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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 the Independence of the Judicial Appointments and Promotions Processes

Whereas

1. In 2007, about 2,000 lawyers marched in the ‘Walk for Justice’ and the proposal for an INDEPENDENT Judicial Appointments Commission was made to ensure an Independent Judiciary.

The Malaysian Bar then handed over two memoranda to the prime minister’s aide.

*The first memorandum was a letter addressed to the prime minister about the “latest crisis in the judiciary” as shown by the expose through a video clip of a lawyer’s lengthy discussion with a senior judge and the alleged brokering of the appointment and promotion of judges, with the Malaysian Bar **urging the prime minister to strengthen the independence of the judiciary through judicial reform and to introduce a Judicial Appointments Commission (JAC) to restore public confidence in the judiciary**.*

The memorandum also urged for an RCI into the video clip. This was well before a government panel later also recommended for the inquiry to be held.

*The other memorandum was the Bar Council’s paper on **the setting up of an independent judicial commission**, providing recommendations such as the composition of such a commission, the process to select judges and the characteristics of candidates. – Malay Mail, 17/6/2022*

2. The role of the Judiciary is to hear and resolve civil and criminal disputes, upholding the constitution and justice, protecting individual rights against state abuse, and also **acting as a check on the legislative and executive branches**. Thus, it is most important that the Judiciary be INDEPENDENT, and the process of selecting judges, deciding on elevation of judges to higher courts, and the appointment to Judicial High Office also must be INDEPENDENT.
3. Noting, that in Court, the government can be a party, including also the Prime Minister, Ministers and even public officers, either in their official capacities or sometimes in their personal capacities, thus the Prime Minister, the Executive branch of government, and even the Legislative branch of government should not be involved in the process of selecting Judges, deciding which judges be elevated to higher courts and/or appointing Judges who will hold Judicial high office like the Chief Justice of the Federal Court, the

President of the Court of Appeal, the Chief Judge of the High Court in Malaya, the Chief Judge of the High Court in Sabah and Sarawak.

4. During the Bar's 2007 'Walk for Justice' and also subsequent statements highlighted the inadequacies of the proposed Judicial Appointments Commission Bill. What was stated in the Bar Council's Memorandum On The Setting Up Of An Independent Judicial Commission dated 26/9/2007 September 2007 in para 23 is as follows:- *'It is thus recommended that the Malaysian judicial appointments commission should comprise 13 members made up of: (a) Chief Justice who should head the Commission; (b) The Attorney General; (c) The President of the Court of Appeal; (d) The Chief Judge of Malaya; (e) The Chief Judge of Sabah and Sarawak; (f) The Minister of Law or his nominee; (g) President or Vice President of the Malaysian Bar; (h) Three senior practicing lawyers (nominated by the Bar Council); (i) Three lay people, who are not practicing lawyers and have never held judicial office (to be appointed by agreement of the other members of the Commission).'* Note, there was no mention by the Bar Council of any Prime Minister's appointees.
5. Then, Parliament enacted the Judicial Appointments Commission Act 2009, whereby a Judicial Appointments Commission was created, who will thereafter select suitable candidates to be appointed Judges, elevated to higher courts, and/or appointed as the Chief Justice of the Federal Court, the President of the Court of Appeal, the Chief Judge of the High Court in Malaya, the Chief Judge of the High Court in Sabah and Sarawak.
6. Sadly, not all the proposals of the Malaysian Bar were adopted – but at the end of the day we had a Judicial Appointments Commission, who will provide recommendations as to suitable and qualified candidates who should be appointed as Judicial Commissioners and/or Judges, of judges who should be elevated to higher courts, and who should be appointed to be the Chief Justice of the Federal Court, the President of the Court of Appeal, the Chief Judge of the High Court in Malaya, the Chief Judge of the High Court in Sabah and Sarawak.
7. Section 28 of the JAC Act 2009 states 'Where the Prime Minister **has accepted any of the persons recommended by the Commission**, he may proceed to tender his advice in accordance with Article 122B of the Federal Constitution.' The wordings clearly suggest that the Prime Minister must accept persons recommended by the JAC.
8. The JAC Act 2009 can be improved. Time frames should be incorporated, to ensure no delays by the JAC, the Prime Minister and/or the King to ensure Judges are speedily appointed without delay as soon as the vacancy occurs.
9. **The JAC Act should make it MANDATORY for the Prime Minister to accept persons recommended by the JAC thereby clearly removing any doubts that the Prime Minister has the option to refuse or delay acting on the JAC's recommendations.**

10. It is good to note, that all applicants considered by the JAC will also be required to be screened by the (a) Malaysian Anti-Corruption Commission; (b) Royal Malaysia Police; (c) Companies Commission of Malaysia; (d) Department of Insolvency Malaysia; and the (e) Inland Revenue Board of Malaysia. [*Reg.8 Judicial Appointments Commission (Selection Process and Method of Appointment of Judges of The Superior Courts) Regulations 2009*].

Federal Constitution and JAC Act 2009

11. It is desirable that Art. 122B of the Federal Constitution be amended to recognise the role of the JAC so as to address concerns regarding the constitutionality of the JAC Act 2009, and to ensure coherence between the constitutional framework governing judicial appointments and the JAC Act and the Judicial Appointments Commission (Selection Process and Method of Appointment of Judges of the Superior Courts) Regulations 2009.
12. Currently Regulation 5 of the Judicial Appointments Commission (Selection Process and Method of Appointment of Judges of the Superior Courts) Regulations 2009 states as follows: -

Regulation 5 Vacancies in the Federal Court and Court of Appeal

(1) In relation to vacancies in the Federal Court and the Court of Appeal, the following persons may propose names to the Commission for selection:

- (a) the retiring Chief Justice, for vacancy in the office of Chief Justice;*
- (b) the Chief Justice and the retiring President of the Court of Appeal, for vacancy in the office of President of the Court of Appeal;*
- (c) the Chief Justice and retiring Chief Judge of the High Court in Malaya or the retiring Chief Judge of the High Court in Sabah and Sarawak, as the case may be, for vacancy in the office of Chief Judge of the High Court in Malaya or Chief Judge of the High Court in Sabah and Sarawak;*
- (d) the Chief Justice, for vacancy in the office of judge of the Federal Court; and*
- (e) the Chief Justice and President of the Court Appeal, for vacancy in the office of judge of the Court of Appeal.*

(2) Notwithstanding sub regulation (1), the Commission may consider names proposed by eminent persons who have knowledge of the legal profession or who have achieved distinction in the legal profession in respect of vacancies in the Federal Court and the Court of Appeal.

13. Art 122B Federal Constitution - Appointment of judges of Federal Court, Court of Appeal and of High Courts states as follows: -

(1) The Chief Justice of the Federal Court, the President of the Court of Appeal and the Chief Judges of the High Courts and (subject to Article 122C) the other judges of the Federal Court, of the Court of Appeal and of the High Courts shall be appointed by the Yang di-Pertuan Agong, acting on the advice of the Prime Minister, after consulting the Conference of Rulers.

(2) Before tendering his advice as to the appointment under Clause (1) of a judge other than the Chief Justice of the Federal Court, the Prime Minister shall consult the Chief Justice.

*(3) Before tendering his advice as to the appointment under Clause (1) of the Chief Judge of a High Court, the Prime Minister **shall consult** the Chief Judge of each of the High Courts and, if the appointment is to the High Court in Sabah and Sarawak, **the Chief Minister of each of the States of Sabah and Sarawak.***

(4) Before tendering his advice as to the appointment under Clause (1) of a judge other than the Chief Justice, President or a Chief Judge, the Prime Minister shall consult, if the appointment is to the Federal Court, the Chief Justice of the Federal Court, if the appointment is to the Court of Appeal, the President of the Court of Appeal and, if the appointment is to one of the High Courts, the Chief Judge of that Court.

(5) This Article shall apply to the designation of a person to sit as judge of a High Court under Clause (2) of Article 122AA as it applies to the appointment of a judge of that court other than the Chief Judge.

(6) Notwithstanding the dates of their respective appointments as judges of the Federal Court, of the Court of Appeal or of the High Courts, the Yang di-Pertuan Agong, acting on the advice of the Prime Minister given after consulting the Chief Justice, may determine the order of precedence of the judges among themselves.

14. The requirement for the Prime Minister to ‘consult the Conference of Rulers’ (Art 122B (1), and the requirement of the Prime Minister to consult the Chief Minister of each of the States of Sabah and Sarawak [Art 122B (3)] are not expressly addressed in the JAC Act 2009, and any necessary clarification or reconciliation of these requirements would be best addressed by Parliament through legislative or constitutional amendment.
15. Note that all that the Prime Minister need to do is CONSULT – there is no requirement for any agreement to be obtained from the parties consulted – only that they be consulted.
16. Anyway, after the enactment of the JAC Act 2009, the practice has generally been as follows: - **the JAC vets and decides suitability and qualification of candidates, and the Prime Minister acts on the recommendation of the JAC (does not advise the King to appoint someone other than those recommended by JAC), and the King appoints Judges in accordance with such advice.**
17. The Resolution on the Judiciary and Malaysian Bar adopted at the 79th Annual General Meeting of the Malaysian Bar held on 15 March 2025 mandates that the Bar Council takes immediate and public action, including but not limited to public statements, memoranda, or legal proceedings, in response to any credible information regarding interference with judicial independence or improper influence in judicial appointments; and to reaffirm the Malaysian Bar's unwavering commitment to defend the independence of the judiciary without fear or favour, as a fundamental statutory and constitutional duty.
18. The Bar Council, acting under such mandate and its statutory duties, organised the Walk to Safeguard Judicial Independence on 14 July 2025. Approximately, 1,500 lawyers marched to the Prime Minister’s office.

The Selection Mechanism of Judges Must Also be INDEPENDENT

19. At present, the JAC is comprised of 9 members, including 5 members who are chosen and appointed by the Prime Minister. Thus, the majority in JAC are PM appointees, and this undermines the Independence of the Judiciary, as it is the JAC who selects suitable and qualified candidates to then be recommended by the Prime Minister, who then advises the King on judicial appointments.
20. The issue of the need for an **INDEPENDENT** Judicial Appointments Commission was raised since 2007 by the Bar, and also in the subsequent Bar comments on the then proposed Judicial Appointments Commission Bill.
21. This issue was again raised by the Conference of Rulers in late 2022,

The Conference of Rulers is proposing that five of the nine members of the Judicial Appointments Committee (JAC) no longer be appointed by the prime minister so that its composition is more balanced and does not carry the interest of any party.

The Yang Dipertuan Besar of Negeri Sembilan, Tuanku Muhriz Tuanku Munawir, who chaired the 260th Conference of Rulers meeting today, said in terms of the judicial system, the Conference of Rulers is responsible for the appointment of judges in Malaysia, and at present, this process is seen as having weaknesses that can be improved, JAC's membership included.

His Highness said JAC plays a key role in proposing judicial nominations, and therefore its membership was critical in ensuring that the committee continued to be looked up to and is capable of nominating judges of calibre and integrity.

"Instead, it (power to appoint JAC members) should be given to several other institutions such as the Malaysian Bar, the Sabah Law Society, Advocates Association of Sarawak and Parliament's Select Committee.

"Currently, JAC has nine members, four of whom are senior judges while five more are individuals appointed by the Prime Minister," Tuanku Muhriz said in his message in conjunction with the two-day 260th Conference of Rulers meeting that began yesterday at Istana Negara.- Astro Awani, 30/11/2022

22. In short, to ensure the Independence of the Malaysian Judiciary, the body that selects Judges too naturally must be independent, and the Prime Minister's appointees currently make up the majority, 5 out of the 9 member JAC.
23. The Malaysian Bar is committed to the Independence of the Judiciary, and an INDEPENDENT judicial selection mechanism.

THEREFORE, it is hereby resolved: -

- A. That the Malaysian Bar adopts the following resolution to ensure and enhance the INDEPENDENCE OF THE JUDICIARY in Malaysia: -

- a) The selection of suitable and qualified candidates to be appointed Judges of or Judicial Commissioners, elevated as Judges of superior courts, and appointed as the Chief Justice of the Federal Court, the President of the Court of Appeal, the Chief Judge of the High Court in Malaya, the Chief Judge of the High Court in Sabah and Sarawak shall be done by an **INDEPENDENT Judicial Appointments Commission**; and
 - b) **The Prime Minister shall only advise the King on Judicial Appointments, as advised/recommended by the Judicial Appointments Commission created by the JAC Act 2009.**
- B. The Malaysian Bar calls for an amendment of the JAC Act 2009, to remove the appointees of the Prime Minister in the JAC, which is now 5 out of the 9 members of the JAC.
- C. That the Malaysian Bar, the Bar Council and/or the President of the Bar continue to advocate the Malaysian Bar's position on the Independence of the Judiciary, including the selection process by an INDEPENDENT Judicial Appointments Commission.
- D. That the Malaysian Bar reaffirms its commitment to the independence of the Judiciary, and and independent judicial appointments process, and authorises the Bar Council to take all such steps and actions, including but not limited to public statements, memoranda, or legal proceedings, as it deems necessary and appropriate to achieve this.