



**Resolution Adopted at the 78th Annual General Meeting of the Malaysian Bar
(Held on 16 March 2024)**

Resolution Regarding the Malaysian Bar as a Self-Regulatory Body in Matters Related to Anti-Money Laundering and Countering Financing of Terrorism

Whereas:

- (1) The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (“AMLA”) has been in force since 15 January 2002. “Reporting institutions” under section 3 of AMLA means “any person, including branches and subsidiaries outside Malaysia of that person, who carries on any activity listed in the First Schedule”. Paragraph 10 of the First Schedule lists “activities carried out by an advocate and solicitor as defined in the Legal Profession Act 1976” as “any activity” for the purposes of section 3 of AMLA.
- (2) In this regard, all advocates and solicitors of the High Court admitted and enrolled under the Legal Profession Act 1976 (“LPA”) are reporting institutions and statutorily obligated to comply with the provisions of AMLA.
- (3) Since 2010, the Malaysian Bar has been made aware of the on-site examinations on selected law firms conducted by Bank Negara Malaysia (“BNM”) as the competent authority under AMLA. The Malaysian Bar has since then formulated checklists, conducted trainings and issued multiple circulars to raise awareness on, and ease, AMLA compliance for Members of the Malaysian Bar.
- (4) Over the years, BNM has issued, among others:
 - (a) Policy document namely, the Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions (AML/CFT and TFS) for Designated Non-Financial Businesses and Professions (DNFBPs) & Non-Bank Financial Institutions (NBFIs), which requires reporting institutions to conduct customer due diligence;
 - (b) Data Compliance Reports (“DCR”) allowing reporting institutions to self-assess their risks and vulnerabilities to money laundering and terrorism financing and to mitigate the risk of their business from being exploited by criminals; and
 - (c) Circulars, for instance on the submission of Suspicious Transaction Report, informing lawyers on the issuance of the red flags and typologies reports for the legal sector with the objective of assisting lawyers in identifying suspicious transactions, putting in place necessary measures and reporting suspicious transactions.

- (5) The responsibilities of an advocate and solicitor in terms of AMLA compliance have inadvertently grown exponentially in recent years. BNM has been working towards improving its anti-money laundering and countering financing of terrorism (“AML/CFT”) risk-based supervision on Designated Non-Financial Businesses and Professions (“DNFBPs”) reporting institutions. This is in line with the Financial Action Task Force’s Recommendations, in particular, Recommendation 28 which requires AML/CFT supervision of DNFBPs to be carried out by a self-regulatory body on a risk-sensitive basis.
- (6) A self-regulatory body¹ (“SRB”) is defined as a body that represents a profession and which is made up of members from the profession, has a role in regulating the persons that are qualified to enter and who practise in the profession and/or also performs certain supervisory or monitoring type functions. Such bodies should also enforce rules to ensure that high ethical and moral standards are maintained by those practising the profession.
- (7) As an SRB, the Malaysian Bar, which is the regulatory and governing body of the legal profession, will undertake AML/CFT supervisory functions. This includes the area of legal mandate and governance, risk-based supervisory framework and tools and allocation of adequate resources premised on the following:
- (a) Clear mandate to undertake AML/CFT supervisory functions independent of other advocacy or regulatory functions;
 - (b) Readiness to undertake risk-based supervisory activities including on-site, off-site and awareness or training and allocation of resources;
 - (c) Adequate, independent and competent resources to undertake supervisory functions;
 - (d) Effective, proportionate and dissuasive actions and sanctions for non-compliance;
 - (e) Adequate and efficient communication and coordination including information sharing between BNM and the Malaysian Bar; and
 - (f) Confidentiality of information and documents relating to AML/CFT supervisory functions.
- (8) The Bar Council acknowledges that supervisory frameworks, arrangements and practices in Singapore and Hong Kong on this matter have shifted towards the suggested risk-based approach, as follows:

Singapore

- (a) The Law Society of Singapore (“LSS”) is mandated with the AML/CFT supervisory powers for the legal profession with the inclusion of Part 5A on

¹ BNM’s policy document entitled “Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions (AML/CFT and TFS) for Designated Non-Financial Businesses and Professions (DNFBPs) & Non-Bank Financial Institutions (NBFIs)”, dated 13 December 2019.

“Prevention of Money Laundering and Financing of Terrorism” in their Legal Profession Act 1966 which, among others, provides for the following:

- (i) Measures a legal practitioner or law practice must take, when preparing for or carrying out transactions concerning a relevant matter, to prevent the transactions from being used to facilitate either or both money laundering and the financing of terrorism; and
 - (ii) The said measures are tailored to the nuances of the legal profession which include customer due diligence, suspicious transaction reporting, keeping of records and powers of inspection.
- (b) LSS issued the Legal Profession (Prevention of Money Laundering and Financing of Terrorism) Rules 2015 and Practice Direction to provide clarification on AML/CFT requirements on the legal profession.
 - (c) LSS also conducts ongoing outreach and engagement programmes to ensure compliance of the requirements.

Hong Kong

- (a) Following the implementation of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance on 1 March 2018, The Law Society of Hong Kong (“LSHK”) issued a guidelines on AML/CFT for legal practitioners (Practice Directions Part P, Chapter 24 of the Hong Kong Solicitors’ Guide to Professional Conduct Vol. 2) which, among others, provide for the following:
 - (i) Mandatory compliance requirements applicable to all law firms, solicitors and foreign lawyers practising in Hong Kong, including the policies, rationale for compliance, procedures and measures a legal practitioner should take when complying with the said mandatory requirements;
 - (ii) The aspects of the said mandatory requirements to be complied with include client identification and verification, client due diligence, enhanced client due diligence, record keeping and staff awareness and training; and
 - (iii) Any law firm, solicitor or foreign lawyer practising in Hong Kong that fails to comply with the said mandatory requirements may face disciplinary action.
 - (b) LSHK also conducts its AML/CFT sectoral risk assessment and bi-annual AML/CFT seminars, forums and courses to address the evolving changes and issues on compliance.
- (9) The Bar Council takes the position that the benefits of the Malaysian Bar as an SRB on AML/CFT-related matters overwhelmingly outweigh any potential challenges, which are mainly administrative and operational in nature.

- (a) The Malaysian Bar is in a better position compared to BNM to perform any form of risk-based assessment on Members of the Bar based on readily available data with the Bar Council Secretariat which is accurate, complete and comprehensive.
- (b) The Malaysian Bar is in a better position to issue any form of policy, checklist and guidelines for Members of the Bar to facilitate AML/CFT-related compliance, fully understanding the nuances of the legal profession in a more effective and efficient manner as compared to any external regulators, such as BNM, which would adopt a “one-size-fits all” approach to compliance.
- (c) Due to familiarity with the workings of the legal profession, the Malaysian Bar is in a better position to regulate and take enforcement actions against Members of the Bar for any non-compliance with the AML/CFT requirements.
- (d) There have been compliance issues with the requirements imposed by external regulators due to the lack of understanding of the nuances of the legal profession, for instance:
 - (i) The Malaysian Bar has received comments from Members of the Bar that some questions posed to comply with the DCR submission made mandatory by BNM are irrelevant and have no bearing on an advocate and solicitor’s obligations under AMLA. The Malaysian Bar is in a better position to draft the relevant questions suited to the nuances of the legal profession;
 - (ii) The Malaysian Bar has received comments from Members of the Bar that during on-site inspections conducted by BNM, certain documents and copies of those documents that are requested to be given are irrelevant to an advocate and solicitor’s obligations under AMLA; and
 - (iii) When Members of the Bar are imposed with terms and obligations by external parties which are illegal, burdensome, irrational and unreasonable, the Malaysian Bar is in a better position to engage with these external parties on behalf of Members of the Bar.

(10) The Malaysian Bar has been in engagement with BNM to explore the possibilities of establishing an SRB in a gradual approach in two phases, as set out below:

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| <i>Phase 1</i> | Formal delegation of competent authority powers to the Malaysian Bar pursuant to sections 7(2) and 25(1) of AMLA, with joint supervision with BNM. |
| <i>Phase 2</i> | Reliance on, or expansion of, prevailing powers under laws governing the operations of the Malaysian Bar. |

(11) The Malaysian Bar’s proposed roles as an SRB on AML/CFT matters are as follows:

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| Regulation | <p><i>Phase 1</i></p> <ul style="list-style-type: none"> • Issuance of policies, guidelines, checklists or supervisory findings; and |
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| | <ul style="list-style-type: none"> • Ensure compliance of fit and proper requirements. <p><i>Phase 2</i></p> <ul style="list-style-type: none"> • Establish enforcement powers by way of rules and regulations under the LPA; • Checklist to facilitate implementation; and • Ensure compliance of fit and proper requirements. |
| Supervision | <p><i>Phase 1 and Phase 2</i></p> <ul style="list-style-type: none"> • Ensure adequacy of competent and independent resources, and nominate authorised examiners based on criteria determined by BNM; • Develop AML/CFT risk-based supervisory framework, which will include supervision, monitoring and driving awareness; • Simplified checklist-based AML/CFT supervision on identified higher risk reporting institutions, followed by corrective actions communication and follow-ups; • Ensure proper maintenance of record of decisions, findings, communications and documents for consistency purposes; and • Ensure information and documents involving reporting institutions are maintained in a secure and confidential manner. |
| Enforcement | <p><i>Phase 1</i></p> <ul style="list-style-type: none"> • Corrective actions and other available administrative and civil actions. <p><i>Phase 2</i></p> <ul style="list-style-type: none"> • The Malaysian Bar to take enforcement actions under the rules and regulations established. |
| Communication | <p><i>Phase 1</i></p> <ul style="list-style-type: none"> • Information and data on supervisory activities; • Sharing of identified typology or emerging risk identified as part of supervision; and • Challenges faced in undertaking the supervisory role. |

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| | <p><i>Phase 2</i></p> <ul style="list-style-type: none">• Similar to Phase 1 but includes escalation of supervisory outcome to the management of the Malaysian Bar, having regard to confidentiality and the need to prevent possible conflicts of interest. |
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Therefore, it is hereby resolved that the Malaysian Bar be authorised to function as an SRB in matters related to AML/CFT and that the Bar Council is authorised to take all necessary or appropriate action towards the implementation, imposition, enforcement, compliance, administration, and any ancillary or incidental actions, in relation to the Malaysian Bar's role and functioning as an SRB.