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Malaysian Bar**

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Resolution Adopted at the Extraordinary General Meeting of the Malaysian Bar (Held on 10 May 2023)

Resolution on the Independence of the Judiciary and Upholding the Rule of Law

Whereas:

- (1) The judiciary has in recent months come under attack as a direct result of the conviction of former Prime Minister Dato' Sri Mohd Najib bin Tun Abdul Razak.
- (2) Such attacks have been compounded by the actions of the Malaysian Anti-Corruption Commission ("MACC") as evidenced by a letter dated 20th February 2023 to the Chief Justice attaching a report (which was leaked into the public domain) wherein the MACC purported to make a finding or come to a view that Justice Dato' Mohd Nazlan bin Mohd Ghazali ("Justice Nazlan") was in breach of the Judge's Code of Ethics 2009, specifically Rule 8(1)(a), by virtue of his previous employment with Maybank Berhad ("Report").
- (3) This is all the more surprising when MACC unlawfully announced publicly in 2022 that it was investigating allegations of corruption against Justice Nazlan, which the Malaysian Bar had condemned vide a resolution passed at the Bar's Extraordinary General Meeting of 27 May 2022, and which investigation MACC appears to have abandoned before MACC inexplicably made a quantum leap to purport to conclude that Justice Nazlan was in conflict of interest.
- (4) Rule 8(1)(a) of the Judge's Code of Ethics 2009 provides as follows:

"Seorang hakim hendaklah memastikan bahawa semua aktiviti luar kehakimannya tidak menimbulkan keraguan yang munasabah tentang keupayaan untuk bertindak dengan saksama sebagai seorang hakim."

As the previous employment of Justice Nazlan with Maybank Berhad was before his elevation as a judge of the High Court of Malaya, it is not an "extra-judicial activity", and accordingly Rule 8(1)(a) of the Judge's Code of Ethics 2009 is inapplicable.

- (5) Allegations of conflict of interest per se and any investigations in respect thereof are not within the ambit of the provisions of the MACC Act, and are *ultra vires* the powers and jurisdictions of the MACC.

- (6) There has been an allegation that Justice Nazlan was in a conflict of interest when presiding as the High Court judge in respect of the trial of Dato' Sri Mohd Najib Tun Abdul Razak (Referred to as the SRC International case).
- (7) Any such allegations of conflict of interest are matters for the trial judge and/or for the appellate courts to determine.
- (8) The allegations of conflict of interest have been determined with finality by two separate panels of the Federal Court, without dissenting judgments.
- (9) Dato' Sri Mohd Najib bin Tun Abdul Razak had made an allegation of corruption against Justice Nazlan in the SRC International case, which allegation has been withdrawn by Dato' Sri Mohd Najib bin Tun Abdul Razak.
- (10) The Federal Court had in its judgment dated 24th February 2023 in Civil Reference No: 06(RS)-4-07/2022(W) cast doubt as to the *bona fides* of the MACC investigation.
- (11) On 14 February 2023 during the 1st Meeting of Parliamentary Business of the 2nd Session at the 15th Parliament 2023, two members of parliament raised the issue of MACC's investigation of Justice Nazlan. The Minister in the Prime Minister's Department (Law & Institutional Reforms), YB Dato' Sri Azalina Binti Othman, replied on 23 February 2023. Notably, this was just before the Federal Court handed down its decisions in the case of *Haris Fathillah bin Mohamed Ibrahim & Ors v Tan Sri Dato' Sri Haji Azam bin Baki & Ors* (06(RS)-4-07/2022(W)) on 24 February 2023 and the review of the Federal Court's decision in *Dato' Sri Mohd Najib Hj Abdul Razak v. PP* (05(RJ)-11-09-2022(W)) on 31 March 2023.
- (12) Pertinent provisions of the Federal Constitution and the Standing Orders of the Dewan Rakyat include the following:
 - (a) Article 127 of the Federal Constitution:

"The conduct of a judge of the Federal Court, the Court of Appeal or a High Court shall not be discussed in either House of Parliament except on a substantive motion of which notice has been given by not less than one quarter, of the total number of members of that House, and shall not be discussed in the Legislative Assembly of any State."
 - (b) Standing Order 36(8) of the Standing Orders of the Dewan Rakyat:

"The conduct or character ... of Judges ... shall not be referred to except upon a substantive motion moved for that purpose."
 - (c) Standing Order 23(1)(g) of the Standing Orders of the Dewan Rakyat:

"a question shall not be so drafted as to be likely to prejudice a case under trial, or be asked to any matter which is sub judice"
- (13) It is unusual for a Minister to disclose or provide information in writing to a litigant or an accused person with regard to the conduct of an investigative agency, in this

instance the MACC, or to its findings. However, such a letter dated 20th March 2023 was issued by the Minister in the Prime Minister's Department (Law and Institutional Reform), Datuk Seri Azalina Othman Said, addressed to Shafee & Co.

- (14) The aforesaid letter by the Minister was issued despite the Federal Court decision in Civil Reference No: 06(RS)-4-07/2022(W) which had cast doubt as to the bona fides of the MACC investigation.
- (15) There has been media coverage of police reports made by various persons against the Chief Justice and/or the judiciary, the latest being on or about 1st April 2023, casting aspersions of abuse of power.
- (16) There has been a media report dated 9th April 2023 of the Pekan UMNO calling for the establishment of the Royal Commission of Inquiry to investigate the Federal Court judges who dismissed Dato' Sri Mohd Najib bin Tun Abdul Razak's appeal against conviction and sentence.
- (17) The Malaysian Bar is dismayed with the Attorney General's public silence and inaction in the face of such unwarranted attacks and allegations of corruption against Justice Nazlan, which undermine the independence of the judiciary and the Rule of Law, and is a dereliction of duty by the Attorney General.

Wherefore, it is hereby resolved that:

- (A) The Malaysian Bar REAFFIRMS its commitment to defend the independence of the judiciary and the Rule of Law without fear or favour;
- (B) The Malaysian Bar CONDEMNS the actions of all those persons who have undermined the independence of the judiciary, scandalised the administration of justice and violated the Rule of Law;
- (C) The Malaysian Bar further ADMONISHES the conduct of the Minister in the Prime Minister's Department (Law and Institutional Reform) which undermines the independence of the judiciary;
- (D) The Malaysian Bar DECLARES no confidence in the Attorney General for his abject failure to defend the judiciary from these attacks and to uphold the Rule of Law;
- (E) The Malaysian Bar DEPLORES the action of MACC in the making of the Report, the timing and manner in which it was issued and the purported conclusion contained therein which is not within the purview of MACC's powers; and
- (F) The Malaysian Bar MANDATES the Bar Council to give notice to the Attorney General to bring contempt proceedings against those persons responsible for the attacks on the judiciary forthwith, failing which the Bar Council shall consider and, if deemed fit, commence such contempt proceedings or any other proceedings or actions in affirmation of the resolutions above.