

What is the Executive?



In the federal government, the Executive consists of:

- the Conference of Rulers
- the Yang di-Pertuan Agong ("YDPA")
- the Prime Minister
- the Cabinet
- the Public Services

What does the Executive do?



The Executive governs the country according to the laws made by Parliament. Each part of the Executive has its own role to play. We will discuss the different roles below.

What is the role of the Conference of Rulers?



The Conference of Rulers is made up of the 9 Rulers and the 4 Yang di-Pertua Negeri (Governors) of the States which do not have Rulers.

The Conference of Rulers has the following functions:

- It elects and may remove the YDPA. It also elects the Timbalan YDPA (Deputy YDPA). Only the Rulers participate in this function;
- It has control over Islamic ceremonies in Malaysia;
- Its consent is needed in order to pass certain laws. For example, laws affecting the privileges, position, honours or dignities of the Rulers must have the consent of the Conference of Rulers;
- It must be consulted before some federal appointments are filled, such as the appointment

of the Chief Justice of the Federal Court, President of the Court of Appeal, the Chief Judges of the High Courts, other judges of the superior courts, the Auditor General and members of the Election Commission;

- It appoints 2 out of 5 members of the Special Court which is the court set up to deal with proceedings by or against the YDPA or the Ruler of a State in his personal capacity;
- It may deliberate on questions of national policy and any other matter that it thinks fit.

Consent to Certain Laws

Consent of the Conference of Rulers is needed to pass laws on certain matters in the Constitution including:

- Article 153 dealing with the special position of Malays and the natives of Sabah and Sarawak and the legitimate interest of other communities;
- Article 152 which makes Malay the national language;
- Part III on citizenship;
- Article 10(4) which prohibits questioning of certain sensitive issues such as privileges granted under Article 153;
- Article 2(b) which deals with the alteration of the boundaries of a State.

What is the role of the YDPA?



The YDPA is a constitutional monarch. Under the Constitution, he is the Supreme Head of the Federation. The YDPA is Head of Islam in his home state, and in Malacca, Penang, Sabah, Sarawak and the Federal Territories of Kuala Lumpur, Labuan and Putrajaya. He is also the Supreme Commander of the Armed Forces.

Under Article 153 of the Constitution, the YDPA must safeguard the special position of the Malays and the

natives of Sabah and Sarawak and the legitimate interests of other communities.

The YDPA is elected by the Conference of Rulers from among the 9 Rulers of the States for a term of 5 years, and this selection is by rotation. The Yang-di Pertua Negeri of the other 4 States cannot become the YDPA and cannot participate in the election of the YDPA.

The YDPA may resign his office by writing to the Conference of Rulers. The YDPA may also be removed from office by the Conference of Rulers.

The YDPA's powers come from the Constitution. The Constitution provides that in exercising his functions, the YDPA must generally follow the advice of the Prime Minister or Cabinet. For example:

- In appointing judges, the YDPA must act on the advice of the Prime Minister.
- For the appointment and dismissal of all Cabinet Ministers (save for the Prime Minister), the YDPA must act on the advice of the Prime Minister.
- In making a proclamation of emergency, the YDPA must act on the advice of the Cabinet.
- In summoning or adjourning the *Dewan Rakyat*, the YDPA must act on the advice of the Prime Minister.

However, for a few functions and powers, the YDPA does not have to act on the advice of the Prime Minister or Cabinet but can act on his own discretion. These functions are:

- the appointment of the Prime Minister. However, the YDPA must appoint a member of the *Dewan Rakyat* who in his judgment is likely to command the confidence of the majority of the members of the *Dewan Rakyat*;
- the withholding of consent to a request to dissolve Parliament;
- calling a meeting of the Conference of Rulers

concerned solely with the privileges, position, honours and dignities of Their Royal Highnesses, and any action decided at the meeting.

What is the Cabinet's role?



The Cabinet consists of all Ministers and is the highest policy-making body in the Federation. These Ministers run and control the functions of the various ministries that govern the country.

Members of the Cabinet must also be members of Parliament (either the *Dewan Rakyat* or the *Dewan Negara*). Ministers are appointed by the YDPA upon the advice of the Prime Minister, which means that they are selected by the Prime Minister.

What is the Prime Minister's role?



The Prime Minister is the Head of Government. The Prime Minister is appointed by the YDPA. In appointing the Prime Minister, the YDPA acts in his discretion, but he may only appoint as Prime Minister a member of the *Dewan Rakyat* who in his judgment is likely to command the confidence of the majority of the members of the *Dewan Rakyat*. In practice, the Prime Minister is usually the leader of the controlling party or controlling coalition of political parties in the *Dewan Rakyat*.

If the Prime Minister ceases to command the confidence of the majority of the members of the *Dewan Rakyat*, he has two choices (i) tender the resignation of the whole Cabinet to the YDPA so that the YDPA may appoint a new Prime Minister, or (ii) advise the YDPA to dissolve the *Dewan Rakyat* for purposes of a new

general election. Under the Constitution, the Prime Minister's role includes advising the YDPA on:

- the appointment of 44 out of 70 Senators;
- the summoning and adjournment of sittings of the *Dewan Rakyat*;
- the appointment of judges of the superior courts (which are the High Courts, the Court of Appeal and the Federal Court);
- the appointment of the Attorney General and the Auditor General;
- the appointment of the Chairmen and Members of the Judicial and Legal Service Commission, Election Commission, Police Force Commission, Education Service Commission, National Finance Council and Armed Forces Council and
- the appointment of the Governors of Malacca, Penang, Sabah and Sarawak.

Many of the functions above are said to be done by the YDPA but actually the YDPA must follow the advice of the Prime Minister.

What is the Deputy Prime Minister's role?



The Constitution makes no provision for a Deputy Prime Minister. However, in practice, Malaysia has always had a Deputy

Prime Minister who has been appointed from the Cabinet.

What is the Public Services of Malaysia?



The public services of Malaysia includes:-

- the police force
- the armed forces
- the education service

It also includes public servants such as those who work for ministries and Federal and State Governments.

The members of the public service do not change with the Government, and they are responsible for the day-to-day running of the ministries and government departments.



Is the Executive accountable to Parliament?

Ministers are responsible to Parliament. Parliament exerts control on Ministers through question time, when Members of Parliament ("MPs") question Ministers on government policy. Controls are also exercised through Select Committees formed in Parliament to look into particular issues.

Frequently Asked Questions



1. Do the Prime Minister and the other members of Cabinet have to take an Oath?

Yes, the Prime Minister and other members of the Cabinet must swear an oath that they will faithfully discharge their duties to the best of their ability and bear true faith and allegiance to Malaysia and will preserve, protect and defend the Constitution.

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2. Does the Constitution state that only a person of a particular race, religion or gender can become the Prime Minister?

No, the Constitution does not say that only a person of a particular race, religion or gender can become Prime Minister of Malaysia.

But, the person who is appointed Prime Minister must be someone who is a Malaysian citizen by birth.

3. The Constitution says that the YDPA has to **consult** the Conference of Rulers in appointing Judges. The Constitution also says that the Prime Minister must **consult** the Chief Justice before advising the YDPA on appointing Judges. What does “consult” mean?

The Constitution does not explain what “consult” means. However, “consult” does not mean “to obtain consent”. In other words, the YDPA does not need the consent of the Conference of Rulers and the Prime Minister does not need the consent of the Chief Justice for the appointment of Judges. On the other hand, “consult” has been said to include a “careful consideration” or “serious consideration” of the views of the Conference of Rulers and the Chief Justice.

4. Parliament is supposed to make federal laws. Can the Executive make laws as well?

Yes, the Executive can make laws in two ways.

First, when Parliament passes an Act that gives the Executive power to do so. Parliament has passed many Acts that give the Executive the power to make laws. Laws made by the Executive are called “delegated or subsidiary legislation”. It is not necessary for subsidiary legislation to be approved by Parliament before it can become law.

In practice in Malaysia, Parliament has given the

Executive quite extensive powers to make subsidiary legislation. For example, the Executive can make laws to punish someone by way of fine or by a jail term.

The second situation in which the Executive can make laws is when a Proclamation of Emergency is issued by the YDPA. If during an Emergency, the *Dewan Negara* and *Dewan Rakyat* are not in session, the YDPA may pass laws called Emergency Ordinances.

As the YDPA must generally act on the advice of the Cabinet, the laws that the YDPA makes through Emergency Ordinances must follow the advice of the Cabinet.

Emergency Ordinances cannot be challenged in Court even if it is inconsistent with other provisions of the Constitution such as those on fundamental liberties.

However, emergency powers cannot be used to enact or amend laws on Islamic law, custom of the Malays, native law or customs of Sabah or Sarawak, religion, citizenship or language. Emergency Ordinances must be obeyed until they are:

- revoked by the YDPA;
- annulled; or
- the Proclamation of Emergency is revoked

Today, there are two Proclamations of Emergency and some Emergency Ordinances that continue to operate in Malaysia. This also means that today, in addition to Parliament, the YDPA (acting on the advice of the Cabinet) can continue to make emergency laws.

5. Do you elect your Government?

Malaysians do not vote for the Prime Minister and the Cabinet directly. We vote for our MPs and the Prime Minister is selected from those MPs. The Prime Minister then chooses the Cabinet.

The Prime Minister may choose his Cabinet from members of the *Dewan Rakyat* or the *Dewan Negara*. If he chooses members from the *Dewan Negara*, it means that those Cabinet members were not elected by Malaysians.

6. I have heard about the term “ministerial responsibility” and “collective responsibility”. What do they mean?

Each Minister in Cabinet is required to answer questions in Parliament about how his or her ministry is run and about the work that the ministry does. Although the Constitution does not say so, it is expected that a Minister must accept responsibility for the policies or mistakes made by his or her ministry, even if he or she was not directly involved. This is the concept of individual ministerial responsibility.

The Constitution states that the Cabinet shall be collectively responsible to Parliament. A member of Cabinet must publicly support a Cabinet decision even if he or she disagrees with the decision in private. If the member of Cabinet feels unable to publicly support a Cabinet decision, he or she should resign. The member cannot criticise the decision in public yet remain in the Cabinet. This is the concept of collective responsibility of Cabinet. The concept of collective responsibility of Cabinet also means that the entire Cabinet should resign if the Prime Minister ceases to command the confidence of the majority of the members of the *Dewan Rakyat*.

What's Next?

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