



**Resolution Adopted at the 77th Annual General Meeting of the Malaysian Bar
(Held on 18 March 2023)**

**Resolution Regarding the Malaysian Bar Professional Indemnity Fund Scheme as an
Alternative to the Present Professional Indemnity Insurance Scheme**

Whereas:

- (1) At the 62nd Annual General Meeting of the Malaysian Bar (“AGM”) on 15 March 2008, the floor adopted a resolution authorising the Bar Council to take all necessary steps towards **determining the viability of a fund** as an alternative to the present Professional Indemnity Insurance (“PII”) Scheme (“2008 Resolution”).
- (2) At the 63rd AGM on 19 March 2009, the floor was presented with a working paper (published in the 2008/09 Annual Report of the Malaysian Bar) and motion regarding the **setting up of the fund**. The resolution was adopted by the House, authorising the Bar Council to proceed to implement the setting up of the fund if it remains viable, as an alternative to the current PII Scheme, at 1 January 2010 or at a time and date deemed appropriate, depending on economic and other related factors (“2009 Resolution”).
- (3) Arising from the 2008 Resolution, funds have been collected from Members’ annual contribution as well as from the excess from the capping of the brokerage fees of the Malaysian Bar’s appointed PII Scheme insurance broker, and from interest collected from fixed deposits. As at 31 December 2022, the total amount currently stands at RM37,253,929.
- (4) Since then, and pursuant to the 2009 Resolution, the Bar Council has continued to study the insurance market, conducted engagements with the Attorney General’s Chambers and Bank Negara Malaysia, as well as sought legal opinions on various aspects of regulatory compliance and good governance regarding the implementation and execution of the scheme.
- (5) In July 2019, the Bar Council approved the name “Malaysian Bar Professional Indemnity Fund” (“MBPIF”) in reference to the fund.
- (6) The proposed MBPIF scheme would function as a mechanism for the Malaysian Bar to pay professional indemnity claims by setting aside funds in a segregated account

dedicated for this purpose (ie the MBPIF). These funds would be collected from Members of the Malaysian Bar in much the same way as the current insurance premiums under the PII Scheme. However, rather than being completely passed to a third party (commercial insurers), the funds would be kept within a segregated fund, and professional indemnity claims will be made against the fund.

- (7) In this manner, the setting up of a professional indemnity fund scheme is a natural progression that moves away from complete reliance on the commercial insurance market — which has historically imposed higher premiums due to external factors — in order to provide indemnity cover to Members of the Malaysian Bar.
- (8) Thus, key objectives of the Bar Council in transitioning in this direction are to insulate against insurance market volatility, exert greater control over the administration of the scheme and its management and, over time, provide stable and affordable indemnity cover to Members of the Malaysian Bar.
- (9) Noting that prior feasibility studies were conducted based on the claims climate and market information available at that time (2007–2008), the Bar Council decided to commission a fresh independent actuarial report in 2022 (“Actuarial Report”)¹ which was a collaborative submission by independent third-party consultants Sime Darby Lockton Insurance Brokers Sdn Bhd and Actuarial Partners Consulting, Malaysia. The findings of the Actuarial Report included a definitive analysis on the viability of a professional indemnity fund scheme based on the Malaysian Bar’s PII Scheme data of the last 10 years, peer comparison with other law societies on the vehicle and model adopted in those jurisdictions, and feedback on the draft Rules (pursuant to section 78A(1)(b) of the Legal Profession Act 1976) pertaining to the scheme which the Bar Council was working on.
- (10) Some of the salient findings of the Actuarial Report are set out below.

<i>Contribution/Premium Adequacy and Financial Sustainability of MBPIF</i>	<i>As MBPIF [Malaysian Bar Professional Indemnity Fund] will be a new establishment, it is expected to register a deficit in the first year because of high initial reserves being set; but would turn to surplus in the second and subsequent years.</i>
<i>Review on Mandatory Limit and Base Excess</i>	<i>It is feasible to increase the existing mandatory limit and reduce the base excess without any increase in the premium. However, any revisions in the limits and base excesses should be implemented gradually to monitor any changes in claims behaviour. Any unfavourable changes</i>

¹ The Actuarial Report was prepared based on a set of key assumptions, the structure that was envisaged in 2008 and the draft Rules which the Bar Council was working on.

	<i>in claims behaviour will have negative impact on the MBPIF.</i>
<i>Viability of Premium Rebate</i>	<i>The projection shows a healthy financial position for the MBPIF from year three onwards. It is recommended that such a rebate feature be introduced after three years.</i>
<i>Key Risks to MBPIF</i>	<i>The MBPIF is exposed to several risks and the top risk identified is claims management. It is important for MBPIF to have oversight or a gatekeeper to ensure same or better system of processes, efficiency, protocols and approvals. Otherwise, it will have significant financial impact on the MBPIF.</i>
<i>Claims</i>	<i>An actuarial valuation on the reserves must be carried out at least once a year to monitor the claims development and to ensure the reserves are sufficient.</i> <i>Members must notify any significant or unusual events eg, large claim amount, large number of claims notification etc, so that remedial action can be undertaken immediately.</i>

- (11) The Bar Council has determined that the setting up of a professional indemnity fund scheme is a viable alternative to the current PII Scheme, and is suitable to be implemented to provide indemnity cover to Members of the Malaysian Bar.
- (12) Since the 2008 and 2009 Resolutions, the Bar Council has had the benefit of considering the Actuarial Report, opinions, and other relevant and current information, and is thus exploring various options on the model, implementation and execution of MBPIF scheme, in addition to considering good governance practices — fairness, transparency, accountability and responsibility — to be put in place to properly govern the scheme.

Therefore, it is hereby resolved that it is viable for the Bar Council to proceed with the implementation of the Malaysian Bar Professional Indemnity Fund scheme expeditiously **at a time and date it deems appropriate depending on economic and other related factors** and that the Bar Council be authorised to take all necessary or appropriate action including but not limited to obtaining requisite approvals (if any), creation of an autonomous body / board / entity, amending the regulatory and/or legislative framework (if necessary) towards the implementation, imposition, enforcement, administration, and any ancillary or incidental actions as a result thereof, in relation to the Malaysian Bar Professional Indemnity Fund scheme.