

Small Firms Committee
Bar Council Malaysia
No. 15 Leboh Pasar Besar
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By email
(germaine@malaysianbar.org.my)

Attn.: George Varughese, Chairperson, Small Firms Committee

Dear Sirs,

**MEMORANDUM BY MEMBERS OF THE MALAYSIAN BAR ON THE PROPOSED
LEGAL PROFESSION (GROUP PRACTICE) RULES 2013**

We refer to Circular No 155/2013 dated 10 July 2013, whereby the Bar Council sought members' feedback on the proposed Legal Profession (Group Practice) Rules 2013 ("Proposed GPR"). This memorandum sets out our comments on the Proposed GPR.

1 GENERAL COMMENTS

- 1.1 The majority (approximately 90%) of law firms in Malaysia are small firms made up of sole proprietors or entities with less than 5 lawyers. The idea behind the "Group Practice" – allowing small firms to band together in a larger set-up while retaining the characteristics of each individual firm – is to grant the member firms the flexibility of small firm practice, while at the same time enabling them to share resources to compete with larger law firms.
- 1.2 The Bar Council's willingness to introduce Group Practice in Malaysia is lauded. Group Practice will apply to the vast majority of Malaysian law firms, and should lead to increased competitiveness and quality of legal services. The Group Practice model should also improve the international accessibility and recognition of Malaysian law firms, thanks to the greater branding opportunities enabled by a Group Practice.
- 1.3 Singapore's Legal Profession (Group Practice) Rules 1999 ("Singapore's GPR") provides a good reference point for the Bar Council. We note that the Proposed GPR is similar in many respects to Singapore's GPR, save for several exceptions. Some of the excluded provisions are notable, and should be included in the Proposed GPR. Further, the Proposed GPR should also include additional provisions, in recognition of the fact that there are some key differences between the respective legal landscapes of Malaysia and Singapore.

2 SPECIFIC COMMENTS

2.1 The definition of a "group practice" should be edited for clarity

- 2.1.1 In Rule 2 of the Proposed GPR, "group practice" is defined as follows:

"group practice" means a practice comprising 2 or more firms with each firm having no more than 5 Advocates and Solicitors and having no branch office which share premises in mutual co-operation and expressly practise as separate firms

This is different from the definition in Singapore's GPR, which is as follows:

“group practice” means a practice comprising 2 or more firms which expressly practise as a group under a group name as separate firms in mutual co-operation

- 2.1.2 We understand that the Bar Council intends to limit the availability of the Group Practice model to law firms which have no more than 5 lawyers, which explains the inclusion of the words “with each firm having no more than 5 Advocates and Solicitors”. This portion of the definition is therefore clear.
- 2.1.3 However, the remainder of the definition of “group practice” in the Proposed GPR is poorly-drafted and ambiguous. The remaining words – “and having no branch office which share premises in mutual co-operation and expressly practise as separate firms” – are ambiguous, and could give rise to the following potentially conflicting interpretations:
- (a) The words “and having no branch office” mean that law firms which have branch offices are automatically disqualified from participating in a Group Practice.
 - (b) The words “and having no branch office” do not refer to the individual law firms, but instead mean that the Group Practice itself is not allowed to have a branch office.
- 2.1.4 The definition of “group practice” should be reworded to remove ambiguity. The Bar Council should also expressly state within the Proposed GPR whether –
- (a) law firms which have branch offices are automatically disqualified from participating in a Group Practice; or
 - (b) a Group Practice is prohibited from opening a branch office.

Our view is that the law firms with branch office should not be disallowed from participating in a Group Practice, and that Group Practices should be permitted to open branch offices. Our reasons for this view are set out in **Section 2.2** of this memorandum.

- 2.1.5 We note that, unlike Singapore's GPR, the definition of “group practice” in the Proposed GPR does not provide for the Group Practice to have a “group name”. Our view is that the use of a group name is essential to a Group Practice, and our reasons for this view are set out in **Section 2.3** of this memorandum.
- 2.1.6 In view of the above, we propose that the definition of “group practice” be revised to the following:

“group practice” means a practice comprising 2 or more firms, with each firm having no more than 5 Advocates and Solicitors, which expressly practise as a group under a group name as separate firms in mutual co-operation

2.2 The Proposed GPR should allow individual member firms to have branch offices, and also allow the Group Practice to have branch Group Practices

2.2.1 This **Section 2.2** expands on the discussion in **Section 2.1**, particularly **Paragraphs 2.1.3 and 2.1.4**.

2.2.2 Law firms which have branch offices should not be disqualified from participating in a Group Practice. Many law firms in Malaysia have branch offices in various States. This is one aspect of legal practice in Malaysia which is different from Singapore, which is a city-state. We see no reason why law firms which have branch offices should be deprived of the opportunity to be part of a Group Practice.

If necessary, the Bar Council can impose conditions – for example that the total number of Advocates and Solicitors in all the branches of the individual firm cannot be more than 5 – to ensure that the spirit of a Group Practice is maintained, but the existence of a branch office in itself should not disqualify a firm from being part of a Group Practice.

2.2.3 A Group Practice should also not be prohibited from opening a branch Group Practice. Again, the difference between Malaysia and Singapore is the existence of many States, and there should be no reason why a Group Practice should be barred from opening branches in different States.

If necessary, the Bar Council can impose conditions – for example that all the member firms in that Group Practice must be present in any branch of the Group Practice – but there should be no blanket prohibition on a Group Practice opening branch offices.

2.2.4 It is important that the Bar Council permits firms with branch offices to participate in a Group Practice, and a Group Practice to open branch offices. A failure to do so could be perceived as the Bar Council imposing unnecessary and unjustifiable geographical boundaries on law firms.

2.2.5 Once the Bar Council has decided on this issue, the Proposed GPR should be amended to expressly state the position in order to remove ambiguity and the possibility of conflicting interpretations.

2.3 The Proposed GPR must allow the adoption of a common and joint Group Practice name among the member firms

2.3.1 We agree that a Group Practice should not be a separate legal entity. However, the Proposed GPR does not appear to allow the adoption of a common and joint Group Practice name among the member firms.

This omission, if maintained, would defeat the purpose for the establishment of Group Practices. The inability to operate under a common Group Practice name would be a severe handicap to branding and marketing initiatives.

2.3.2 Rule 6 of Singapore's GPR is very practical, and should be introduced into the

Proposed GPR, mutatis mutandis. It reads as follows:

Name, style and register of group practice

6—(1) *A group practice shall bear a name which describes the group practice as such and shall bear the words “Group Law Practice” as part of its name.*

(2) *No firm which is not a member of a group practice shall describe itself as a group practice.*

(3) *A firm in a group practice may in the course of its professional undertakings and in documents in which its name appears, including its letterheads, nameplates and business calling cards, use the name of the group practice in conjunction with its own firm name.*

(4) *The sole proprietors and partners of firms which wish to practise as a group practice shall apply to the Council for approval of the proposed name of the group practice and the manner in which the name of the group practice will be used in conjunction with the firm name of each firm in the group practice.*

(5) *No firm shall practise as a member of a group practice unless the name of the group practice shall have been approved in accordance with paragraph (4).*

(6) *The approval or rejection of any proposed name shall be at the sole discretion of the Council.*

(7) *Without limiting the discretion of the Council, the Council shall not approve any proposed name which in its opinion —*

(a) is or may be reasonably be regarded as being ostentatious, in bad taste, misleading, exploitative, deceptive, inaccurate, false, sensational, offensive or in any other way unbecoming the dignity of the legal profession;

(b) is so similar to that of an existing group practice as to be likely to be confused with it; or

(c) is inconsistent with any of the provisions of the Legal Profession (Publicity) Rules (R 13).

(8) *The Council may, if it thinks fit, direct a group practice to change its name and the group practice shall comply with the direction within 6 weeks after the date of the direction or such longer period as the Council allows.*

(9) *If a group practice fails to comply with any direction under paragraph (8), the sole proprietors and partners of the firms of the group practice shall immediately cease to practise under the name of the group*

practice.

- 2.3.3 Group Practices in Singapore have clearly worded nameplates, business cards, letterheads and other office documentation indicating that the member firms are part of the respective Group Practices. We are not aware of any reported problems or confusion caused by allowing a joint Group Practice name.
- 2.3.4 As mentioned above, the absence of a joint Group Practice name as representative of the member firms would result in an inability to brand and market the Group Practice. If the firms in a Group Practice are not permitted to use a joint Group Practice name, it would almost entirely defeat the purpose of introducing the Group Practice model into Malaysia.

Therefore, the Proposed GPR must be amended to make it compulsory for a Group Practice to adopt and consistently use a joint Group Practice name.

- 2.3.5 If the Bar Council is concerned about confusion as to the nature of Group Practices, further rules may be incorporated to make it mandatory for Group Practices to clearly exhibit sign or nameplates at the entrance of the Group Practice offices explaining the nature of the Group Practice.

2.4 Criteria for approval or rejection of applications must be put in place

- 2.4.1 Rule 6(iii) of the Proposed GPR reads: "The approval or rejection of any group practice shall be at the sole discretion of the Bar Council." Whilst we accept that the Bar Council will have discretion to approve or reject a Group Practice application, effort should be made to include some general criteria in the Proposed GPR to avoid the decision-making process being completely vague and arbitrary.
- 2.4.2 The criteria in Rule 6(7) of Singapore's GPR in relation to the criteria for the approval of a joint Group Practice Name would serve as a good reference point for the Bar Council in this respect.

3 CONCLUSION

- 3.1 For the reasons set out above, the current draft of the Proposed GPR is unsatisfactory, as it has several glaring omissions and uncertainties.
- 3.2 If the current draft of the Proposed GPR is adopted, it would open the Bar Council to criticism that it is not really serious about the interests and welfare of small firms, and that the Bar Council has not taken into account the Malaysian legal landscape, where legal practice is quite often based across several States.
- 3.3 The Proposed GPR needs to be amended so it facilitates, instead of discourages, small firms seeking to establish themselves as Group Practices in line with the perceived benefits of such Group Practices.

Bearing in mind that there are currently small firms who already effectively "share" premises by contributing their portions to the lease or tenancy, the Group Practice model which is introduced by the Bar Council must be envisaged to

advance the present position, instead of merely formalising it. The current draft of the Proposed GPR gives the impression that the Bar Council is in fact not in touch with the existing realities of small firm legal practice.

- 3.4 We understand that the Bar Council's Small Firms Committee had visited Singapore's Group Practices such as Mozaic Group Law Practice ("Mozaic") to study the implementation of Group Practices there. The Group Practices established in Singapore following Singapore's GPR have not caused any confusion or problems.

As an example, Mozaic is made up of 10 small firms. There is no confusion as to what Mozaic is, or what it is about. Any visitor to Mozaic's premises or its website (mozaiclaw.com) will clearly discern the small firms that are part of the said Group Practice, and their services.

- 3.5 In summary, the current draft of the Proposed GPR must be amended, in particular as follows:

3.5.1 The definition of a "group practice" should be edited for clarity (see **Section 2.1** of this memorandum).

3.5.2 The Proposed GPR should allow individual member firms to have branch offices, and also allow the Group Practice to have branch Group Practices (see **Section 2.2** of this memorandum).

3.5.3 The Proposed GPR must allow the adoption of a common and joint Group Practice name among the member firms (see **Section 2.3** of this memorandum).

3.5.4 Criteria for approval of rejection of applications must be put in place (see **Section 2.4** of this memorandum).

- 3.6 We thank the Bar Council for inviting feedback on the Proposed GPR, and trust that the above proposals will be given due consideration. We hope that the revised Proposed GPR will reflect that the Bar Council has taken into account the interests of small law firms, and is cognisant of the realities of small firm legal practice in Malaysia.

Dated 29 July 2013.

Endorsed by the following Advocates & Solicitors (arranged according to the order of receipt of endorsement):

Foong Cheng Leong, Shanmuga Kanesalingam, Fahri Azzat, Edmund Bon Tai Soon, Marcus van Geyzel, Seira Sacha Abu Bakar, and New Sin Yew.