal Profession (Publicity) Rules, 2001*, Rule 5(1) (a) (ii) of which prohibits lawyers from publicizing about themselves or their practice in any manner "that may reasonably be regarded as being ... in bad taste ... sensational, intrusive, offensive or in any other way unbefitting the dignity of the legal profession".

ACCORDINGLY, the Malaysian Bar hereby resolves to:

(i) Condemn, in the strongest terms, Shafee Abdullah’s behaviour since 10th February 2015;

(ii) Call on the in-coming Bar Council to immediately lodge a complaint against Shafee Abdullah with the Disciplinary Board;

(iii) Urge the Bar Council to take all other steps to prevent Shafee Abdullah from continuing to bring the legal profession into disrepute.

Dated this 28th day of February 2015

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Tommy Thomas
(Proposer)

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Tan Sri V.C George
(Seconder)
A Motion to call upon Mr Christopher Leong to retract the Press Release dated 11 February 2015 titled “Press Release: Dato’ Seri Anwar Ibrahim: Prosecuted or Persecuted?” issued by him as President of the Malaysian Bar and to further call upon him to tender a Public Apology to the Judiciary in respect thereof for bringing the Judiciary into contempt and misleading the Malaysian public

WHEREAS:

(1) The individual by the name and style of Dato’ Seri Anwar bin Ibrahim (hereinafter known as “DSAI”) was charged for the crime of sodomy pursuant to Section 377B read with Section 377A of the Penal Code and was tried in relation thereto by the High Court of Malaya and acquitted in respect thereof by the High Court on 9 January 2012. Thereafter, on appeal before the Court of Appeal by the prosecution, the Court had overturned the said acquittal on 7 March 2014, DSAI was found guilty of the charge and sentenced to five years imprisonment. This conviction was subsequently affirmed by the Federal Court of Malaysia on 10 February 2015.

(2) Mr Christopher Leong, in his capacity as President of the Malaysian Bar and head of the Bar Council on 11 February 2015, in consequence of the aforementioned conviction of DSAI, proceeded to issue a Press Release titled “Press Release: Dato’ Seri Anwar Ibrahim: Prosecuted or Persecuted?” (“Press Release”) stating, inter alia, the following:-

(a) That the Malaysian Bar had not had the opportunity to peruse the extensive written grounds of judgment of the Federal Court;

(b) That it was the opinion of the Malaysian Bar nonetheless, that an accused who is charged with a crime need raise only a reasonable doubt, and where there is such reasonable doubt the accused must be acquitted;

(c) Since the hearing of the appeal was extensively reported in the media, the decision of the Federal Court has come as a surprise to many;

(d) That it is notable that DSAI was not charged under section 377C of the Penal Code for forced sodomy or sodomy rape, although they may appear to have been some allegation of coercion made in the proceedings;

(e) That DSAI has been convicted of an offence, sentenced to five years imprisonment and will be disqualified as a Member of Parliament for a charge that seems, on its face, to be a victimless offence;

(f) That this conviction has also given rise to questions or concerns as to why the complainant, Mohd Saiful Bukhari Azlan, who was alleged to have been a participant in the act of sodomy, was not charged for abetment under sections 377A and 377B of the Code, read with section 109 of the same;

(g) That the charge against DSAI is based on a provision of the Penal Code that has been rarely used and given this, it is remarkable that DSAI has been prosecuted and convicted twice for an alleged offence of sexual acts between adults wherein the charge does not contain elements of coercion; and
That it is a strange world that we live in and these glaring anomalies fuel a perception that DSAI has been persecuted, and not prosecuted.

The above statements pronounced by the President of the Malaysian Bar in the Press Release, for and on behalf of the Malaysian Bar, are and ought to be, whether taken in isolation or read as a whole, taken and construed as follows:

(a) A serious contempt of court that brought the administration of justice and the courts into public odium and disrepute;

(b) A militation against the fundamental and statutory duties of the Bar to uphold the cause of justice without fear, and in particular, without favour as well as promote good relations between members and other persons concerned in the administration of law and justice in Malaysia, and this includes the protection and sanctity of the judicial system from unwarranted scurrilous attacks;

(c) A misinterpretation of the law, since only the penetrator can be charged for an offence under section 377A and 377B;

(d) A statement made in haste and purporting to represent the stand of the Malaysian legal profession as a whole and as the same was made without the prior permission and consent of members, it did not represent the views of a majority of members of the Bar;

(e) An unfair and unsubstantiated statement given that the President of the Malaysian Bar and head of the Bar Council, Mr Christopher Leong, admitted to not having read the extensive written grounds of judgment of the Federal Court prior to issuing the said Press Release; and

(f) A tacit nod to the trial of the judiciary by the media, and an implication that courts exercising their judicial functions in any particular case before them ought to give due weight and credence to what is reported regarding the same in the mass media, a notion which the legal profession abhors.

The Press Release has caused must consternation, outrage and opprobrium, not only amongst members of the Malaysian Bar but also amongst the wider section of the Malaysian public.

Members of the Malaysian Bar herein assembled note that the Press Release not only subjected the whole judicial system in place within Malaysia, established by Article 121 of the Federal Constitution, to mere ordinary criticism in respect of the grounds of judgment but has had and will have the effect of lowering the stature of the judiciary amongst the Malaysian public in general, and constitutes the single worst attack against the integrity of Malaysian courts since the sacking of several reputable as well as high ranking judges, including Tun Salleh Abbas, the former Lord President of the Supreme Court of Malaysia in 1988, which was rightly condemned by this Bar by its Resolution brought before the Extraordinary General Meeting of the Malaysian Bar at the Shangri-La Hotel and approved therein on 9 July 1988.

Concerned Members of the Malaysian Bar have, with a view to its remedy, organised an initial grouping of 100 of their numbers, who have released a press statement dated 21 February 2015 expressing their utter disbelief and amazement with the Press Release, and
have CALLED loudly for its retraction and the tendering by the President of the Bar an unequivocal and unconditional apology public apology to the judiciary AND the communication thereof to all international bodies and entities, FAILING WHICH, the issuer thereof, Mr. Christopher Leong, President of the Malaysian Bar must immediately resign or face serious consequences in respect thereof, including possible contempt proceedings initiated by the Attorney-General. As at the date of this 69th Annual General Meeting of the Malaysian Bar, the Bar President has yet to retract the said Press Release, and may be retiring from his post without retraction of the said Press Release and without tendering the necessary apology in respect thereof.

(7) Members of the Bar herein assembled note that the Bar President has so far failed, refused and/or neglected to retract the said Press Release, apologise to the judiciary in respect thereof and communicating the same to all international bodies and entities and that such contemptible omissions give rise to just grounds for a resolution calling upon him to do the same.

NOW, THEREFORE, members of the Bar present at this 69th Annual General Meeting of the Malaysian Bar herein assembled, doth RESOLVE:-

1. To call upon Mr Christopher Leong to retract forthwith the Press Release dated 11 February 2015 titled “Press Release” Dato’ Seri Anwar Ibrahim: Prosecuted or Persecuted?” made in his capacity as President of the Malaysian Bar.

2. To call upon Mr Christopher Leong to tender a public apology to the Malaysian judiciary in respect of the issuance the Press Release dated 11 February 2015 titled “Press Release” Dato’ Seri Anwar Ibrahim: Prosecuted or Persecuted?” made in his capacity as President of the Malaysian Bar.

3. In the event this resolution (in para 1 and 2 hereinabove) is failed to be carried out by Mr Christopher Leong immediately, then the same shall be the duty of the incoming President of the Malaysian Bar, to be carried out within 14 days from the date of this resolution.

Proposed by

FAIDHUR RAHMAN ABDUL HADI
BC/F/533

Seconded by

AIDIL BIN KHALID
BC/A/1846
MOTION

WHEREAS:

(1) The Resolution adopted at the Extraordinary General Meeting of the Malaysian Bar held at Wisma MCA, Kuala Lumpur on 19 September 2014 (‘the September 2014 Resolution’) amongst others called for:

(a) the repeal of the Sedition Act 1948 (‘the Act’);

(b) the withdrawal of all pending charges, cases and appeals under the Act; and

(c) a moratorium on the use of the Act.

(2) Six months have passed since the passage of the September 2014 Resolution. Far from a repeal of the Act, on 27 November 2014, the Prime Minister was widely reported as declaring that the Act will not be repealed but will instead be strengthened.

(3) Instead of withdrawing the charges, cases and appeals that were pending under the Act, the Attorney General has actively pursued them:

(a) Since 2013, at least 21 persons have been charged under the Sedition Act 1948, and most of the instances have been listed in Appendix A to the September 2014 Resolution.

(b) Among the cases that have gone to full trial, activist Adam Adli was convicted and sentenced to 12 months’ imprisonment, activist Safwan Anang was convicted and sentenced to 10 months’ imprisonment and activist and former ISA detainee Hishamuddin Rais was fined RM5,000. The Attorney General has appealed to increase the sentences in all these cases.
Furthermore, instead of a moratorium on the use of the Act, since the beginning of 2015, the Attorney General and the Inspector General of Police have additionally investigated, arrested, remanded or charged several elected representatives, activists, students, a lawyer and even a cartoonist under the Act, including lawyer Eric Paulsen, cartoonist Zulkiflee Anwar Haque (Zunar), Member of Parliament Rafizi Ramli, Member of Parliament Nga Kor Ming, Parti Sosialis Malaysia Secretary General S. Arutchelvan, State Assemblyman Dr Afif Bahardin, activist Lawrence Jeyaraj, 2 students for posting on Facebook a “firecracker poster” and at least 14 activists from pro-secession group Sabah Sarawak Keluar Malaysia (SSKM).

While the Malaysian Bar does not advocate the use of the Act against any person, it nevertheless condemns the apparent bias with which the Act has been wielded to predominantly suppress the voices of dissent against the government of the day, but not against those whose hate speech and incendiary actions target the minorities in the country. A list of instances of selective non-prosecution by the Attorney-General is set out in Appendix C of the September 2014 Resolution. To that list, the following instances are added:

(a) On 5 October 2014, Petaling Jaya Utara Umno deputy division chief Mohamad Azli Mohemed Saad reportedly called for the abolishment of vernacular schools.

(b) On 26 November 2014, Baling Wanita Umno chief Datuk Mashitah Ibrahim reportedly alleged falsely that a Chinese in Kedah had burnt the Quran in a prayer ritual.

(c) On 2 February 2015, Minister of Agriculture and Agro-Based Industry Datuk Seri Ismail Sabri Yaakob reportedly wrote in a Facebook post that Chinese-owned businesses were raising prices indiscriminately and called for a boycott of Chinese businesses.
Far more disquieting is the manner in which the Inspector General of Police has employed the powers granted his office under the Act and other laws. The act of arrest and the manner of detention seem to have become the tools to punish those who speak and express political dissent; while those who stoke racial and religious discord are accorded deference:

(a) Activist Ali Abdul Jalil had 3 charges levelled against him under the Act. Over the course of approximately 22 days, Ali was repeatedly charged and remanded under the Act and once he posted bail under one charge, he was re-arrested and remanded again under a fresh sedition charge in what can arguably be viewed as a bid to keep him remanded for as long as possible. The ordeal he experienced exemplifies the abject abuse of the Act by the authorities and how it is used as an instrument of oppression against dissenting voices. Ali has since fled the country seeking political asylum in Sweden, saying, “Malaysia is not safe for me”. He has been declared a prisoner of conscience by Amnesty International.

(b) On 12 January 2015, about 20 police officers were deployed to arrest Eric Paulsen under the Act, and his mobile phone and laptop were seized. He was remanded for 2 days during which time the police took him to his house to search for additional laptops.

(c) On 10 February 2015, about 5 police officers were deployed to Zulkiflee Anwar Haque (Zunar)’s house to arrest him under the Act, and he was remanded for 3 days.

(d) On 19 February 2015, about 10 police officers were deployed to S. Arutchelvan’s home to arrest him under the Act, and also seized his computer, modem and mobile phone.

(e) In contrast, Datuk Seri Ismail Sabri Yaakob was not investigated under the Sedition Act but under the Penal Code. Unlike the others who were arrested in order for statements to be taken, and who would in all
likelihood have attended at the police station voluntarily, the police
negotiated the setting up of a meeting with Datuk Seri Ismail Sabri
Yaakob in order to take his statement.

(7) The conduct of the Inspector General of Police and those under his command
demonstrates that powers granted to them under oppressive laws are being
utilised indiscriminately and to intimidate the public. The abuse of the
remand process as a means of punishment and the manner of arrest and
seizure of property outlined above are a gross abuse of process and the law.

(8) The sum totality of the matters that have occurred since the September 2014
Resolution demonstrates that the Malaysian Government has not heeded the
call of the Malaysian Bar, but has instead doubled down on its use of the Act
to “quell dissent… constrict and deny democratic space, and …oppress and
suppress Malaysians”.

THEREFORE, it is hereby resolved that:

(A) The Malaysian Bar condemns the continued use of the Sedition Act 1948, in
particular its excessive and selective use.

(B) The Malaysian Bar condemns the abuse of process by the IGP and those
under his command in using their powers to intimidate and punish rather than
investigate.

(C) The Malaysian Bar calls upon the Malaysian Government to abide by the
Prime Minister’s pledge of 11 July 2012 to repeal the Sedition Act 1948, and to
forthwith repeal the Sedition Act 1948.

(D) The Malaysian Bar calls on the Attorney General to forthwith withdraw all
pending charges, cases and appeals, and to concede to all pending appeals, under
the Sedition Act 1948.
(E) The Malaysian Bar calls upon the Judiciary to prevent the systematic abuse of the Sedition Act 1948, and to prevent an abuse of the process of investigation and remand by the police.

(F) The Malaysian Bar calls upon the Attorney General to impose a moratorium on the use of the Sedition Act 1948 pending its repeal, and for the police to cease all investigations pursuant to the Sedition Act 1948.

(G) The Malaysian Bar calls upon the Attorney General and the Inspector-General of Police to respect the liberty of an individual and the people's right to legitimate dissent and criticism.

(H) The Malaysian Bar calls upon the Attorney General to be a professional, impartial and competent AG by leading the Attorney General's Chambers in upholding the Constitution and the laws of Malaysia in a fair and equitable manner.

(I) The Malaysian Bar calls upon the Inspector-General of Police to be a professional, impartial and competent IGP by leading the police force in maintaining law and order, preventing and detecting crimes and apprehending criminals rather than policing social media or speech.

(J) The Malaysian Bar directs the Human Rights Committee of the Bar Council to appoint a task force to monitor the use of the Sedition Act 1948 and to produce monthly reports on the same to the Bar Council.

Dated on the 6th day of March 2015.

Proposer: Ambiga Sreenevasan

Seconder: Ragnath Kesavan
A Motion to revoke the Resolution proposed by Christopher Leong, as Chairman of the Bar Council and on behalf of the Bar Council in relation to the Sedition Act 1948 passed and adopted by the Malaysian Bar at its Extraordinary General Meeting on 19 September 2014

WHEREAS:-

(1) The Sedition Act 1948 was passed in 1948 as the Sedition Ordinance 1948 by the Federal Legislative Council then in existence, and has been retitled the Sedition Act 1948 pursuant to a revision thereof.

(2) The Sedition Act 1948, being a preventive law, criminalises certain speech deemed to have seditious tendencies, among these, the incitement of racial and religious tensions, criticisms against the administration of justice in Malaysia, and questioning of certain Articles of the Federal Constitution containing the basic structure thereof, in particular, Article 152 in relation to the National Language, Article 153 in relation to the status of Malays and the legitimate rights of other races, and Article 181 in relation to the Malay Rulers. The Act prevents the occurrences of racial and religious disharmony at their source by making such incitement, criticism and questioning free from the ordinary requirement to prove intention under other criminal legislation, such as the Penal Code. The Sedition Act 1948 is also unique in the sense that it is the only ordinary legislation referred to in the Federal Constitution, in particular Article 64(3) thereof which prohibits even Members of Parliament from questioning constitutional provisions that make up the basic structure of Malaysia.

(3) The Malaysian Bar had on 19 September 2014 organised an Extraordinary General Meeting wherein a Resolution was proposed by Christopher Leong, chairman of the Bar Council for and on behalf of the Bar Council contending that the Sedition Act 1948, on grounds mentioned in that Resolution, should be abolished and that all investigations and proceedings for offences under the Sedition Act 1948 be discontinued. The Resolution was approved by members of the Malaysian Bar present at the said EGM by 701 votes in favour and 13 votes against. Further to the Resolution, the Bar Council organized the Walk for Peace and Freedom on 16 October 2014, culminating in the handing over of a Memorandum to the relevant authorities urging the repeal of the Sedition Act 1948.

(4) The actions of the Bar Council in the preceding paragraph formed part of a wider national debate between all concerned members of society generally and the Malaysian public at large as to the merits versus the demerits of repealing, as opposed to retaining, the Sedition Act 1948.

(5) Upon the due consideration been given to the views of all strata of society by the relevant authorities, including that of the Malaysian Bar, a decision was
made to retain the Sedition Act 1948 and to strengthen the same by adding provisions protecting Islam as the religion of the Federation and to prohibit any call for succession of Sabah and Sarawak as states of the Federation.

(6) In view of the above, in particular the conclusion of the national debate in favour of retaining the Sedition Act 1948, it is necessary to revoke the Resolution passed at the Extraordinary General Meeting of the Malaysian Bar held on 19 September 2014.

NOW, THEREFORE, members of the Bar present at this 69th Annual General Meeting of the Malaysian Bar herein assembled, doth RESOLVE:-

1. That the Resolution proposed by Bar Council chairman Christopher Leong at the Extraordinary General Meeting held on 19 September 2014 calling for the repeal of the Sedition Act 1948 passed by the Malaysian Bar at the said meeting, be and is hereby revoked.

2. That the Malaysian Bar takes cognizance of the conclusion of the national debate in favour of retaining the Sedition Act 1948, and supports the proposal to strengthen its provisions in relation to the Islam as religion of the Federation and to prohibit any call for succession of Sabah and Sarawak from Malaysia.

3. That the Bar Council is directed to communicate the contents of this Motion to all and sundry bodies and entities, local and international, who had hitherto expressed support for the Malaysian Bar’s prior position in favour of repealing the Sedition Act 1948.

Proposed by

FAIDHUR RAHMAN ABDUL HADI
BC/F/533

Seconded by

NURRUL NADIA BINTI NORRIZAN
BC/N/1951

WHEREAS:-

1. The Bar Council had during the months of November 2014 to December 2014 conducted its annual election of the Bar Council members in accordance with sections 49, 50 and 51 of the Legal Profession Act 1976.

2. There were twenty-three candidates that had filed their nomination papers for election to the Bar Council for the 2015/2016 term.

3. Thereafter, ballots were distributed to almost 16,000 members of the Malaysian Bar by post and members were expected to receive their ballot papers beginning 6 November 2014.

4. Members were instructed to return the ballots to the Bar Council Secretariat not later than 5.30 pm on 1 December 2014 (Monday). The ballots would then be delivered to the election scrutineers on 2 December 2014 where a ballot-counting process will be conducted.

5. During the ballot-counting process, one of the candidates had observed as follows:-

   (a) Candidates and their representatives were only allowed to observe the ballot-counting process through a purported live streaming telecast in a viewing room. The actual counting process was conducted in another room in another building altogether.

   (b) There were cameras that were allegedly placed in the ballot-counting room. However, the purported live streaming telecast only provided coverage in respect of only one team of scrutineers of the counting process.

   (c) Candidates who had intended to view the ballot-counting process were required by the Bar Council Secretariat staff to sign a written undertaking that they will not photograph, record or transmit by electronic means the footage they viewed via the purported live streaming telecast. In the absence of such undertaking, the candidates were refused entry to the viewing room. This written undertaking is not provided for in any written law.

6. The ballot-counting process is therefore non-transparent as:-

   (a) The candidates and their representatives were not permitted to view the actual ballot-counting process altogether.
(b) The purported live streaming telecast had provided coverage in respect of only one team of scrutineers of the ballot-counting process.

(c) The candidates or their representatives were required to sign a written undertaking prior to being admitted into the viewing room.

NOW, THEREFORE, members of the Bar present at this 69th Annual General Meeting of the Malaysian Bar herein assembled, doth RESOLVE:-

1. To call for a transparent ballot-counting process by allowing the candidates in person or their representatives in person to observe and view the ballot-counting process at the ballot-counting room without any conditions or restrictions whatsoever.

2. To allow the candidates or their representatives to question and object to any ballots found to be irregular.

3. To allow the candidates or their representatives to challenge the results of the election thereof.

Proposed by

HANIF ARDUL RAHMAN
BC/H/366

Seconded by

AZRIL MOHD AMIN
BC/A/1092
Motion For The Provision Of Legal Aid And Assistance To Workers

Whereas:

1) Workers in Malaysia whose rights are violated have the right to lodge claims with the Human Resource Department (HRD) (formerly known as Labour Department), the Industrial Relations Department (IRD) or other available avenues – but workers need legal advice and assistance to be able to effectively determine and document their claims, which would also include identifying and preparing the requisite evidence, be it documentary evidence or available witnesses, to support their claim. Workers generally do not have the capacity, legal knowledge or know-how to be able to do this.

2) Less than 5% of workers in the private sector are unionized, and as such the majority of the about 13 million workers in Malaysia, of which about 2.9 million are migrant workers, will not have even have access to union assistance. Most unions also do not have the capacity and legal knowledge needed to assist workers with their claims.

3) After the lodging of complaints, if the matter cannot be resolved by conciliation, in the HRD, it proceed to a hearing before the Labour Court – whereby proceedings are akin to any court proceedings, whereby the worker have the right to be represented by a lawyer. Most employers are currently represented by lawyers but most workers are not. This is an unjust situation.

4) The worker claims at the HRD generally is small and not very large, and employing the services of a lawyer would mean paying more than the amount claimed for, or a significant percentage of the total claim. Lawyers ordinarily will not likely to take up such cases.

5) At present, when a worker is successful in claim at the HRD or Labour Court (HR Court), what he will get is only the amount that the employer should have originally paid him but failed to. In proceeding with the claim, the worker loses monies in terms of transport and even lost days of work. Hence, at the end of the day, the worker loses out. When an employer cheats the workers, by, amongst others, the non-payment of monies due, the law should provide deterrence in the form of maybe requiring the said employer to pay double or triple the amount of payable to the worker.

6) The Bar Council Legal Aid Centers has the capacity and the ability to assist, provide legal assistance and even representation for workers from the point before the worker lodges any complaints/claims to the point of the final settlement of the claim, and this legal aid...
should be provided to all workers, including migrant workers, especially those whose basic wages do not exceed RM3,000-00.

7) National Legal Aid Foundation, at present, do not extend their services to claims for worker rights.

We hereby resolve:

(1) That Malaysian Bar, through its Legal Aid Centers, extends the services of providing advice, assistance and legal representation for all workers with basic monthly salary of less than RM3,000 from the point of intending to file a complaint at the Human Resource Departments (Labour Offices) or other avenues of justice to the full settlement of the said cases.

(2) The Malaysian Bar shall also do the needful to make the National Legal Aid Foundation extend its services to also worker rights violations.

(3) The Bar Council also do the needful to create awareness of, and if possible, provide training on, worker rights, including how to use all available channels to access for justice for workers, including providing necessary training for lawyers, workers and trade unions.

(4) That the Bar Council shall call upon Malaysia to reviews all existing labour legislations, also with a view of providing more deterrent penalties for employers and just remedies for workers who have been exploited or cheated by employers.

Charles Hector Fernandez
BC/C/712
5th March 2015
MOTION ON ROYAL PARDON AND THE DEATH PENALTY

Whereas:

1) Article 42(1) Federal Constitution provides that: ‘The Yang di-Pertuan Agong has power to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial and all offences committed in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya; and the Ruler or Yang di-Pertua Negeri of a State has power to grant pardons, reprieves and respites in respect of all other offences committed in his State.’

2) Article 42(3) Federal Constitution also states that, ‘Where an offence was committed wholly or partly outside the Federation or in more than one State or in circumstances which make it doubtful where it was committed, it shall be treated for the purposes of this Article as having been committed in the State in which it was tried.’

3) Anyone can move the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri of a State to exercise this power to grant pardons, reprieves and respites, including commuting the sentence of death.

4) Mindful that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable, and the other arguments that have been advanced for the abolition of the death penalty are good reasons why the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri of a State to exercise their powers to commute the death sentence to one of imprisonment.

5) In Thailand, Royal Pardon has resulted in 90 percent or more persons sentenced to death having their sentence commuted to imprisonment.

6) Information about the whole process of application for pardon is not easily available to the public. Neither are the principles or the considerations that are relevant in making or considering such application.

7) It is known that Malaysia has commuted the death penalty for some foreign nationals, possibly on the application of foreign nation states, possibility by reason of some diplomatic consideration. If there are different standards applicable for the commuting of the death penalty, then this will be considered discriminatory against local Malaysian death row inmates and those from less influential nation states. The statistics of persons whose
death sentence had been commuted need to be obtained, and the reasons for this need to be studied, analyzed and considered.

8) On 18/12/2014, the United Nations General Assembly (UNGA) adopted a Resolution to establish a moratorium on executions with a view to abolishing the death penalty. This is the fifth time this resolution has been tabled since the first in 2007. 117 member states voted in favour of the 2014 resolution, indicating the continuing growing global support for the abolition of the death penalty.

**We hereby resolve:**

(1) **That Malaysian Bar, through the Bar Council or otherwise, do take the necessary steps to apply to the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri of a State to immediately commute the death penalty of all persons on death row.**

(2) **That the Bar Council do the needful to study, and increase awareness about all aspects of the procedures relating to the application for pardon.**

Charles Hector Fernandez  
BC/C/712  
6th March 2015
Dear Sirs,

RE:  SUBMISSION OF 2 RESOLUTIONS TO BE TABLED AT THE MALAYSIAN BAR AGM

We refer to the above and attach herewith the following proposed resolutions to be tabled at the Malaysian Bar Annual General Meeting scheduled for 14 March 2015.

1. Proposed resolution regarding the minimum standards and fair remuneration for Chambering Students / Pupil in Chambers proposed by Steven Hoe and seconded by Ashwin Kumar; and

2. Proposed resolution regarding the Monopoly of the Provision of the Professional Indemnity Insurance by Jardine Lloyd Thompson Sdn Bhd (Underwritten by Pacific & Orient Insurance Co. Berhad) proposed by Steven Hoe and seconded by Vengetraman Manickam.

We should be grateful if these resolutions are tabled at the Malaysian Bar Annual General Meeting for the consideration and adoption by the Malaysian Bar.

Should you require any further information and/or assistance, please do not hesitate to contact us.

We remain

Yours faithfully,

STEFAN HOE
MESSRS STEVEN & ASSOCIATES
Proposed resolution regarding the Monopoly of the Provision of the Professional Indemnity Insurance by Jardine Lloyd Thompson Sdn Bhd (Underwritten by Pacific & Orient Insurance Co. Berhad)

Motion proposed by Steven Hoe, dated 6 March 2015 for consideration and adoption by the Malaysian Bar Annual General Meeting on 14 March 2015.

(A) WHEREAS it is one of the requirements of the Legal Profession Act 1976 that any person intending to practise as an Advocate and Solicitor, must comply with all the rules and regulations made by the Bar Council with regards to professional indemnity as provided for by section 78A of the said Act.

(B) WHEREAS the Bar Council requires all practising advocates and solicitors to take out and maintain a professional indemnity insurance, prior to the issuance of the Annual and Practising certificates.

(C) WHEREAS the Bar Council has entered into an agreement with Jardine Lloyd Thompson Sdn Bhd to be the sole agent providing the professional indemnity insurance for and/or behalf of Pacific & Orient Insurance Co. Berhad.

(D) WHEREAS Jardine Lloyd Thompson Sdn Bhd continues to maintain a monopoly over the issuance of professional indemnity insurance for the whole of the practising legal professionals within Peninsular Malaysia.

(E) WHEREAS section 4 of the Competition Act 2010 prohibits any agreement that has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.
(F) **WHEREAS** there may be concerns that the Malaysian Bar and/or Jardine Lloyd Thompson Sdn Bhd may have abused its dominant position by limiting or controlling market outlets or market access to other potential providers of professional indemnity insurance, to the prejudice of the practising advocates and solicitors within Peninsular Malaysia, contrary to section 10(2)(b)(ii) of the Competition Act 2010.

(G) **WHEREAS** the Malaysian Bar and Jardine Lloyd Thompson Sdn Bhd may be in breach of the Competition Act 2010 by failing to promote competitive insurance premiums, quality of insurance services and provision of wider choices for the whole of the practising legal profession in Peninsular Malaysia.

**WE** hereby resolve:

**THAT** the Malaysian Bar adopt and implement the following recommendations immediately.

**RECOMMENDATIONS**

a) **THAT** the Malaysian Bar undertakes an immediate review of the agreement entered into with Jardine Lloyd Thompson Sdn Bhd and make public to the members of the Malaysian Bar of the processes involved (including all relevant documents) in the selection of Jardine Lloyd Thompson Sdn Bhd as the sole agent provider of the professional indemnity insurance;

b) **THAT** the Malaysian Bar advertises and starts a fresh bidding process for the provision of the supply of professional indemnity insurance for the start of the legal year of 2016 by all interested insurance companies;
c) **That** the Malaysian Bar selects and nominates at least 3 (three) different insurance companies who are able to meet the minimum standards required for the provision of the professional indemnity insurance; and

d) **That** all practising advocates and solicitors be permitted to freely negotiate and select the provider for their professional indemnity insurance, from the approved list of insurance companies selected, as provided by the Malaysian Bar.

Dated: 6th day of March 2015

[Signature]

Steven Hoe
Proposer
The Bar Council by Circular No. 155/2013 dated 10 July 2013 sought members’ views on the proposed Legal Profession (Group Practice) Rules 2013. The move to allow law firms to band together to establish a Group Practice (GP) is lauded. The GP model is an important option especially for small firms which make up about 90% of the profession.

Following the Circular:
(a) A memorandum dated 29 July 2013 (6 pages) was sent to the Bar Council: see Appendix I hereto.
(b) A letter dated 7 February 2014 with the attached GP Rules (showing tracked changes of proposed amendments in 6 pages) was sent to the Bar Council: see Appendix II hereto.

It is understood that the Bar Council at its February 2015 meeting decided to proceed with the proposed Rules without amendments. Therefore, the restrictions to the establishment of a GP remain, some of which are as follows:
1. Only small firms defined as those with 5 lawyers or less are eligible to form a GP.
2. The maximum number of firms to be allowed in a GP is 5.
3. Firms with branches will not be eligible to form a GP.
4. A GP must be housed under one roof in the same premises.
5. A GP is not allowed to have a common GP name.

These restrictions are unreasonably onerous, and defeat many of the objectives for forming a GP in the first place. Singapore and Hong Kong have similar GPs with far fewer restrictions.

In view of international and regional trends towards liberalisation of the profession, and the need to prepare Malaysian firms for global disruption in the industry, the Bar Council urgently needs to enable and empower firms with maximum flexibility to pool their resources, and develop their capabilities and competitive edge. And the same time without compromising the values and standards of the profession.

THEREFORE IT IS RESOLVED that:

1. The incoming Bar Council 2015/16 re-consider the proposed Legal Profession (Group Practice) Rules 2013 with a view to amending the the same in line with the GP Rules of Singapore and Hong Kong.

2. Alternatively, that the Malaysian Bar adopts the proposed amendments reflected by the tracked changes to the GP Rules shown in Appendix II hereto.

Dated this 6th day of March 2015

Proposer: Edmund Bon Tai Soon

Seconders:
1. Amer Hamzah bin Arshad
2. Foong Cheng Leong
3. Yudistra Darma Dorai
4. Abdul Rashid bin Ismail
5. Ong Yu Jian
6. Jamie Wong Siew Min
APPENDIX I

(to the Motion dated 6 March 2015 to be proposed at the
69th Bar AGM by Edmund Bon Tai Soon)
Attn.: George Varughese, Chairperson, Small Firms Committee

Dear Sirs,

MEMORANDUM BY MEMBERS OF THE MALAYSIAN BAR ON THE PROPOSED LEGAL PROFESSION (GROUP PRACTICE) RULES 2013

We refer to Circular No 155/2013 dated 10 July 2013, whereby the Bar Council sought members’ feedback on the proposed Legal Profession (Group Practice) Rules 2013 ("Proposed GPR"). This memorandum sets out our comments on the Proposed GPR.

1 GENERAL COMMENTS

1.1 The majority (approximately 90%) of law firms in Malaysia are small firms made up of sole proprietors or entities with less than 5 lawyers. The idea behind the "Group Practice" – allowing small firms to band together in a larger set-up while retaining the characteristics of each individual firm – is to grant the member firms the flexibility of small firm practice, while at the same time enabling them to share resources to compete with larger law firms.

1.2 The Bar Council’s willingness to introduce Group Practice in Malaysia is lauded. Group Practice will apply to the vast majority of Malaysian law firms, and should lead to increased competitiveness and quality of legal services. The Group Practice model should also improve the international accessibility and recognition of Malaysian law firms, thanks to the greater branding opportunities enabled by a Group Practice.

1.3 Singapore’s Legal Profession (Group Practice) Rules 1999 ("Singapore’s GPR") provides a good reference point for the Bar Council. We note that the Proposed GPR is similar in many respects to Singapore’s GPR, save for several exceptions. Some of the excluded provisions are notable, and should be included in the Proposed GPR. Further, the Proposed GPR should also include additional provisions, in recognition of the fact that there are some key differences between the respective legal landscapes of Malaysia and Singapore.

2 SPECIFIC COMMENTS

2.1 The definition of a “group practice” should be edited for clarity

2.1.1 In Rule 2 of the Proposed GPR, "group practice" is defined as follows:

"group practice" means a practice comprising 2 or more firms with each firm having no more than 5 Advocates and Solicitors and having no branch office which share premises in mutual co-operation and expressly practise as separate firms
This is different from the definition in Singapore's GPR, which is as follows:

"group practice" means a practice comprising 2 or more firms which expressly practise as a group under a group name as separate firms in mutual co-operation

2.1.2 We understand that the Bar Council intends to limit the availability of the Group Practice model to law firms which have no more than 5 lawyers, which explains the inclusion of the words "with each firm having no more than 5 Advocates and Solicitors". This portion of the definition is therefore clear.

2.1.3 However, the remainder of the definition of "group practice" in the Proposed GPR is poorly-drafted and ambiguous. The remaining words – "and having no branch office which share premises in mutual co-operation and expressly practise as separate firms" – are ambiguous, and could give rise to the following potentially conflicting interpretations:

(a) The words "and having no branch office" mean that law firms which have branch offices are automatically disqualified from participating in a Group Practice.

(b) The words "and having no branch office" do not refer to the individual law firms, but instead mean that the Group Practice itself is not allowed to have a branch office.

2.1.4 The definition of "group practice" should be reworded to remove ambiguity. The Bar Council should also expressly state within the Proposed GPR whether –

(a) law firms which have branch offices are automatically disqualified from participating in a Group Practice; or

(b) a Group Practice is prohibited from opening a branch office.

Our view is that the law firms with branch office should not be disallowed from participating in a Group Practice, and that Group Practices should be permitted to open branch offices. Our reasons for this view are set out in Section 2.2 of this memorandum.

2.1.5 We note that, unlike Singapore's GPR, the definition of "group practice" in the Proposed GPR does not provide for the Group Practice to have a "group name". Our view is that the use of a group name is essential to a Group Practice, and our reasons for this view are set out in Section 2.3 of this memorandum.

2.1.6 In view of the above, we propose that the definition of "group practice" be revised to the following:

"group practice" means a practice comprising 2 or more firms, with each firm having no more than 5 Advocates and Solicitors, which expressly practise as a group under a group name as separate firms in mutual co-operation.
2.2 The Proposed GPR should allow individual member firms to have branch offices, and also allow the Group Practice to have branch Group Practices.

2.2.1 This Section 2.2 expands on the discussion in Section 2.1, particularly Paragraphs 2.1.3 and 2.1.4.

2.2.2 Law firms which have branch offices should not be disqualified from participating in a Group Practice. Many law firms in Malaysia have branch offices in various States. This is one aspect of legal practice in Malaysia which is different from Singapore, which is a city-state. We see no reason why law firms which have branch offices should be deprived of the opportunity to be part of a Group Practice.

If necessary, the Bar Council can impose conditions – for example that the total number of Advocates and Solicitors in all the branches of the individual firm cannot be more than 5 – to ensure that the spirit of a Group Practice is maintained, but the existence of a branch office in itself should not disqualify a firm from being part of a Group Practice.

2.2.3 A Group Practice should also not be prohibited from opening a branch Group Practice. Again, the difference between Malaysia and Singapore is the existence of many States, and there should be no reason why a Group Practice should be barred from opening branches in different States.

If necessary, the Bar Council can impose conditions – for example that all the member firms in that Group Practice must be present in any branch of the Group Practice – but there should be no blanket prohibition on a Group Practice opening branch offices.

2.2.4 It is important that the Bar Council permits firms with branch offices to participate in a Group Practice, and a Group Practice to open branch offices. A failure to do so could be perceived as the Bar Council imposing unnecessary and unjustifiable geographical boundaries on law firms.

2.2.5 Once the Bar Council has decided on this issue, the Proposed GPR should be amended to expressly state the position in order to remove ambiguity and the possibility of conflicting interpretations.

2.3 The Proposed GPR must allow the adoption of a common and joint Group Practice name among the member firms.

2.3.1 We agree that a Group Practice should not be a separate legal entity. However, the Proposed GPR does not appear to allow the adoption of a common and joint Group Practice name among the member firms.

This omission, if maintained, would defeat the purpose for the establishment of Group Practices. The inability to operate under a common Group Practice name would be a severe handicap to branding and marketing initiatives.

2.3.2 Rule 6 of Singapore’s GPR is very practical, and should be introduced into the
Proposed GPR, mutatis mutandis. It reads as follows:

Name, style and register of group practice

6—(1) A group practice shall bear a name which describes the group practice as such and shall bear the words "Group Law Practice" as part of its name.

(2) No firm which is not a member of a group practice shall describe itself as a group practice.

(3) A firm in a group practice may in the course of its professional undertakings and in documents in which its name appears, including its letterheads, nameplates and business calling cards, use the name of the group practice in conjunction with its own firm name.

(4) The sole proprietors and partners of firms which wish to practise as a group practice shall apply to the Council for approval of the proposed name of the group practice and the manner in which the name of the group practice will be used in conjunction with the firm name of each firm in the group practice.

(5) No firm shall practise as a member of a group practice unless the name of the group practice shall have been approved in accordance with paragraph (4).

(6) The approval or rejection of any proposed name shall be at the sole discretion of the Council.

(7) Without limiting the discretion of the Council, the Council shall not approve any proposed name which in its opinion —

(a) is or may be reasonably be regarded as being ostentatious, in bad taste, misleading, exploitative, deceptive, inaccurate, false, sensational, offensive or in any other way unbefitting the dignity of the legal profession;

(b) is so similar to that of an existing group practice as to be likely to be confused with it; or

(c) is inconsistent with any of the provisions of the Legal Profession (Publicity) Rules (R 13).

(8) The Council may, if it thinks fit, direct a group practice to change its name and the group practice shall comply with the direction within 6 weeks after the date of the direction or such longer period as the Council allows.

(9) If a group practice fails to comply with any direction under paragraph (8), the sole proprietors and partners of the firms of the group practice shall immediately cease to practise under the name of the group
2.3.3 Group Practices in Singapore have clearly worded nameplates, business cards, letterheads and other office documentation indicating that the member firms are part of the respective Group Practices. We are not aware of any reported problems or confusion caused by allowing a joint Group Practice name.

2.3.4 As mentioned above, the absence of a joint Group Practice name as representative of the member firms would result in an inability to brand and market the Group Practice. If the firms in a Group Practice are not permitted to use a joint Group Practice name, it would almost entirely defeat the purpose of introducing the Group Practice model into Malaysia.

Therefore, the Proposed GPR must be amended to make it compulsory for a Group Practice to adopt and consistently use a joint Group Practice name.

2.3.5 If the Bar Council is concerned about confusion as to the nature of Group Practices, further rules may be incorporated to make it mandatory for Group Practices to clearly exhibit sign or nameplates at the entrance of the Group Practice offices explaining the nature of the Group Practice.

2.4 Criteria for approval of rejection of applications must be put in place

2.4.1 Rule 6(iii) of the Proposed GPR reads: “The approval or rejection of any group practice shall be at the sole discretion of the Bar Council.” Whilst we accept that the Bar Council will have discretion to approve or reject a Group Practice application, effort should be made to include some general criteria in the Proposed GPR to avoid the decision-making process being completely vague and arbitrary.

2.4.2 The criteria in Rule 6(7) of Singapore’s GPR in relation to the criteria for the approval of a joint Group Practice Name would serve as a good reference point for the Bar Council in this respect.

3 CONCLUSION

3.1 For the reasons set out above, the current draft of the Proposed GPR is unsatisfactory, as it has several glaring omissions and uncertainties.

3.2 If the current draft of the Proposed GPR is adopted, it would open the Bar Council to criticism that it is not really serious about the interests and welfare of small firms, and that the Bar Council has not taken into account the Malaysian legal landscape, where legal practice is quite often based across several States.

3.3 The Proposed GPR needs to be amended so it facilitates, instead of discourages, small firms seeking to establish themselves as Group Practices in line with the perceived benefits of such Group Practices.

Bearing in mind that there are currently small firms who already effectively “share” premises by contributing their portions to the lease or tenancy, the Group Practice model which is introduced by the Bar Council must be envisaged to
advance the present position, instead of merely formalising it. The current draft of
the Proposed GPR gives the impression that the Bar Council is in fact not in
touch with the existing realities of small firm legal practice.

3.4 We understand that the Bar Council’s Small Firms Committee had visited
Singapore’s Group Practices such as Mozaic Group Law Practice (“Mozaic”) to
study the implementation of Group Practices there. The Group Practices
established in Singapore following Singapore’s GPR have not caused any
confusion or problems.

As an example, Mozaic is made up of 10 small firms. There is no confusion as to
what Mozaic is, or what it is about. Any visitor to Mozaic’s premises or its website
(mozaiclaw.com) will clearly discern the small firms that are part of the said
Group Practice, and their services.

3.5 In summary, the current draft of the Proposed GPR must be amended, in
particular as follows:

3.5.1 The definition of a “group practice” should be edited for clarity (see
Section 2.1 of this memorandum).

3.5.2 The Proposed GPR should allow individual member firms to have branch
offices, and also allow the Group Practice to have branch Group
Practices (see Section 2.2 of this memorandum).

3.5.3 The Proposed GPR must allow the adoption of a common and joint Group
Practice name among the member firms (see Section 2.3 of this
memorandum).

3.5.4 Criteria for approval of rejection of applications must be put in place (see
Section 2.4 of this memorandum).

3.6 We thank the Bar Council for inviting feedback on the Proposed GPR, and trust
that the above proposals will be given due consideration. We hope that the
revised Proposed GPR will reflect that the Bar Council has taken into account the
interests of small law firms, and is cognisant of the realities of small firm legal
practice in Malaysia.

Dated 29 July 2013.

Endorsed by the following Advocates & Solicitors (arranged according to the order of
receipt of endorsement):
Foong Cheng Leong, Shanmuga Kanesalingam, Fáhri Azzat, Edmund Bon Tai Soon,
Marcus van Geyzel, Seira Sacha Abu Bakar, and New Sin Yew.
APPENDIX II

(to the Motion dated 6 March 2015 to be proposed at the
69th Bar AGM by Edmund Bon Tai Soon)
Your Ref. : Please Advice
Our Ref. : MISC/2014
Date : 7.2.2014

Bar Council Small Firms Committee
Bar Council Malaysia
No. 15, Leboh Pasar Besar
50050 Kuala Lumpur

E: germaine@malaysianbar.org.my
F: 03 20261313 / 20342825

Dear Sirs,

PROPOSED LEGAL PROFESSION (GROUP PRACTICE) RULES 2013

On behalf of the firms named below, we refer to your Circular No. 155/2013 dated 10.7.2013. We also refer to the e-mail memorandum dated 29.7.2013 signed by several members of the Bar. To date, no official or public response has been made by the Bar Council.

2. In light of the impending changes to the legal practice, we have taken the liberty to amend the Bar Council’s proposed Rules as attached (with tracked changes) for the urgent consideration of the Bar Council and its approval.

3. Kindly keep us updated on the progress of the Rules which we hope will be brought into force by March 2014 before the upcoming Malaysian Bar AGM.

Yours faithfully,

Khairan Sharizad Ab. Razak
For and on behalf of
1. Messrs. Nizam, Amer & Sharizad
2. Messrs. Foong Cheng Leong & Co
3. Messrs. Bon Advocates
4. Messrs. Rashid Zulkifli
5. Messrs. Peter Ling & Van Geyzel
6. Messrs. Raj, Ong & Yudistra
LEGAL PROFESSION (GROUP PRACTICE) RULES 2013

Arrangement of Provisions

1 Citation

PART I
PRELIMINARY

2 Definitions
3 Application

PART II
GENERAL PRINCIPLES

4 Purpose and spirit of group practice
5 Separate liability
6 Register of group practice
7 Management of group practice
8 Bank account
9 Confidentiality
10 Incapacity or death of sole proprietor

Citation

1. These Rules may be cited as the Legal Profession (Group Practice) Rules.

PART I
PRELIMINARY

Definitions

2. In these Rules, unless the context otherwise requires -
"client account" has the same meaning as in the Solicitors' Account Rules 1990;
"firm" means a law firm as defined in the Legal Profession (Publicity) Rules 2001;
"firm name" means the name or style under which the practice of a firm is being carried on;

"group practice" means a practice comprising 2 or more firms with each firm having no more than 58 Advocates and Solicitors which expressly practise as a group under a group name as separate firm and having no branch office which share premises in mutual co-operation and expressly practise as separate firms;

"manager" means the manager referred to in rule 7;

“office account” has the same meaning as in the Solicitors’ Account Rules 1990.

Application

3. These Rules shall apply to all firms in a group practice and are intended to govern their relationship within the group practice and their dealings with clients and other persons outside the group practice without prejudice to rules of etiquette and professional practice, any other rules and guidelines issued by the Bar Council from time to time and any other applicable law.

PART II
GENERAL PRINCIPLES

Purpose and spirit of group practice

4.–(i) The purpose and spirit of a group practice is to enable the firms in a group practice to come together in mutual co-operation without being partners of each other.
(ii) A firm in a group practice may instruct another firm in the group practice to undertake work entrusted by a client to the instructing firm provided consent in writing shall be obtained from the client and subject to paragraph (iv) and to any rule of etiquette and professional practice.

(iii) A firm in a group practice may act in a matter when another firm in the group practice is acting for the other party in the same matter provided consent in writing shall be obtained from the client and subject to paragraph (iv) and to any rule of etiquette and professional practice.

(iv) A copy of paragraphs (ii) and (iii) shall be displayed prominently within the office of a group practice and within the office of each firm in the group practice.

(v) An advocate and solicitor of a firm in a group practice, who is a commissioner for oaths or notary public, may attest to any document requiring attestation of clients of another firm in the group practice.

**Separate liability**

5. (i) Each firm in a group practice shall be liable for and duly and punctually pay and discharge its own debts and liabilities and shall keep the manager and the other firms in the group practice and their respective estates indemnified against such debts and liabilities and against all actions, proceedings, costs, claims and demands in respect thereof.

(ii) Each firm in a group practice shall bear its own professional indemnity insurance premia, accountancy and audit costs, professional and similar subscriptions and levies payable to the Bar Council.

(iii) A group practice is not a separate legal entity. A group practice may be established as a legal entity pursuant to Companies Act 1965 or Limited Liability Partnerships Act 2012.

**Register of group practice**

6. (i) A group practice shall bear a name which describes the group practice as such and shall bear the words “Group Law Practice” as part of its name.
(ii) No firm which is not a member of a group practice shall describe itself as a group practice.

(iii) A firm in a group practice may in the course of its professional undertakings and in documents in which its name appears, including its letterheads, nameplates and business calling cards, use the name of the group practice in conjunction with its own firm name.

(iv) Sole proprietors and partners of firms which wish to practise as a group practice shall apply to the Bar Council for approval of the proposed name of the group practice and manner in which the name of the group practice will be used in conjunction with the firm name of each firm in the group practice.

(vii) No firm shall practise as a member of a group practice unless the group practice shall have been approved in accordance with paragraph (iv).

(viii) The approval or rejection of any group practice shall be at the sole discretion of the Bar Council which is subject to judicial review.

(viii) Without limiting the discretion of the Bar Council, the Bar Council shall not approve any proposed name which in its opinion:

(a) Is or may be reasonably be regarded as being ostentatious, in bad taste, misleading, exploitative, deceptive, inaccurate, false, sensational, offensive or in any other way unbefitting the dignity of the legal profession;

(b) Is so similar to that of an existing group practice as to be likely to be confused with it; or

(c) Is inconsistent with any of the provisions of the Legal Profession (Publicity) Rules 2001.

(viii) The Bar Council may, if it thinks fit, direct a group practice to change its name and the group practice shall comply with the direction within 6 weeks after the date of the direction or such longer period as the Bar Council allows.

(ix) If the group practice fails to comply with any of the direction under paragraph (viii), the sole proprietors and partners of the firms of the group
Any firm which joins or withdraws from a group practice shall within 7 days of such joining or withdrawal notify the Bar Council.

A firm shall not be a member of more than one group practice.

The Bar Council shall maintain a register of group practices and the firms in each group practice.

The nameplates of all firms in a group practice shall be displayed outside the premises of the group practice.

### Management of group practice

7. (i) A group practice may be managed by a manager which may be a legal entity established pursuant to the Companies Act 1965 or Limited Liability Partnerships Act 2012.

(ii) The manager may provide, or firms in a group practice may otherwise share, the infrastructure and management services which may be required for the efficient and proper functioning of the group practice.

(iii) For the purposes of this rule –
"infrastructure" includes the premises in which the group practice operates, furnishings, law books, office and related equipment and paraphernalia, utilities, electronic services for the purpose of searches and research;

"management services" includes all aspects of the management of the group practice, such as the hiring and termination of secretarial, clerical and other staff or agent of the group practice, but does not include any aspect which a firm in the group practice has by these Rules or by contract agreed to provide for itself.

### Bank account
8. – (i) The firms in a group practice may open and operate a common bank account for the purpose of meeting common expenses including costs of the manager.

(ii) Each firm in a group practice shall maintain, separately from the other firms in the group practice its own office and client accounts.

Confidentiality

9. Each firm in a group practice shall ensure that a confidentiality agreement is executed by all their employees whereby the employees covenants and agrees that he or she shall at no time during or after their term of employment, use for his or her own benefit or for the benefit of others, or disclose or divulge to others, any confidential information which the firm or any other firm in the group practice has, and may in the future, come into possession of including but not limited to trade secrets, customers lists, methods, processes or precedents.

Incapacity or death of sole proprietor

10. The sole proprietor of a firm in a group practice shall appoint in writing another firm in the group practice to act in his stead in the event of his incapacity or death.
Dear Sirs,

RE: SUBMISSION OF 2 RESOLUTIONS TO BE TABLED AT THE MALAYSIAN BAR AGM

We refer to the above and attach herewith the following proposed resolutions to be tabled at the Malaysian Bar Annual General Meeting scheduled for 14 March 2015.

1. Proposed resolution regarding the minimum standards and fair remuneration for Chambering Students / Pupil in Chambers proposed by Steven Hoe and seconded by Ashwin Kumar; and

2. Proposed resolution regarding the Monopoly of the Provision of the Professional Indemnity Insurance by Jardine Lloyd Thompson Sdn Bhd (Underwritten by Pacific & Orient Insurance Co. Berhad) proposed by Steven Hoe and seconded by Venketraman Manickam.

We should be grateful if these resolutions are tabled at the Malaysian Bar Annual General Meeting for the consideration and adoption by the Malaysian Bar.

Should you require any further information and/or assistance, please do not hesitate to contact us.

We remain

Yours faithfully,

STEVEN HOE
MESSRS STEVEN & ASSOCIATES
Proposed resolution regarding the minimum standards and fair remuneration for Chambering Students / Pupils in Chambers

Motion proposed by Steven Hoe, dated 6 March 2015 for consideration and adoption by the Malaysian Bar Annual General Meeting on 14 March 2015.

(A) WHEREAS it is a legal requirement that any person wishing to be admitted as an advocate and solicitor to the Malaysian Bar, should have satisfactorily served in Malaysia the prescribed period of pupillage for a qualified person, pursuant to section 14 of the Legal Profession Act 1976.

(B) WHEREAS a number of chambering students / pupils-in-chambers may experience neglect by their masters and may be treated unfavourably in the acquisition of knowledge and skills, and may not receive a fair and just remuneration, and the current terms and conditions imposed on pupillage fails to recognise the importance of a healthy work-life balance.

(C) WHEREAS it is unacceptable and unfair that a number of chambering students / pupil-in-chambers may be treated as an expendable lowly paid workforce and may not be given adequate support or motivation by their respective masters in the pursuit of obtaining greater knowledge and skills for the profession that they are about to embark upon.

(D) WHEREAS the remuneration received, if any, by some chambering students / pupil-in-chambers may sometimes be well below the poverty line and certainly short of the agreed minimum wage as provided for by the Minimum Wage Order 2012, which should be the minimum benchmark to emulate.
WE hereby resolve:

THAT the Malaysian Bar adopt and implement the following recommendations as soon as possible.

RECOMMENDATIONS

a) THAT all chambering students / pupil-in-chambers should receive the minimum wage as provided for by the Minimum Wage Order 2012 as the minimum wage, subject to an additional minimum weighting allowance for certain geographical areas where the costs of living may be much higher;

b) THAT all chambering students / pupil-in-chambers should have the right to rest and leisure, including reasonable limitation of working hours and periodic paid holidays, in addition to the gazetted public holidays;

c) THAT all chambering students / pupil-in-chambers should be given exemptions from payment of Court fees payable for the purposes of filing of documents in relation to their Short Call and Long Call;

d) THAT all chambering students / pupil-in-chambers should be given exemptions from payment of all compulsory training events organised by the Malaysian Bar and relevant State Bar Committees’;

e) THAT all chambering students / pupil-in-chambers should be given a structured development plan drawn up by the Malaysian Bar, in which they would have to meet the minimum standards expected of an Advocate and Solicitor, supervised and certified by the Malaysian Bar; and
f) **THAT** all chambering students / pupil-in-chambers should be made to compulsorily attend and conduct in person at least 10 (ten) Court proceedings, after Short Call and must complete at least 1 (one) hearing at the Magistrates' Court on his own, all of which are duly certified by the relevant Court officer / Registrar or Magistrate.

Dated: 6th day of March 2015

[Signature]

Steven Hoe
Proposer
Motion On TPPA And 'Investor-State Dispute Settlement' (ISDS) Provisions

Whereas:

1) It is disturbing that Malaysia may be signing Trans-Pacific Partnership Agreement (TPPA), whereby the contents of the said Agreement have been kept secret from Malaysians, and even Parliament. In a democracy, transparency is fundamental, and the current government should not be signing any such agreements like the TPPA, Bilateral Investment Treaties (BITs) or other trade agreements without first fully disclosing the contents to all Malaysians, for the purpose of getting public feedback, inputs and even objections. It is unconscionable for current governments to sign ‘secret’ agreements that will in effect bind future governments and the people of Malaysia for many years to come.

2) It has been revealed that the TPPA does have a section or chapter, commonly known as 'investor-state dispute settlement' (ISDS) which empowers the foreign investor, which includes the shareholder, to sue or commence legal action against Malaysia, and disturbingly the dispute will not be before Malaysian courts, but some foreign court or tribunal.

3) The ISDS clauses will open up a government to legal action by the foreign investor if the government introduces or changes a law or policy that will result in businesses having to expend more monies, or has the effect of decreasing profits.

4) This will have the effect of deterring governments in putting in place laws that may be necessary for improving the welfare and wellbeing of persons in Malaysia. This would include laws or policies that may require businesses to expend monies or adhere to certain requirements to improve, amongst others, environmental protection, improve occupational safety and health standards, better rights for workers, and even matters concerning public health and safety. Potential investors' suits and a potential award may cause governments to abandon necessary public measures for improving life in Malaysia.

5) The above concerns are very real, as seen by actions that have already been undertaken in reliance of such ISDS provisions:-

a) Veolia group, a French multinational, is suing the Egyptian government because of a rise in the monthly minimum wage. The company is using the ISDS provisions in an investment treaty between France and Egypt.
b) The Canadian government banned a gasoline additive on environmental and public health grounds. Ethyl Corporation took action against it, and after the ISDS tribunal decided that it had jurisdiction over the claim, Canada settled and agreed to remove the ban, declare publicly that the gasoline additive was not an environmental or a health risk, and pay $19 million in compensation to the US firm.

c) The tobacco company Philip Morris did sue Uruguay for requiring cigarette packs to display graphic health warnings, and also Australia for requiring plain packaging for its cigarettes.

d) Indonesian government was sued for $2 billion by a London-based mining company Churchill, which claims its right to mine in Busang (East Kalimantan) was violated when the local government revoked the concession rights held by a local company in which it had invested.

6) The ISDS is also be discriminatory – as it is a remedy only available to foreign investors coming from certain nations, and not all. The local investor in Malaysian companies will not have this right. The ISDS provisions may also be abused by foreign investors investing just at the point before some new law or policy is being formulated or comes into effect.

7) The Trans-Pacific Partnership Agreement (TPPA) will make medicine more expensive in signatory nations including Malaysia, according to a study by the University of New South Wales.

8) TPPA will also impact on the exercise of freedom of expression and opinions especially internet freedom by requiring Internet service providers to police our online activities.

9) Signing such agreements with such provisions is also a vote of no confidence on our judiciary and the administration of justice in Malaysia, and will be to the detriment of people in Malaysia generally.

10) Cost Benefit Analysis (CBA) done by certain entities, without the full disclosure and participation of Malaysians, including people’s elected representatives in Parliament, is meaningless and results of such CBAs is questionable.

We hereby resolve:

(1) That Malaysia immediately suspend the signing of the Trans-Pacific Partnership Agreement (TPPA), Bilateral Investment Treaties (BITs) or other trade
agreements until the said contents are disclosed to all Malaysians for the purposes of getting feedback, discussions and approval. At the very least in a parliamentary democracy, approval must be sought and obtained in Parliament before the government signs any agreements that will bind and impact future governments and the people of Malaysia for many years to come.

(2) That Malaysia do not sign any agreements which have 'investor-state dispute settlement' (ISDS) clauses and provisions, which amongst others, may open the door to the possibility of vesting foreign investors with rights to take our government to court in some foreign arbitration tribunals, when our government imposes new laws for improving the wellbeing and welfare for the people in Malaysia, for public health reasons, for safeguarding our environment, for improving occupational health and safety standards at the workplace, for according workers better rights including higher rates of minimum wages.

(3) That Malaysia do not sacrifice its sovereignty, by signing agreements that will allow foreign investors and businesses to take legal action against Malaysia in any foreign court or tribunal. Any such actions, that can be taken against Malaysia must be in Malaysian courts.

(4) That Malaysia do not sign inter-State agreements like the TPPA that, amongst others, will cause an increase of the cost of medicines and healthcare, impact on the freedom of expression and information, and privacy of Malaysians, that are discriminatory in nature, or will impact the cost of living.

(5) That the Malaysian Bar do the needful to educate the Malaysian public of the possible dangers and risk of the TPPA and such agreements, and the need for transparency and accountability before any government binds Malaysia, its peoples and future governments to such agreements.

(6) That the Malaysian Bar do the needful to actively put into effect the essence and principles as stated in this Resolution for the wellbeing and welfare of people in Malaysia.

Charles Hector Fernandez
BC/C/712
4th March 2015
Motion to increase Building Fund levy from RM100 to RM250 per annum for a period of 15 years, proposed by Christopher Leong (Chairman, Bar Council), on behalf of the Bar Council, dated 6 March 2015

WHEREAS:

(1) The Bar Council had in March 1979 exercised its powers under section 46(3) of the Legal Profession Act 1976 to fix the amount of the current levy for the Building Fund at RM100 per annum;

(2) Since 1979, the Malaysian Bar has acquired its current Bar Council Secretariat building, as well as buildings for all State Bar Committees except for Kuala Lumpur, Perlis and Terengganu;

(3) When we moved into the current Bar Council Secretariat premises in 2004, the constraint of space was already a problem. The building was already occupied to its brim by the Bar Council Secretariat, and hence the Kuala Lumpur Bar Committee (“KLBC”), Bar Council Legal Aid Centre (Kuala Lumpur) (“LAC KL”), and Advocates and Solicitors Disciplinary Board (“ASDB”) could not be housed within the same premises;

(4) The Bar Council Risk Management and Professional Indemnity Insurance Department is currently renting premises at Wisma Maran at a rate of RM39,000 per annum;

(5) ASDB is also renting premises at Wisma Maran, at a rate of RM330,000 per annum;

(6) The membership of the Malaysian Bar has increased manyfold since 1979, and currently stands at approximately 15,750 Members;

(7) Commensurate with the increased membership, there has been a correlative increase in the number of staff working at the Bar Council Secretariat to serve the Members of the Malaysian Bar, as well as to cater to the needs and demands of the Malaysian Bar and its wide range of activities;

(8) This increase in the number of staff and activities has resulted in an acute shortage of space at the Bar Council Secretariat;

(9) On 15 July 2014, the Bar Council was constrained to shift its Raja Aziz Addruse Auditorium from the Bar Council Secretariat building to the Straits Trading Building to facilitate additional space for its staff, at a rental rate of RM248,268 per annum. The facilities at the Straits Trading Building — collectively called the Bar Council Malaysia Professional Standards and Development Centre — are used by and shared with KLBC and LAC KL.

(10) An eviction notice was served on KLBC and LAC KL at their Wisma Kraftangan premises in 2014, requiring both KLBC and LAC KL to relocate to alternative premises;

(11) In September 2014, both KLBC and LAC KL relocated to Wisma Hangsam, where the rental cost amounts to RM169,646 per annum and RM115,080 per annum, respectively. This represents an aggregated increase of RM105,276 per annum;
(12) The accumulative rental paid out for all the aforesaid rented premises amounts to RM901,994 per annum, which represents “thrown-away expenditure” in that there is no capital return derived.

(13) It is financially prudent and in the mid- to long-term interest of the Malaysian Bar to enable the Malaysian Bar to own (including by purchasing or by constructing) a building in order to house the Bar Council Secretariat, Raja Aziz Addruse Auditorium, Risk Management and Professional Indemnity Insurance Department, KLBC, LAC KL, as well as ASDB, under one roof, or alternatively to enable the Malaysian Bar to own (including by purchasing or by constructing) more than one building in order to house all these entities, departments and facilities in separate buildings;

(14) It is financially prudent and in the mid- to long-term interest of the Malaysian Bar that appropriate premises are acquired:

(a) To accommodate the Bar Council Secretariat, Raja Aziz Addruse Auditorium, Risk Management and Professional Indemnity Insurance Department, KLBC, LAC KL, as well as ASDB;
(b) That would provide sufficient space for any future needs;
(c) That would result in capital appreciation accruing to the Bar;
(d) That would be an income-generating property for the Bar that could hopefully meet, at least partially if not wholly, the operating costs of the building, and even the Bar; and
(e) That would provide a source of income to the Bar other than subscription income;

(15) In addition to the KLBC, there is a further need to purchase and provide buildings for the Perlis Bar Committee and the Terengganu Bar Committee; and

(16) The current amounts of subscription and levies payable by each Member of the Bar per annum are:

<table>
<thead>
<tr>
<th>Fund</th>
<th>Amount (RM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Subscription</td>
<td>450</td>
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<tr>
<td>Building Fund</td>
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<tr>
<td>Compensation Fund</td>
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<td>Discipline Fund</td>
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<td>LawCare Fund</td>
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</tr>
<tr>
<td>Legal Aid Fund</td>
<td>100</td>
</tr>
<tr>
<td>Sports Fund</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>930</strong></td>
</tr>
</tbody>
</table>

**THEREFORE, it is hereby resolved that:**

(1) Pursuant to section 46(4) of the Legal Profession Act 1976, the levy for the Building Fund shall be increased from RM100 to RM250 per annum, with effect from 1 January 2015, for a period of 15 years; and

(2) The Bar Council is hereby mandated to take any and all such further action as it deems appropriate or necessary in order to fulfil the purposes set out above.
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