



**Resolution Adopted at the 75th Annual General Meeting of the Malaysian Bar
Held on 13 March 2021**

Resolution to Clarify on the Policy to Implement Minimum Remuneration for Pupils in Chambers

WHEREAS:

- (1) Several other jurisdictions, including England & Wales, Hong Kong, and Australia, have implemented some form of either mandatory or recommended minimum pay for persons undergoing pupillage or equivalent.¹ In this regard:
 - (a) The mandatory minimum for pupils in England & Wales, fixed by the Bar Standards Board (the regulatory entity for barristers in England & Wales), is GBP18,960 per annum for pupillages in London and GBP16,601 per annum for pupillages outside London.
 - (b) The recommended minimum for trainee solicitors in England & Wales, proposed by the Law Society (the representative body for solicitors in England & Wales), is GBP22,541 in London and GBP19,992 outside of London.
 - (c) The mandatory minimum in Hong Kong is HKD6,000 per month, pursuant to paragraph 11.9A of the Code of Conduct of the Hong Kong Bar Association.
 - (d) The mandatory minimum for law graduates undergoing training within law firms is AUD1,012.90 per week or AUD26.66 per hour, pursuant to the Legal Services Award 2020.
- (2) On 7 Jan 2020, the Malaysian Bar issued a circular (No. 004/2020) (“Circular”) announcing the launch of a national survey on Minimum Salary of Young Lawyers, the objective of which was to “*gain a better understanding of the perspectives of, and financial challenges faced by, young lawyers, in order to ascertain whether a minimum wage system should be developed for the legal profession*”.² The results of this survey have yet to be officially released, with reference to its results only available via a Press Comment that was released by the Chairperson of the National Young Lawyers and Pupils Committee, Yusfarizal bin Yusoff on 14 Jan 2021 (addressed further below).³

¹ <https://www.linkedin.com/pulse/faq-minimum-remuneration-pupils-jason-yong-kok-yew/>
<https://www.lawsociety.org.uk/topics/hr-and-people-management/recommended-minimum-salary-for-trainee-solicitors>.

² https://www.malaysianbar.org.my/cms/upload_files/document/CircularNo004-2020.pdf.

³ <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-comment-proposal-for-implementation-of-minimum-remuneration-or-pupils-in-chambers-and-young-lawyers>.

- (3) On 16 Dec 2020, a group of young lawyers (The Young Lawyers Movement) submitted a Change.org petition called “*Implement minimum pay for pupils in Malaysia*” with a total of over 4,200 supporters to Yusfarizal bin Yussoff, the Chairperson of the National Young Lawyers and Pupils Committee, who accepted the petition on behalf of the Bar Council.
- (4) Subsequent to this, the President of the Malaysian Bar, Salim Bashir in an interview with *The Malaysian Insight* published on 27 Dec 2020⁴ stated that the Malaysian Bar is working on making the necessary changes to allow pupils to be paid reasonably during their pupillage period. He reportedly stated the following:

”It is not a straight [sic] jacket formula and the idea of minimum allowance needs to take into account various factors, including business financial impacts and sustainability of most law firms due to the pandemic.

We need to err on the side of caution and refrain from making popular decisions.”

- (5) The Young Lawyers Movement then served several copies of the said petition to the following State Bar Committees: the Perak State Bar Committee on 29 Dec 2020, the Penang State Bar Committee on 30 Dec 2020, the Kedah Bar State Committee on 31 Dec 2020 and the Perlis Bar State Bar Committee on 31 Dec 2020.
- (6) The Chairperson of the National Young Lawyers and Pupils Committee, Yusfarizal bin Yussoff subsequently released a Press Comment on 14 Jan 2021 stating, amongst others, the following:
 - (a) In September 2019, the Bar Council conducted a survey among members of the Malaysian Bar to collect data on the remuneration of pupils.
 - (b) Between January and February 2020, the National Young Lawyers and Pupils Committee conducted a separate online national survey, which resulted in 95.35% of the 2,600 respondents agreeing that the Bar Council should implement a minimum remuneration for pupils. 61% of the respondents agreed that the rate should vary according to the state in which they were practising in.
 - (c) The Bar Council then directed the National Young Lawyers and Pupils Committee to conduct another series of surveys at the State Level by the respective State Bar Committees throughout Peninsular Malaysia. According to Yusfarizal bin Yussoff, the National Young Lawyers and Pupils Committee is expected to be able to produce a final report by 2021.
- (7) We note that there have been several issues regarding the implementation of a minimum remuneration for pupils in chambers that were raised in the Press Release, namely the following:
 - (a) “*Section 12(3) of the Legal Profession Act 1976 (“LPA”) stipulates that the remuneration to pupils is only optional, and a structured training programme must*

⁴ <https://www.themalaysianinsight.com/s/291919>.

be devised by the pupil-master once he/she decided to take a pupil under his/her tutelage”;

- (b) *“Other legal impediments, such as the sanctity of contract between the pupil and the pupil-master based on consensus ad idem”;*
 - (c) *“Whether the fixing of a minimum remuneration to pupils would affect the ability of pupil-masters to take pupils, as the option would be open for firm-owners to instead take paralegals or legal associates with better experience”;*
 - (d) *“The movement and concentration of pupils from one place to another that provides better remuneration”;* and
 - (e) *“The current economic situation that affects legal firms in terms of financial capability and employability.”*
- (8) We believe the issues above can be resolved through sufficient data and discussion as to, *inter alia*, the mechanism by which such a minimum wage may be implemented, the method by which the minimum wage level is set, and the needs of different states to set minimums at different levels. As such, we seek clarification on the position of the Malaysian Bar on these several issues and its ongoing efforts to implement a policy on minimum remuneration.
- (9) There are various benefits to the implementation of a minimum wage, whether mandatory or recommended, within the legal profession, namely the following:
- (a) Underpaid pupillages disproportionately favour pupillage candidates who are fortunate enough to be able to live on even an underfunded pupil’s allowance for at least nine months, owing to their socioeconomic privilege.
 - (b) Underpaid pupillages disincentivise the recruitment of many otherwise well-qualified, competent pupils who would be a valuable addition to the profession, merely on the basis that their personal circumstances (social, economic or otherwise) do not allow them to live on an underfunded pupil’s allowance for a period of at least nine months.
 - (c) The reputation of the Malaysian Bar as an open, accessible, noble and diverse profession would be compromised if such inequity were allowed to persist within the profession.
 - (d) Underpaid pupillages may affect a pupil’s learning because of their inability to sustain their cost of living.
 - (e) The Bar Standards Board in England & Wales remarked, in a 2010 report on pupillages:⁵

⁵ https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Annex_B_Pupillage_REPORT.pdf

“The reasons why (the minimum wage) was introduced are obvious and, in our view, still relevant. The financial stresses on candidates for the Bar are considerable. The prospect of receiving no payment during pupillage would, we have no doubt, act as a further deterrent to recruitment, which would be additional to the inherent cost of the BVC/BPTC (compulsory qualifying exams for admission), and the uncertainty of getting any pupillage at all.

Pupillage would be restricted to individuals whose personal circumstances permitted them to work for at least six months, if not twelve, without payment. The reputation of the Bar as an open, accessible profession would be severely damaged.”

- (f) The Bar Standards Board in that same report noted that having adequately paid pupillages also had the effect of improving the quality of pupillages by incentivising firms, pupil masters and pupils to treat pupillages as an investment in the pupils and in the growth of their practices.
- (g) All of the above applies similarly to the recruitment and retention of already-qualified advocates and solicitors.

THEREFORE, it is hereby resolved that:

The Malaysian Bar shall immediately and without further delay take all necessary steps to:

- (A) clarify the progress and status of the various state-level surveys conducted by their respective State Bar Committees;
- (B) release a report or reports of the results of the state-level surveys immediately if completed, and in any case prior to September 2021;
- (C) clarify the Malaysian Bar’s position on whether the minimum remuneration should be mandatory in nature;
- (D) clarify the Malaysian Bar’s position on whether amendments to the Legal Profession Act 1976 are necessary for the implementation of a minimum remuneration (whether mandatory or otherwise) for pupils and/or advocates and solicitors and the grounds for that position;
- (E) if amendments to the Legal Profession Act 1976 are required, clarify what steps the Malaysian Bar has taken or intends to take towards proposing and procuring such amendments to the Legal Profession Act 1976; and
- (F) clarify any and all other steps the Malaysian Bar has taken or intends to take towards the implementation of a minimum remuneration (whether mandatory or otherwise) for pupils and/or advocates and solicitors, including but not limited to issuing Bar Council Rules and Rulings.