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During the 2019/2020 term, the Court Liaison Committee (“CLC”) continued with its primary objective of looking into the needs of, and problems encountered by, Members of the Bar in matters relating to the administration of justice in the courts. CLC met six times during the period under review, with active participation from representatives of the State Bar Committees. To encourage active participation from the State Bar Committee representatives who are unable to travel for a meeting, CLC had initiated the use of a technology platform that allows such members to participate remotely, via a virtual meeting.

The activities undertaken by CLC for the term are summarised in the following sections.

## **(A) Meetings with the Authorities**

CLC had several meetings with members and representatives of the Judiciary, to discuss issues relating to court matters and the administration of justice.

### **(1) Meeting with the Office Bearers of the Judiciary**

On 10 July 2019, the Office Bearers (“OBs”) of the Malaysian Bar and CLC met the Chief Justice of the Federal Court of Malaysia (“CJ”), YAA Tan Sri Tengku Maimun binti Tuan Mat; President of the Court of Appeal (“PCA”) YAA Tan Sri Dato’ Sri Ahmad bin Haji Maarop; Chief Judge of Sabah and Sarawak (“CJSS”) YAA Tan Sri Datuk Seri Panglima David Wong Dak Wah; Chief Justice of Malaya (“CJM”) YAA Tan Sri Dato’ Sri Azahar bin Mohamed; and Chief Registrar (“CR”) Tuan

Ahmad Terrirudin bin Mohd Salleh, to discuss matters relating to court practice, including:

- (a) Arahan Amalan Ketua Hakim Negara Bil 1/2019, pertaining to the postponement of cases

Bar Council (“BC”) raised concerns on paragraphs (2), (3) and (5) of the Arahan Amalan, and stated that it serves merely as a guide to the Courts, and that the Courts should still be allowed to exercise judicial discretion in the granting of adjournments, as and when necessary. They noted that there are many instances where the Sessions Court Judges or the Magistrates strictly adhered to this Arahan Amalan without using their discretionary power to grant or refuse the adjournment.

CJM said he will follow up on this issue with the Sessions Court Judges and the Magistrates.

- (b) Proposed draft of Arahan Amalan Ketua Hakim Negara pertaining to oral submissions for civil and criminal cases

BC agreed to the proposed draft Arahan Amalan on oral submissions in court. The Office Bearers of the Judiciary stated that in light of the Bar Council’s agreement, the proposed Arahan Amalan may be issued.

- (c) Panels hearing civil and criminal appeals

CJ said that the current practice is that hearings for appeals proper are to be heard before a panel of five Judges. She informed BC that the Judiciary is proposing the following:

- (i) Hearings for appeals proper to be heard before three Judges;
- (ii) cases involving public interest matters are heard before seven Judges; and
- (iii) cases involving constitutional issues are heard before nine Judges.

CJ requested BC to submit its views on this, and BC has obtained feedback from Members through the issuance of Circular No 238/2019 entitled “Request for Feedback by Office of the Chief Justice of the Federal Court of Malaysia”.

BC later gave its view that the current practice should be maintained, as it does not agree with the proposal.

- (d) Feedback about the e-Lelong system

Two issues were discussed during the meeting, as follows:

- (i) Instances where the Registrar determines the same reserved price after an auction fails three times. This practice is happening widely in Ipoh, Johore, and Penang; and
- (ii) BC requested that the execution fees be reduced from 3% to 1%.

CJ requested CR to look into the concerns raised by BC.

However, the CR’s Office — in a letter dated 13 Sept 2019 — confirmed that the existing execution fees of 3% will be maintained. BC will continue to pursue this matter with the Judiciary.

- (e) Child rights skills training for the judiciary

BC indicated its interest to conduct a child rights skills training for the judiciary. The CR’s Office has contacted the Bar Council Child Rights Committee, which is currently discussing the matter.

- (f) Watching brief lawyers addressing the court, and getting information and documents

OBs and CLC raised the issue that BC held a watching brief for two inquest matters in Seremban, Negeri Sembilan. The Deputy Public Prosecutor (“DPP”) informed the Court that no

documents will be given to BC's watching brief lawyers as BC is not an interested person or a party, as far as the DPP is concerned.

BC stated that discretion must ultimately be left in the hands of the presiding Judge, and this discretion should, in general, be exercised in favour of the release of documents.

The CR's Office — in a letter dated 11 Sept 2019 — confirmed that Arahan Amalan Bil 2/2014 has been revoked by Arahan Amalan Bil 2/2019, which addresses the issues raised by BC.

(g) Security at the Terengganu Court building

OBs and CLC raised their concerns regarding the requirement for lawyers to produce an identification card in order to enter the Terengganu Court building. CR confirmed that the practice has been stopped, and the Judiciary does not intend to continue it.

(h) Grounds of judgment

OBs and CLC said that when a matter is called for defence at the Court of Appeal, the grounds of judgment should be provided. CJ stated that no grounds of judgment will be provided, but reasons will be provided as to why the defence is being called.

(i) Shortage of interpreters for Tamil and Chinese languages

OBs and CLC informed at the meeting that there must be efforts to increase the number of interpreters for Tamil and Chinese languages in the system. CR stated that there is no one willing to apply for the posts; hence, lawyers need to engage interpreters privately. BC will pursue this matter further with the relevant bodies.

(j) e-Review

Two issues were raised in relation to e-Review, as follows:

- (i) No notification is given that the Registrar has replied to a lawyer's message when a case management does not proceed because the Registrar is on sick leave or away to attend to urgent matters. Therefore lawyers are unable to close the case within reasonable time; and
- (ii) Unable to print out messages from the e-Review system.

CJ requested CR to address the issues raised by BC.

The Judiciary met CLC on 17 Sept 2019 and 8 Oct 2019 to discuss the above-mentioned e-Review matters in detail, and has agreed to engage with the Judiciary's vendor to see how they can be best resolved.

(k) DPPs meet with Magistrates or Sessions Court Judges without defence counsel present

CJ requested CR to address the concerns raised by BC on the above-mentioned issue.

(l) Too many adjournments granted for witnesses to be brought by prosecution

OBs and CLC raised their concerns on the above issue, which is occurring especially in Courts in Ampang, Selangor.

The CR's Office — in a letter dated 11 Sept 2019 — stated that Arahan Amalan Ketua Hakim Negara Bil 1/2019 will be reissued to all Judges as a reminder to be more cautious in exercising discretion on postponements.

(m) Coaching of prosecution witnesses

BC expressed concern that prosecution witnesses in three different courts in Ampang, Selangor, said they had been coached.

The CR's Office — in a letter dated 11 Sept 2019 — confirmed that it has taken note of the issue, and said that the Court welcomes formal complaints to be lodged to the presiding officer if the situation recurs.

(n) Punctuality of service of documents

The CR's Office — in a letter dated 11 Sept 2019 — confirmed that it has taken note that the Court must be stricter about punctuality of service of documents under section 51A of the Criminal Procedure Code ("CPC"), and acknowledged that documents should be served before the commencement of trial. However, officers, in exercising their discretion, must also be mindful of sections 51A (3),(4), and (5) of the CPC.

(o) Size of Sepang Magistrates Court

The CR's Office — in a letter dated 11 Sept 2019 — confirmed that it is aware that the Sepang Magistrates Court is small. The court has to work with limited space as it is an old court complex.

(p) Delay in information regarding assignment of courts

BC raised the concern that lawyers have to wait from 9:00 am until 11:00 am to find out which court their clients will be charged in.

The CR's Office — in a letter dated 11 Sept 2019 — stated that the assignment of courts is done upon registration of cases either through the case management system ("CMS") or manually at the registration counter, and depends on the time the cases are filed by enforcement agencies.

Generally, the cut-off time for registration of cases is 10:00 am. The parties are informed of the assignment of courts once the registration process has been completed.

(q) Lack of designated waiting area

BC highlighted that there is no designated waiting area in Kajang and Petaling Jaya Courts for lawyers and those who will be charged.

The CR's Office — in a letter dated 11 Sept 2019 — stated that Kajang Court has responded to this issue by adding more seats in the waiting area for lawyers, those who will be charged, and members of the public.

As for Petaling Jaya Court, an application has been made to Bahagian Pengurusan Pejabat Ketua Pendaftar Mahkamah Persekutuan ("PKPMP") for more seats and long benches to be placed in the front section of the courts, waiting areas, and every lobby of each floor.

(r) e-Filing and reprinting of documents

OBs and CLC said that once e-filing has been made, Judges should not ask for hard copies of the documents to be provided, as it defeats the objective of e-filing as well as creates duplication. The CR's Office — in a letter dated 11 Sept 2019 — stated that the Judges must themselves print documents that they require.

(s) Staggered hearing times

OBs and CLC said that lawyers are made to wait unnecessarily in court, and requested staggered hearing times for matters in all courts.

The CR's Office — in a letter dated 11 Sept 2019 — informed BC that a notice will be issued to all Sessions Court Judges and Magistrates to address this issue.

CJ also requested that the effort be reciprocated by the Bar to observe punctuality.

(t) “Child room” in all court complexes

OBs and CLC requested to set up a “child room” in all court complexes where members of the public can drop off their children who are not allowed in courtrooms.

CJ requested CR to look into the proposal raised by BC.

The CR’s Office — in a letter dated 11 Sept 2019 — stated that at present, courts are constrained by limited space and financial ability to provide such a facility. The CR’s Office informed us that this proposal should be brought to the attention of the Ministry of Women, Family and Community Development.

(u) Consolidated Arahan Amalan for e-Filing case codes

OBs and CLC requested an Arahan Amalan that consolidates all the e-Filing case codes for ease of reference.

The CR’s Office — in a letter dated 11 Sept 2019 — stated that the Office of the Registrar of the High Court of Malaya, the Office of the Registrar of the Subordinate Court of Malaya, and Unit Pengurusan Data and Statistik (“UPDS”) of the CR’s Office is currently revising all the previous Arahan Amalan pertaining to case codes.

## **(2) Meeting to discuss the expansion of e-Review**

On 17 Sept 2019, CLC met with Puan Hasbi binti Hasan, Registrar of the High Court of Malaya and her team to discuss regarding the expansion of the e-Review system. The objective of the meeting was to obtain CLC’s views on the e-Review system and how it can be improved prior to its expansion to all the courts in Peninsular Malaysia.

CLC was informed of the expansion plan of e-Review to 20 locations in the High Courts and Subordinate Courts of Malaya, and that the CR’s Office is drafting a guideline on e-Review in the form of an Arahan Amalan. They have agreed to consult CLC before finalising the Arahan Amalan.

## **(3) Meeting to discuss e-Review at Court of Appeal and Federal Court**

CLC was invited for a meeting on 8 Oct 2019 to discuss a few issues pertaining to e-Review conducted at the Court of Appeal (“COA”) and the Federal Court (“FC”), which arose from the meeting on 17 Sept 2019.

Among the issues discussed were as follows:

- (a) Manner in which e-Review is conducted at COA and FC (ie monologue or dialogue);
- (b) Lack of agreement between the parties on the starting time for the first case management; and
- (c) Resorting to face-to-face case management that can be granted for contentious matters.

The CR’s Office decided to revise the e-Review guidelines and requested CLC to provide its feedback, which CLC did on 17 Dec 2019.

## **(4) Meeting with the Office Bearers of the Judiciary**

BC met with the Office Bearers of the Judiciary on 24 Oct 2019 to discuss the following issues relating to courts and the administration of justice:

- (a) Insufficient time for lawyers to make submissions

President of the Malaysian Bar, Abdul Fareed Abdul Gafoor explained that too many cases are fixed in a day, and lawyers are not given sufficient time to make their submissions. In some cases, they were told to quickly “wrap it up”. PCA said that he will highlight this to the Court of Appeal Judges.

- (b) Proposed amendments to the Legal Profession Act 1976 (“LPA”)

BC presented the proposed amendments to the LPA with reference to the draft Bill prepared by the Attorney General’s Chambers, and the summary table containing a list of the sections in the draft Bill that refer to the Judiciary.

- (c) Renovation of Penang Court Complex

CR confirmed that his office has been requesting the Public Works Department Malaysia (Jabatan Kerja Raya Malaysia, “JKR”) to start the renovation. PCA has requested CR to find out from JKR the reason of the delay.

- (d) No advocacy in High Court (Criminal)

The Secretary of the Malaysian Bar, Salim Bashir reported that a new practice in the Kuala Lumpur High Court and some courts in other states is that Judges have ordered written submissions, and disallowed oral submissions. PCA requested CR to look into this issue.

- (e) Lack of judicial courtesy in lower courts; and

The Vice-President of the Malaysian Bar, Roger Chan Weng Keng reported on feedback he has received about the lack of judicial courtesy in the lower courts. CJM requested BC to write to him and provide more information on this matter.

- (f) Transfer of immigration cases

BC raised concerns on the transfer of immigration cases (Pendatang Asing Tanpa Izin, “PATI”) from the Sepang Sessions Court to the Semenyih Sessions Court. CLC Co-Chairperson AG Kalidas is of the view that the detention camp is not safe for court proceedings. He asked the CR’s Office to revisit the decision, and to examine the detention centre to verify if all the issues have been resolved.

CR said that the location has been examined, and it is safe for court proceedings. CR said he took note of the concerns raised, and that any issues that occur in future can be brought to the attention of Selangor Managing Judge YA Dato’ Zabariah binti Mohd Yusof.

#### **(5) Meeting with Director of the e-Court Division of the Federal Court | 6 Nov 2019**

CLC met with Hamidah binti Mohamed Deril, Director of the e-Court Division of the Federal Court and her team, as well as the representative from OMESTI, to discuss pressing issues relating to the implementation of phase 2 of the e-Filing system.

The main issues that were discussed were the following:

- (a) New PKI digital signing solution;
- (b) File search function;
- (c) Limitation of size for uploaded documents; and
- (d) Multiple accounts for a single user.

CLC was informed that a new digital signing solution for all digital signing activities in the e-filing system (“EFS”) will be introduced starting from 14 Feb 2020. For details, please refer to Circular No 289/2019 (dated 30 Dec 2019).

#### **(6) Rules Committee Meeting**

CLC had meetings with the Rules Committee (“Committee”) on 22 Mar 2019 and 9 Dec 2019 to discuss proposed amendments to the Rules of Court 2012 and the Rules of the Federal Court 1995.

The Committee on 22 Mar 2019 adopted the proposed amendments to Order 24 Rule 5, Order 34 Rule 10, Order 53 Rule 3, Order 53 Rule 4, Order 55 Rule 4, Order 55 Rule 5, Order 55A Rule 1, and Rule 8 of the Rules of Court 2012.

At that meeting, the Committee sought BC’s views on the proposal to amend Order 34 Rule 2, Order 34 Rule 5, Order 35 Rule 3, Order 56A, Order 62 Rule 6(1), Order 93 Rule 7, and Order 70A of the Rules of Court

2012, as well as Rule 57A and R107A of the Rules of the Federal Court 1995.

Further discussion of the amendments took place at the meeting on 9 Dec 2019.

## **(B) e-Court System**

### **(1) e-Filing**

The Director of the e-Court Division of the Federal Court of Malaysia, Hamidah binti Mohamed Deril, has extended to us a notification (by email) entitled “Information on Roaming Certificate” dated 5 Dec 2019.

The notification provides information about the new digital signing solution for all digital signing activities in EFS starting from 14 Feb 2020.

### **(2) e-Review**

The online case management (“e-Review”) module is “an online forum within the e-Court System which enables judicial officers and legal representatives in a case to conduct case management via exchange of written messages without having to attend court”.

The e-Review system came into operation on 22 Oct 2018 in the Court of Appeal and Federal Court.

It was further implemented in the High Court (Commercial), Kuala Lumpur Court Complex on 24 Dec 2018, and was expanded to all divisions at the Kuala Lumpur High Court on 25 Feb 2019, the Shah Alam High Court (for cases with civil codes 21, 22, and 23 only) on 4 Mar 2019, and the Penang High Court (for cases with civil codes 21, 22, and 23 only) on 1 Apr 2019.

Several training sessions were held from December 2018.

## **(C) Court Notices**

Below is the list of the circulars issued by BC to Members of the Bar in respect of court-related matters, including notifications of court notices, from January to December 2019.

- (1) Circular No 055/2019 | Arahan Amalan Ketua Hakim Negara Bil 1/2019 | Penangguhan Kes (dated 27 Feb 2018);
- (2) Circular No 150/2019 | Application for Renewal of Digital Certificate Using E-Court Token (dated 1 Aug 2019);
- (3) Circular No 183/2019 | Request for Feedback Regarding Expansion of E-Review System (dated 11 Sept 2019);
- (4) Circular No 238/2019 | Request for Feedback by Office of the Chief Justice of the Federal Court of Malaysia (dated 5 Nov 2019);
- (5) Circular No 289/2019 | Information on Roaming Certificate: Maximum Validity Period (dated 30 Dec 2019); and
- (6) Circular No 025/2020 | Arahan Amalan Hakim Besar Malaya Bil 1 Tahun 2020 | Pengurusan Kes Sivil Sebelum Bicara (dated 3 Feb 2020).

## **Acknowledgement**

We are deeply grateful to the members of CLC for assisting the Bar Council to address the various issues and problems faced by Members of the Bar in relation to court practice. We would also like to thank the members of fellow Bar Council committees, and the Bar Council Secretariat — particularly Rajen Devaraj, Chief Executive Officer; Vilashini Vijayan, Assistant Director; Ariff Erzanie Ramli, Executive Officer; and Jul Indra Tofan, Administrative Assistant — who have been supportive in helping us to discharge our duties.

AG Kalidas and Harleen Kaur Tarjeet Singh  
Co-Chairpersons

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