



**Badan Peguam Malaysia
Malaysian Bar**

www.malaysianbar.org.my

Wisma Badan Peguam Malaysia
2 Leboh Pasar Besar
50050 Kuala Lumpur, Malaysia
Tel : +603-2050 2050
Fax : +603-2050 2019
Email : council@malaysianbar.org.my

**Resolution Adopted at the 80th Annual General Meeting of the Malaysian Bar
(Held on 14 March 2026)**

Resolution on Strengthening Judicial Independence of Sessions Court Judges and Magistrates, and Structural Separation within the Judicial and Legal Service

Whereas:

- (1) The appointment of Sessions Court Judges, Magistrates and other judicial officers is governed by the Subordinate Courts Act 1948 (“SCA”).
 - (a) Sessions Court Judges
 - (i) Appointed by the Yang di-Pertuan Agong on the recommendation of the Chief Judge, pursuant to section 59(3) of the SCA; and
 - (ii) **Must be members of the judicial and legal service (“JLS”)** pursuant to section 60 of the SCA; and
 - (b) Magistrates and other relevant officers
 - (i) First Class Magistrates: Appointed by the State Authority or by the Yang di-Pertuan Agong in the Federal Territories, on the recommendation of the Chief Judge, pursuant to section 78 of the SCA:
 - First Class Magistrates **must be a member of the JLS** pursuant to section 78A of the SCA; and
 - By virtue of section 77 and the Fourth Schedule of the SCA, the persons listed therein are also *ex officio* First Class Magistrates;
 - (ii) Second Class Magistrates: Appointed by the State Authority or by the Yang di-Pertuan Agong in the Federal Territories, pursuant to section 79 of the SCA; and
 - (iii) Subordinate Court Registrars, Deputy Registrars, Senior Assistant Registrars and Assistant Registrars (*ex officio* First Class Magistrates, pursuant to the Fourth Schedule of the SCA): Appointed pursuant to sections 5A(1)¹ or 5A(2)² of the SCA;
- (2) The JLS is a public service as stated in Article 132(1) of the Federal Constitution (“FC”);

¹ Section 5A(1): The Registrar, Deputy Registrar and the Senior Assistant Registrar shall be appointed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice.

² Section 5A(2): The Assistant Registrar of the Subordinate Courts shall be appointed in accordance with section 106.

- (3) The JLS comprises both judicial and legal officers, including officers of the Attorney General's Chambers, Deputy Public Prosecutors, Federal Counsel as well as Magistrates, Sessions Court Judges, Senior Assistant Registrars and Assistant Registrars. This broad composition reflects both judicial and prosecutorial / legal service functions;
- (4) Under Articles 138 and 144 of the FC, the Judicial and Legal Service Commission ("JLSC") exercises jurisdiction over, among others, appointments, confirmation, transfers, promotion and disciplinary control of members of the JLS;
- (5) As Sessions Court Judges and First Class Magistrates are statutorily required to be appointed from among members of the JLS, such appointments therefore fall within the jurisdiction of the JLSC;
- (6) The JLSC is presently composed of³:
 - (a) the Chairman of the Public Services Commission as its Chairman;
 - (b) the Attorney General or, if the Attorney General is a member of Parliament or is appointed otherwise than from members of the JLS, the Solicitor General; and
 - (c) members who are appointed by the Yang di-Pertuan Agong after consultation with the Chief Justice from among persons who are, or have been, or are qualified to be a judge;
- (7) On 23 February 2026, the Government tabled the Constitution (Amendment) (No. 2) Bill 2026⁴ to amend, *inter alia*, Articles 138 and 145 of the FC;
- (8) Among others, Article 138 will be amended to confer additional functions on the JLSC, and restructure its composition with the addition of the following as permanent members:
 - (a) Chief Judge of the High Court in Malaya;
 - (b) Chief Judge of the High Court in Sabah and Sarawak;
 - (c) Public Prosecutor; and
 - (d) Solicitor General;
- (9) The explanatory statements indicate that if the Bill is passed, the Attorney General, who is presently the head of service for officers of the JLS, would no longer be from among members of the JLS, and the Solicitor General would instead carry out this function following the proposed constitutional amendments⁵;
- (10) Notwithstanding the proposed amendments, the structural placement of judicial officers within the JLS remains unaffected;

And whereas:

- (11) Judicial independence is a foundational principle of the rule of law. It applies equally to all levels of the judiciary, including Sessions Court Judges and Magistrates, who constitute the primary point of contact for the majority of litigants within the justice system;

³ Article 138(2) of the Federal Constitution.

⁴ [Constitution \(Amendment\) \(No. 2\) Bill 2026](#).

⁵ [Constitution \(Amendment\) \(No. 2\) Bill 2026](#).

- (12) The institutional design and composition of the JLSC, even if the amendments to Article 138(2) of the FC take effect, give rise to longstanding concerns relating to the perception and reality of judicial independence, including:
- (a) the chairmanship of the JLSC by the Chairman of the Public Services Commission, an institution within the Executive branch;
 - (b) the participation of the executive-linked office holders, including the Attorney General, who serves as the legal adviser to the Government under Article 145(2) of the FC, and, pursuant to the proposed amendments, the Public Prosecutor, within the JLSC; and
 - (c) the concentration within a single commission of powers affecting the appointment, career progression, transfer and discipline of Sessions Court Judges and Magistrates;
- (13) The combination of judicial and legal service functions within a single body, together with executive-linked participation in administrative decisions affecting judicial careers, may contribute to a public perception that the Sessions Court Judges and Magistrates do not enjoy the same degree of institutional separation as the superior court judges, and therefore, raises concerns as to whether this institutional design sufficiently safeguards judicial independence⁶;
- (14) Additionally, the current fused structure of the JLS, whereby judicial officers and prosecutorial officers are part of the same service and are inter-transferable, raises concerns as to its compatibility with judicial independence and with the rules of natural justice, in particular the rule against bias;
- (15) The need for judicial independence at all levels of the Bench has been judicially recognised. In *Ahmad bin Abu Bakar v Public Prosecutor*⁷, the High Court observed (emphasis added):
- On independence of the judiciary, which must necessarily include magistrates and judges of the sessions courts, the interference by the police constable of magistrate ‘A’s discharge of judicial duty must be frowned upon ... A judge of whatever rank, and this must include a magistrate, is required to render an honest, unbiased opinion based purely on the law and the facts. It is not a simple task. It demands a whole gamut of wisdom, conscience, absolute freedom from bias and prejudice and above all fairness.⁸
- (16) Judicial independence encompasses both the independence of individual judges and the institutional independence of the courts. As observed by the Supreme Court of Canada in *Valente v R*⁹, individual guarantees are insufficient where the court itself is not institutionally independent of the Executive¹⁰;

⁶ IMLC 2018 | [Thirtieth Anniversary of the 1988 Judicial Crisis: Lessons about the Importance of Judicial Independence and Impartiality \(Emeritus Professor Datuk Dr Hj Shad Saleem Faruqi\)](#), 5th Raja Aziz Addruse Memorial Lecture, 15 August 2018.

⁷ [1998] 7 MLJ 391.

⁸ *Ibid*, p 400, paras D–E.

⁹ [1985] 2 SCR 673.

¹⁰ *Ibid*, para 20.

- (17) International and comparative standards affirm that at all levels of the judiciary, including at subordinate courts, judicial independence must be secured through transparent and independent appointment and management mechanisms, as reflected in:
- (a) the Commonwealth (Latimer House) Principles on the Three Branches of Government¹¹, which emphasises the need for an independent process for judicial appointments designed to guarantee the quality and independence of mind of judges; and
 - (b) the international model clauses and guidance on Judicial Appointments Commissions¹² which recommend a commission chaired by the Chief Justice, with broad judicial, professional and lay representation, and independent criteria for appointment, thereby underscoring the institutional separation of judicial appointments from Executive control;
- (18) The Malaysian Bar has long advocated¹³ for structural reform of the JLS, including the separation of judicial officers, namely Sessions Court Judges, Magistrates, Senior Assistant Registrars and Assistant Registrars, to be placed under the administrative oversight of the Chief Justice, separate from the legal and prosecutorial officers under the Attorney General or Public Prosecutor; and
- (19) The Malaysian Bar has repeatedly and consistently affirmed its commitment to defending the independence of the judiciary and upholding the rule of law through its past resolutions¹⁴.

Therefore, it is hereby resolved that:

- (A) The Malaysian Bar affirms that judicial independence applies equally and without distinction to Sessions Court Judges and Magistrates, and further reaffirms that judicial independence is essential to the administration of justice and the protection of fundamental rights;
- (B) The Malaysian Bar calls upon the Government to review the legal and constitutional framework governing the appointment, confirmation, transfer, promotion and disciplinary control of Sessions Court Judges and Magistrates, including vesting such appointments in a separate, independent judicial appointments body or reconstituted commission with appropriate judicial majority and adequate safeguards, and, to take any steps, including amendments to the FC and the SCA, as necessary to strengthen the institutional and functional independence of the Sessions Court Judges and Magistrates; and
- (C) The Malaysian Bar further calls upon the Government to undertake comprehensive structural reform of the JLS to ensure the administrative and institutional separation of

¹¹ [Commonwealth \(Latimer House\) Principles on the Three Branches of Government](#) (September 2023), p 8, para II on Preserving Judicial Independence.

¹² [Judicial Appointments Commissions: A Model Clause for Constitutions](#), Dr Karen Brewer, James Dingemans QC and Dr Peter Slinn on behalf of the Commonwealth Magistrates' and Judges' Association, Commonwealth Lawyers Association and Commonwealth Legal Education Association, May 2013.

¹³ [Bar Council's Submissions on Institutional and Law Reforms | Judiciary / Judicial Appointment Commission](#), pp 290–291.

¹⁴ [Resolution Regarding Remuneration of Judges and Establishment of Judges' Remuneration Commission](#) (adopted at the 77th Annual General Meeting of the Malaysian Bar on 18 March 2023); [Resolution on the Independence of the Judiciary and Upholding the Rule of Law](#) (adopted at the Extraordinary General Meeting of the Malaysian Bar on 10 May 2023); [Resolution on the Judiciary and Malaysian Bar](#) (adopted at the 79th Annual General Meeting of the Malaysian Bar on 15 March 2025).

judicial officers, including Sessions Court Judges, Magistrates, Senior Assistant Registrars and Assistant Registrars, from Executive oversight, placing them instead under the separate oversight of the Chief Justice, including by introducing any necessary constitutional or legislative amendments, in order to strengthen judicial independence and reduce the perception of bias or conflict.