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Malaysian Bar**

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**Resolution Adopted at the 80th Annual General Meeting of the Malaysian Bar
(Held on 14 March 2026)**

Resolution on Ensuring Prosecutorial Independence with the Separation of the Offices of the Attorney General and the Public Prosecutor

Whereas:

- (1) The Malaysian Bar has consistently and unequivocally advocated for the separation of the offices of the Attorney General (“AG”) and the Public Prosecutor (“PP”), ensuring that prosecutorial duties, prosecutorial discretion and law reform remain free from political influence or external pressures and are governed by the principles of transparency, independence and accountability;
- (2) In this regard, a resolution on the AG, PP and Improvement of Public Perspective of Administration of Justice in Malaysia was adopted at the 70th Annual General Meeting of the Malaysian Bar held on 19 March 2016¹, *inter alia*, advocating the adoption of the United Nations Guidelines on the Role of Prosecutors;
- (3) Proposed reforms on the separation of offices of the AG and the PP were also submitted by the Bar Council Law Reform and Special Areas Committee (now known as the Bar Council Civil Law and Law Reform Committee) to the Prime Minister’s Department (Law and Institutional Reform) on 23 February 2023²;
- (4) At the invitation of the Parliamentary Special Select Committee on Human Rights, Election and Institutional Reform (“PSSC”), the Malaysian Bar provided comprehensive views relating to this issue on 15 November 2023. Specific reforms and processes were recommended to the PSSC on the appointment process, security of tenure, accountability mechanisms, protocols and guidelines for the PP when exercising its functions. A comparative analysis premised upon various models in other jurisdictions such as India, Kenya, Australia, New Zealand, Jamaica, and England and Wales, and two written submissions were given to the PSSC at the meeting as well as after the meeting;
- (5) Numerous press releases advocating the AG-PP reforms have been issued by the Malaysian Bar over the years;³

¹ Resolutions Adopted at the 70th Annual General Meeting of the Malaysian Bar, *Malaysian Bar Website*, 19 March 2016. Accessed at mybar.my/4sNLMDp.

² Bar Council’s Submissions on Institutional and Law Reforms | Attorney General’s Chambers and Public Prosecutor, 23 February 2023, pp 1 and 2. Accessed at mybar.my/40yMjgp.

³ Press Release | The Malaysian Bar Applauds the Government’s Commitment to the Separation of Powers of the Attorney General and the Public Prosecutor, *Malaysian Bar Website*, 5 November 2020; Press Release | Remove Public Prosecutorial Role from the Attorney General, *Malaysian Bar Website*, 8 May 2018.

- (6) The current constitutional and legislative frameworks that provide for the functions of the AG, create an inherent conflict between the AG's function as the Government's legal adviser and the concurrent simultaneous role as the PP who is required to prosecute criminal matters impartially and independently. The relevant laws (pre-amendment) are as follows:
- (a) Under Article 145(2) of the Federal Constitution ("FC"), it is the duty of the AG to advise the Yang di-Pertuan Agong ("YDPA"), the Cabinet, or any Minister upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him;
 - (b) Under Article 145(3) of the FC, the AG has power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial;
 - (c) Under Article 145 (5) of the FC, the AG shall hold office during the pleasure of the YDPA and may at any time resign his office and, unless he is a member of the Cabinet, shall receive such remuneration as the YDPA may determine;
 - (d) Under Article 43 of the FC, the Cabinet of Ministers are selected from members of either house of Parliament;
 - (e) Section 376(1) of the Criminal Procedure Code ("CPC") provides that the AG shall be the PP and shall have the control and direction of all criminal prosecutions and proceedings under the CPC; and
 - (f) Section 376(2) of the CPC provides that the Solicitor General shall have all powers of a Deputy Public Prosecutor and shall act as PP in case of the absence or inability to act of the AG;
- (7) In the current appointment mechanism under Article 145(1) of the FC, the AG is appointed by the YDPA on the advice of the Prime Minister and holds office at the pleasure of the YDPA. As observed by Justice VC George in *Lim Kit Siang v United Engineers*⁴:

In Malaysia the Attorney General's position is very different from that of his British counterpart. He is a civil servant appointed by His Majesty the Yang di-Pertuan Agong on the advice of the Prime Minister. He is not answerable to anybody, not to any Minister or Ministry, not even to the Prime Minister, not to Parliament and not to the people (in that his is not a political appointment). However, he holds office during the pleasure of the Yang di-Pertuan Agong which in effect means during the pleasure of the Executive.

- (8) This consolidation of power into a single individual, along with the AG's lack of direct accountability to Parliament or the public, underscores the urgent need to separate the offices of the AG-PP. In *Peguam Negara Malaysia v Chin Chee Kow*⁵, the Federal Court held that "unfettered discretion is contrary to the rule of law", ruling that the AG's

⁴ *Lim Kit Siang v United Engineers (M) Bhd. & Ors* [1987] CLJ (Rep) 722.

⁵ *Peguam Negara Malaysia v Chin Chee Kow* (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal [2019] 3 MLJ 443.

decisions — whether statutory or prerogative — shall be subject to judicial review to ensure accountability. This case illustrated the systemic conflict of interest inherent in the dual roles of the AG, who is supposed to independently act as the guardian of the public interest, yet simultaneously serves as the chief legal adviser to the government of the day;

- (9) On 5 November 2020, the Government announced its commitment to law reform in separating the offices of the AG and PP (“AG-PP Law Reform”), to ensure transparency and accountability in the Malaysian legal system;⁶
- (10) The Malaysian Bar was consulted on the AG-PP Law Reform as part of the Comparative Study Task Force led by the Legal Affairs Division of the Prime Minister’s Department. On 10 September 2025, the Cabinet decided that the AG-PP Law Reform would follow a full institutional separation model, where the two roles would be held by two individuals of equal-rank. This full institutional separation model necessitates amendments to the FC and other relevant legislation;⁷
- (11) The Malaysian Bar supports the full institutional separation model⁸ provided that it strengthens the institutional independence and integrity of these offices, increases transparency and accountability to the public, and ensures that prosecutorial decisions are entirely insulated from any form of Executive influence or political interference;⁹
- (12) However, the Malaysian Bar finds it alarming that even following and as a consequence of this AG-PP Law Reform, the AG could still be appointed from among Members of Parliament.¹⁰ This matter was brought up in Parliament on 6 October 2025, where YB Dato’ Sri Azalina bt Othman Said, Minister in the Prime Minister’s Department (Law and Institutional Reform) (“Law Minister”) responded that such a proposed outcome will be a policy decision decided by the Cabinet;¹¹
- (13) The Constitution (Amendment) (No. 2) Bill 2026 (“Bill”) addressing the separation of the offices of the AG and PP was tabled for its first reading at Parliament on 23 February 2026. The Bill provides, *inter alia*, as follows:

Attorney General

145(1A) The Yang di-Pertuan Agong may require a member of the judicial and legal service of the Federation selected for appointment as the Attorney General to retire at any age on the grounds of national interest.

⁶ [“Separation of powers between solicitor-general, AG under way”](#), *The Vibes*, 5 November 2020.

⁷ [“Constitutional Amendment On AG, PP Separation Of Powers To Be Tabled Next Year – Azalina”](#), *Bernama*, 6 October 2025.

⁸ [“Malaysian Bar hails separation of A-G and public prosecutor powers as ‘landmark reform’”](#), *New Straits Times*, 10 September 2025.

⁹ [“Power separation enhances neutrality”](#), *The Star*, 24 February 2026.

¹⁰ [“Cabinet to decide whether attorney general will sit in govt post-separation, says Azalina”](#), *The Edge Malaysia*, 6 October 2025.

¹¹ *Penyata Rasmi (Hansard)*, Parlimen Kelima Belas dated 6.10.2025 p 11; [“IN THE COURTS 2025: Move to separate attorney-general and public prosecutor roles set in motion”](#), *The Edge Malaysia*, 7 January 2026.

(5A) Parliament shall by law provide for the remuneration of the Attorney General, and the remuneration so provided shall be charged on the Consolidated Fund.

Public Prosecutor

145A. (1) The Yang di-Pertuan Agong shall in his discretion, on the recommendation of the Judicial and Legal Service Commission and after consultation with the Conference of Rulers, appoint a person qualified under Clause (2) to be the Public Prosecutor for the Federation.

- (14) The Malaysian Bar notes with concern that the Bill does not prohibit the appointment of the AG from among Members of Parliament or members of the Cabinet, and this concern is due to potentially excessive Executive control. While the Malaysian Bar agrees that the office of the AG should be subject to parliamentary oversight, the Malaysian Bar is of the opinion that the role of the AG should not be performed or filled by a Member of Parliament or member of Cabinet in order to ensure the highest degree of independence;
- (15) The Malaysian Bar further notes that the relevant provisions under the Bill which provide for the appointment of the PP, are irreconcilable with the Government's purported stance on seeking to further transparency and accountability in the Malaysian legal system. The independence of the appointment process of the PP remains a significant concern, as the AG who also sits on the Judicial and Legal Service Commission, would be in a position to influence the appointment of the PP, thereby rendering the legal reforms and intended separation of powers otiose and falling short of their said purpose;
- (16) It is further concerning that instead of designating an independent commission or Parliament itself as responsible for the appointment of the PP under the Bill, such responsibility lies with the YDPA acting on the recommendation of the Judicial and Legal Service Commission, without any provision for Parliamentary oversight or accountability. To effect meaningful change, the appointment and removal of the PP must lie solely with an independent selection committee or an independent commission that is ultimately accountable to Parliament;
- (17) On 3 March 2026, the Bill was tabled for its second reading at the House of Representatives (Dewan Rakyat) wherein the Law Minister deferred the Bill to another Parliamentary Special Select Committee due to concerns raised over the lack of accountability, transparency and independence in the appointment and removal processes of the PP;¹² and
- (18) Now is an opportune time for the Malaysian Bar to resolve in the strongest possible terms — to reject the Bill in its current form and call upon the Government to adopt a responsible approach by providing a legislation that is substantively different taking into account all concerns raised, since this new legal framework will affect the strength of our institutions, and shape the administration of justice system and prosecutorial practice in the nation.

¹² Penyata Rasmi (Hansard), Parlimen Kelima Belas dated 3.3.2026 p 65.

Therefore, it is hereby resolved that:

- (A) The Malaysian Bar reaffirms and reiterates its long-standing position that the office of the AG and the PP must be kept separate and independent, recognising that such separation is essential in safeguarding prosecutorial independence and the maintenance of public confidence in the justice system;
- (B) Whilst the Malaysian Bar supports in principle the decision of the Government to separate the offices of the AG and the PP, the Malaysian Bar **asserts** that the operational provisions and amendments under the Bill to effect this separation, do not meaningfully promote such accountability and transparency as declared by the Government but conversely appear to promote the interference of the Executive in the role of the AG, the interference of the AG in the selection of the PP and allows for a further lack of accountability and transparency in the process of the selection of the PP; and
- (C) The Malaysian Bar takes all necessary steps, to call for amendments to the Bill to uphold the rule of law and ensure independence, accountability and transparency in the selection of the AG and the PP, including but not limited to:
 - (1) amending the proposed Article 145A under the Bill to require that the PP instead be appointed and removed by an independent commission or selection committee which is accountable and subject to Parliamentary oversight and approval;
 - (2) amending any provisions that require the retirement of the AG or PP on the grounds of national interest without clearly defined criteria or procedural safeguards;
 - (3) ensuring the security of tenure of the PP by incorporating necessary safeguards concerning any renewal or extension thereof shall be subject to transparent and objective assessment criteria, independent of the Executive; and
 - (4) removing the role of the Judicial and Legal Service Commission in the appointment of PP.