

Guidance Note for Applicants | Qualified Foreign Law Firm

Under the Legal Profession Act 1976 (“Act”) and the Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014 (“Rules”) made thereunder, a Foreign Law Firm (“FLF”) may make an application under section 40G of the Act for a Qualified Foreign Law Firm (“QFLF”) licence.

- (1) An FLF licensed as a QFLF will not require a Malaysian law firm as a partner. Liberalisation will begin with the initial offering of up to five QFLF licences, as this avenue has been created to support the Malaysian Government’s Malaysian International Islamic Finance Centre (“MIFC”) initiative, as announced by the Prime Minister in his policy speech on 22 April 2009. QFLF licences will therefore only be granted to FLFs that have proven expertise in International Islamic Finance, and which would be able to support and contribute to the MIFC initiative.
- (2) An FLF may make an application to the Bar Council for a QFLF licence in Form B of the Rules.
- (3) The FLF should be of good reputation, and neither the FLF nor any of its lawyers should be subject to any disciplinary proceedings in any jurisdiction or should have been previously disciplined for any disciplinary offence. The FLF shall also not be party to any criminal or civil proceedings that may lead to disciplinary proceedings being taken against the firm in any jurisdiction.
- (4) The permitted practice areas are defined as transactions regulated by Malaysian law and at least one other national law, or transactions regulated solely by any law other than Malaysian law. In the case of a QFLF, work regulated by Malaysian law shall be undertaken in conjunction with one or more external advocates and solicitors of the High Court of Malaya holding valid and subsisting practising certificates.
- (5) The following are specifically excluded from the permitted practice areas, namely, constitutional and administrative law; conveyancing; criminal law; family law; succession law, including wills, intestacy, probate and administration; trust law where the settlor is an individual; the law relating to charities and foundations, whether the settlor is an individual or a corporation; retail banking, including corporate or commercial loans to small and medium enterprises; registration of patents and trademarks; appearing or pleading in any court of justice in Malaysia, representing a client in any proceedings instituted in such a court or giving advice, whether or not the main purpose of which is to advise the client on the conduct of such proceedings; and appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Malaysia.
- (6) The FLF should have the relevant legal expertise and experience in the permitted practice areas as may be determined by the Bar Council. For the purpose of determining whether a lawyer satisfies the requirements of relevant legal expertise and experience, any period spent in attending any course, postgraduate education, articles, pupillage or similar training in the permitted practice areas will be disregarded. Permitted practice areas are defined as transactions regulated by

Malaysian law and at least one other national law, or a transaction regulated solely by any law other than Malaysian law, provided that in the case of a QFLF, such aspect of work regulated by Malaysian law shall be undertaken with one or more advocates and solicitors of the High Court of Malaya holding a valid practising certificate.

For purposes of demonstrating its expertise in International Islamic Finance, the FLF should provide the following information:

- (i) A summary of the FLF's transactions in Islamic finance in the past 5 years, with details of financial values and transactional complexities;
 - (ii) The FLF's track record or ranking globally as a leading law firm in International Islamic Finance;
 - (iii) The number of lawyers with International Islamic Finance expertise that would be based in the Malaysian office, and details of their participation in International Islamic Finance transactions in the past 5 years;
 - (iv) The areas of International Islamic Finance practice that the FLF would offer in Malaysia, in particular those areas not offered by Malaysian law firms and other FLFs;
 - (v) The extent that the Malaysian office would function as a headquarters for the Asian region; and
 - (vi) The non-Malaysian clients in International Islamic Finance the FLF will service out of the Malaysian office.
- (7) At least two (2) foreign lawyers in the QFLF, who shall be equity partners in the FLF, must reside in Malaysia for not less than 182 days in any calendar year.
- (8) The number of Malaysian lawyers in a QFLF shall not be less than 30% of the total number of lawyers in that firm, unless otherwise determined by the Selection Committee.
- (9) A Malaysian lawyer employed in a QFLF shall be disqualified from obtaining a practising certificate under Part III of the Act.
- (10) The curriculum vitae of Malaysian lawyers in the QFLF should contain information pertaining to:
- (i) employment history;
 - (ii) experience and expertise in the permitted practice areas, with details of the subject matter; and
 - (iii) professional achievements.
- (11) The QFLF will also be subject to prudential requirements in terms of professional indemnity insurance at a level appropriate to the nature and extent of their business pursuant to section 78A of the Act. In the case of a QFLF, the firm shall provide evidence of professional indemnity insurance from an authorised registered Malaysian

insurance company or a global insurance company that has its registered office in Malaysia, with the following minimum terms and conditions:

- (i) Minimum mandatory limit of RM 5,000,000 for each and every claim. The policy Retention (or Deductible) to be no more than RM 500,000 for each and every claim (any requests for higher Retentions will be subject to the discretion and any additional requirements of the Bar Council);
 - (ii) Coverage for worldwide jurisdiction or, as a minimum, covering the jurisdiction(s) equivalent to the foreign law work / advice given now or at any time in the past by the QFLF;
 - (iii) The QFLF must provide evidence of the insurance policy purchased, to the Bar Council within 30 days of receiving its licence (and annually for renewal), and the scope of cover must, where reasonably practical, not be materially more restrictive than the mandatory scheme; and
 - (iv) A global professional indemnity insurance policy will be acceptable as long as there is a locally compliant policy subject to the minimum agreed standards and limits as above.
- (12) The QFLF must inform the Bar Council within seven (7) days of any material changes to its global insurance policy / policies which provides indemnity against loss arising from claims in respect of civil liability in connection with the provision of legal services in or from Malaysia by the QFLF. Material changes include, but are not limited to, changes in the insurer, the coverage terms and conditions, and the amount of insurance coverage.
- (13) The FLF shall submit a 3-year business plan (“Business Plan”) with its application form to the Bar Council. The Business Plan shall include but not be limited to any proposal for transfer of technology and expertise in the appropriate permitted practice areas, and the FLF’s proposed contribution to the growth and development of the Malaysian legal services market, particularly in the area of International Islamic Finance, as well as the implementation of the Business Plan. The FLF shall undertake that no material modification shall be made to the Business Plan without the prior written approval of the Bar Council. The Business Plan shall also include the following information:
- (i) Number of lawyers and partners in the QFLF;
 - (ii) Number of Malaysian lawyers in the QFLF;
 - (iii) Scope of the QFLF in terms of practice areas;
 - (iv) Scope of the QFLF in terms of geographical reach;
 - (v) Projected increase of lawyers / partners (specify practice areas and seniority);
 - (vi) Projected growth in revenue;
 - (vii) Technology investment in the QFLF (equipment / software / databases and support);

- (viii) Training plans for professional staff; and
 - (ix) Any other material information (e.g. proposed commencement date of the QFLF).
- (14) The application fee for a QFLF licence, as stated in Rule 14 (Second Schedule) of the Rules is RM15,000. The applicant must ensure that the fee is paid before submitting the application, and a copy of the receipt is enclosed with the application. The method of payment is as follows:
- (i) Cheque made payable to “Malaysian Bar”; or
 - (ii) Direct deposit or Internet banking (such as Instant Transfer) to:

Bank Name:	RHB Bank Berhad
Account Name:	Malaysian Bar
Account No:	2-64188-0000521-9
Bank Address:	No.75, Jalan Tun H. S. Lee, 50000 Kuala Lumpur, Malaysia
Swift Code:	RHBBMYKL
Bank ID:	KUP00980031

Note: No refund will be made in the case of unsuccessful applications.

- (15) Upon approval of the application, the Bar Council will issue a licence in Form E of the Rules.
- (16) Within three (3) months after the end of each period of twelve (12) months from the date of commencement of the licence, the QFLF shall submit an annual report and accounting requirements in respect of its business. The annual report should contain information pertaining to:
- (i) the operational performance of the QFLF relative to the targets or benchmarks set in the QFLF business plan;
 - (ii) proposed plans, if any, to expand or restructure the operations of the QFLF, including but not limited to changes in the number of lawyers and other employees and the scope of the practice of the QFLF (e.g. changes in the areas of legal practice or geographical areas served); and
 - (iii) the cumulative amount of profits earned and the annual audited financial statements of the QFLF.
- (17) The QFLF licence shall be valid for an initial period of three years, unless earlier revoked.
- (18) The Bar Council may, on receipt of an application in writing and payment of the prescribed fee, renew the QFLF license subject to such conditions as it may impose.

- (19) All QFLFs shall be regulated by the Bar Council. The Act provides for the establishment of a Selection Committee that will be responsible for considering all applications, and for making recommendations for approval / non-approval to the Bar Council. The Selection Committee will be co-chaired by the Attorney General and the President of the Malaysian Bar and will have five members in all. The Bar Council will serve as the Secretariat for the Selection Committee. All applications should therefore be directed to the Bar Council, using the forms prescribed in the Rules.
- (20) All QFLFs will have to comply with the same rules governing advocates and solicitors in Peninsular Malaysia.

(Updated on 22 July 2020)