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To Members of the Malaysian Bar

Meetings Between the Bar Council and Chief Justice (7 Aug 2018 and 2 Nov 2018)

On 7 Aug 2018, the Bar Council Court Liaison Committee (“CLC”) met with the Chief Justice of the Federal Court of Malaysia (“CJ”), YAA Tan Sri Datuk Seri Panglima Richard Malanjum, to discuss issues relating to the implementation of the e-Court Phase 2 system.

Issues relating to court practice were discussed during a subsequent meeting with the CJ on 2 Nov 2018.

The key matters discussed during the two meetings are summarised below.

I. Meeting with the CJ on 7 Aug 2018

(A) Issues raised by CLC

(1) Disruption in the Functioning of the E-Filing System on 25 and 30 May 2018

CLC highlighted that the e-filing system continued to experience disruptions — such as on 25 and 30 May 2018 — and enquired if the e-Court Division of the Federal Court (“e-Court Division”) had identified and resolved the problem.

The CJ requested his officers to check with the e-Court Division regarding this matter.

(2) Standard Operating Procedure during Disruption in E-Filing System

CLC highlighted that we had been informed — at the previous meeting (held on 23 Jan 2018) — that the e-Court Division is currently drafting the standard operating procedure (“SOP”) that will apply during periods of disruption in the functioning of the e-filing system, and that the Bar Council will be notified once the SOP has been finalised. However, the Bar Council has not received any update.

The CJ acknowledged the importance of having an SOP in the event of disruptions to the e-filing system, and requested his officers to check with the e-Court Division on this matter.

CLC proposed that the e-Court Division set up a system whereby lawyers can send an email to a dedicated email address during disruptions to the e-filing system, and receive an automated acknowledgement of the receipt of their email. The court should then consider the e-filing to have been successfully completed. CLC added that the court could allow a “grace period” for lawyers to make the requisite payment once the system has resumed functioning.

The CJ agreed to consider setting up this proposed system to accept e-filing via email during disruptions.

(3) Errors in Filing Codes

CLC asked if users of the e-filing system could contact the Registrar of the relevant court to request that the Registrar's office assist in amending inaccurate filing codes.

The CJ requested his officers to check if such amendments can be made without needing to make any changes to the existing system.

CLC also enquired whether, in cases of inaccurate filing codes, the court can amend the filing code and accept the e-filing, or whether the filing fee can be waived, if the documents need to be refiled.

The CJ responded that payment of filing fees is under the purview of the Treasury, and hence the decision regarding granting of waivers is not in the hands of the court.

(4) Helpdesk

CLC noted that the Helpdesk is not reachable through the hotline.

The CJ requested his officers to check with the e-Court Division regarding this matter.

(5) Notification for Extraction of Documents

CLC pointed out that it is unclear whether notifications of extraction of documents should be sent to a law firm's e-filing inbox, or to the law firm's email address, and this has resulted in inconsistencies in the actual practice.

The CJ asked his officers to check on this matter.

(6) Limitations of File Search Function

CLC said that pursuant to the Rules of Court 2012, the fee for a file search is RM12 for 30 minutes. However, the system only allows the user to view the search result page by page, but does not allow the user to download the document in full.

CLC enquired if the Rules of Court 2012 can be amended to permit users to conduct file searches for an unlimited period of time each day, for a flat fee. CLC also requested that the system be modified to permit documents to be downloaded in full.

The CJ said that he will consider the CLC's proposals, and added that he sees no reason why users should not be allowed to download the documents.

(7) Group Law Practice

In respect of law firms in a Group Law Practice ("GLP"), CLC explained that e-filing will remain unchanged for such firms since e-filing accounts are based on the names of individual law firms, and these names do not change when a GLP is formed. CLC requested that the change of a law firm's address when it joins a GLP not affect e-filing, and that the law firm's e-filing token and digital certificate also remain unchanged since the e-filing registration is based on individual law firms.

The CJ's Officer, Sim Guan Meng, explained that because each token and each digital certificate is registered to a specific lawyer practising at a particular law firm and location, the token and digital certificate can no longer be used if the lawyer changes to a different law firm, or the law firm changes its address.

(8) Restriction in Size of Uploaded Files

CLC requested that the maximum size of files for uploading into the e-filing system be increased from the current limitation of 35MB per file.

Sim Guan Meng explained that there are constraints in this respect, and that the size of files for uploading is usually limited in order to prevent technical problems that could cause failures during the uploading process, including corruption of files or loss of bytes.

(9) MPKI

CLC reported that the MPKI software application frequently malfunctions, and it is time-consuming and tedious for Members when they have to uninstall and reinstall the application.

CJ requested his officers to check with the e-Court Division on this matter.

(10) Restriction on Filing of Amended Drafts

CLC pointed out that in the current system, a lawyer cannot file an amended draft if any errors are identified after the court has approved the document that was filed. With the manual filing system, the lawyer could bring the revised draft to court, and the court would amend the draft or the lawyer could file the revised draft.

The CJ noted that this is possible in Sabah and Sarawak, and informed his officers to have the process revised by the e-Court Division.

(11) Extracted Documents No Longer Available in Inbox

CLC reported that Members have informed the Bar Council that extracted documents occasionally disappear from their law firm's e-filing inbox.

CJ requested his officers to notify the e-Court Division about this problem.

(12) Certification of Digitally Sealed Orders as True Copies

CLC informed the CJ that some land offices and other agencies require original sealed Orders, and do not accept digitally sealed Orders. However, the court can no longer provide a certified true copy in such situations, as there is now a direction that prior approval from the Chief Registrar of the Federal Court is required in order for a digitally sealed Order to be certified as a true copy.

The CJ asked his officers to look into this matter and to revoke the direction.

(B) Issues raised by the Chief Justice

(1) Online Case Management and CAP

The CJ said that in Sabah and Sarawak, all case management is carried out online via the Case Management System (“CMS”) that is linked to the e-filing system. This allows for a two-way, interactive case management system known as e-Review, and lawyers need not appear in court during case management hearings.

The CJ said that this system can be used for both civil and criminal matters, and parties can request to appear before the judge, in the event of any dispute.

He added that the pilot project in Peninsular Malaysia was targeted to be launched in September 2018 for the Court of Appeal and Federal Court, to be followed by the Jalan Duta court complex.

The Bar Council notes that the e-Review module came into operation on 22 Oct 2018 for the Court of Appeal and Federal Court. For details, please refer to [Circular No 258/2018](#), dated 17 Oct 2018, entitled “Implementation of the E-Review Module in Court of Appeal and Federal Court”.

The CJ also explained about “CAP”, a user-friendly online portal created to enable easy communication between the courts and the public. He said that one aim of this system is to provide notifications to all the parties involved in a case.

(2) Digital Monitor to Display Cases Being Called

The CJ said that a digital monitor will be installed in the Palace of Justice canteen to display the cases being called, so that lawyers could utilise the canteen facilities while waiting for their cases.

(3) Individual Contact Information of Lawyers

The CJ said that it is difficult to contact lawyers if they provide only the general email address of their law firms. He proposed that lawyers provide their own (individual) email addresses and contact number(s) so that the court can contact the lawyers directly.

Members of the Bar are requested to take note of this proposal.

(4) Verification of Documents by the Court Registry

The CJ enquired if the Bar Council would be agreeable to a proposal that court papers filed by lawyers would not be rejected by the Registrars or court Registry staff; instead, it is to be left to the parties to object, if they so wish.

CLC said that there is no reason why the Bar Council would object to the proposal, provided the judge reviews the objections based on their merits.

(5) Insufficient Payment Made During E-Filing

The CJ proposed that the e-filing system be amended to automatically “kick out” a user who makes insufficient payment — such as for the payment of the filing fee — during the e-filing process. The CJ said that such mistakes are not acceptable.

II. Meeting with the CJ on 2 Nov 2018

(1) Expansion of E-Review System

The CJ stated that the e-Review system might be extended to the Jalan Duta court complex and the court in Shah Alam. Once the system is implemented, lawyers need not attend court for mentions and case management, which can be conducted while the lawyers remain in their office. This will help ease the parking problems at the courts.

(2) Video Conferencing

The CJ said he intends to introduce video conferencing, possibly commencing in Penang and then expanding to Johore to help alleviate the problems faced by lawyers who have to travel long distances for straightforward mentions and cases.

(3) Fixing of Cases on Staggered Basis

The CJ expressed his intention to introduce staggered timing for cases other than bankruptcy matters and also for hearings before the Deputy Registrar, in order to minimise the amount of waiting time for lawyers.

(4) Remand Hearings

The CJ said that one magistrate will be appointed to hear only remand cases, thus allowing other magistrates to hear trials, in order to speed up trials so that lawyers need not wait long for their cases to be called up.

(5) Lack of Interpreters

CLC requested that the courts provide a pool of interpreters for lawyers to approach, as lawyers face difficulties in finding interpreters for civil matters.

The CJ asked his officers to find out how many interpreters are in the pool, and to look into increasing the number.

(6) Group Mediation

The CJ has indicated that group mediation will be introduced for “runner matters”, to encourage early settlement. A pilot project is expected to be introduced in Kota Bharu, Kelantan.

(7) Court Papers Not to be Rejected for Administrative Reasons

The CJ reiterated that he will direct the courts and their staff not to reject, based on administrative reasons, any court papers filed by lawyers, because the right to object lies with the parties who will then have to put forward their arguments in court.

Members are thus strongly encouraged to ensure that all court papers filed are in order.

(8) Request for Feedback About the Judiciary

The CJ requested that CLC collate feedback from Members of the Bar on issues they face in relation to court proceedings.

We urge Members to provide feedback, by clicking [here](#).

III. Meeting on E-Filing Matters on 2 Nov 2018

CLC also met with the e-Court Division and OMESTI to discuss the technical issues involving the e-filing Phase 2 system. This meeting was chaired by Sabariah bt Othman, Deputy Chief Registrar (Operations) of the Federal Court.

(1) Sharing of Tokens Between Lawyers of Different Law Firms

The e-Court Division pointed out that some lawyers who do not have their own tokens are carrying out e-filing by utilising tokens registered to lawyers at other law firms. By doing so, Members will face serious problems when doing e-filing and using the e-Review system, as the information about the lawyer or law firm on record will not be accurate.

Members are strongly encouraged to purchase their own tokens for e-filing, and not use tokens belonging to other law firms.

(2) Updating Contact Information for Lawyers and Law Firms

The e-Court Division alerted CLC that some law firms have registered their email addresses with the courts for e-filing and e-Review purposes, but subsequently fail to notify the courts when a lawyer leaves the law firm. Consequently, the courts tend to send out multiple emails to lawyers.

Administrators of the law firms' e-filing accounts are strongly urged to ensure that the details of the relevant users are fully updated.

Counsel appointed by a law firm will not be included in the e-Review system and will not receive any emails from the courts. The courts have agreed to create a mechanism to allow an instructing solicitor to invite counsel, who can then participate in the e-Review system.

(3) Requirement of NRIC Number

CLC was informed that the Insolvency Act 1967 requires the National Registration Identity Card ("NRIC") number of debtors to be stated in debtors' petitions and notices upon commencement of action, in order to avoid any confusion when debtors have similar or identical names. The courts have suggested that this information be included in the writs as well.

CLC said that it is difficult to obtain the NRIC numbers of the persons concerned. Since the courts' online system is now linked to the National Registration Department, the online connection will enable automatic checks of the names and NRIC numbers of debtors, and this information can be accessed via the e-filing system.

For probate matters, Borang C will not be generated unless both the old and new NRIC numbers are stated therein. This applies especially to caveats that carry old NRIC numbers.

(4) Refund of E-Filing Fee

CLC expressed its view that the relationship between a lawyer and the courts is akin to a contract. As such, when a lawyer makes an error in the course of e-filing, the courts are not entitled to the e-filing fee that has been paid, and must refund it.

The e-Court Division agreed, and indicated that CLC will be asked to provide feedback on scenarios where a refund might be justified, which would exclude situations involving gross negligence.

(5) Use of E-Filing for Criminal Cases

The e-Court Division requested that **Members of the Bar be encouraged to start using e-filing for criminal cases as well.**

(6) Notice of Appeal

CLC was informed that some lawyers are filing their Notice of Appeal in the appellate court, rather than in the court that handed down the decision being appealed. When this occurs, the courts no longer have the capacity to notify the lawyer concerned.

Members of the Bar are strongly urged to follow the correct procedure.

(7) Entry of Accurate and Complete Data

The e-Court Division noted that some lawyers do not key in the information of the parties accurately or completely when using the e-filing system. One example is when the names of some plaintiffs are omitted from documents in suits involving multiple plaintiffs. The lawyers subsequently face problems when executing judgments, because the judgment order contains the names of all the plaintiffs, but the list of names in the e-filing system is incomplete.

(8) Power of Attorney

Members of the Bar are reminded to include a cover page for Powers of Attorney, as the court usually makes the endorsement on the first page of the document. An endorsement that is made on the document itself may not be visible, and may obscure the content of the document.

Should you have any enquiries, please contact Vilashini Vijayan, Executive Officer, by telephone at 03-2050 2095, or by email at vila@malaysianbar.org.my.

Thank you.

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