

Position Paper: Recognizing Malaysia's Legal Diversity in ASEAN Bar Council

(Malaysian Bar, Sabah Law Society, Advocates Association of Sarawak)

Introduction & Executive Summary

Malaysia's legal profession is constitutionally unique in ASEAN, comprising three independent legal professional bodies for one country. Unlike in other nations where a single Bar association speaks for all lawyers, Malaysia's Peninsular (West Malaysia), Sabah, and Sarawak each maintain distinct Bars governed by separate laws. This separation is not merely historical, but born of legal design at the time of Malaysia's formation. It ensures autonomy for Sabah and Sarawak in regulating their own legal practitioners and courts, as guaranteed by the Federal Constitution and the Malaysia Agreement 1963.

Advocacy Position: Because of this unique structure, it is essential that all three Bars be formally recognized in regional bodies (such as the ASEAN Bar Leaders Summit) to ensure inclusive and accurate representation of Malaysia's legal profession. A single "Malaysian" representative (e.g., the Malaysian Bar under the Legal Profession Act 1976) cannot legitimately represent the two Borneo state Bars, which are separate, sovereign entities. This Position Paper outlines the constitutional basis, legal framework, and comparative precedents justifying equal recognition of the Malaysian Bar, Sabah Law Society (SLS), and Advocates Association of Sarawak (AAS) as independent members in ASEAN-level forums; and seek to present a practical and inclusive Bar representation at the Council.

Constitutional & Legal Foundations for Separate Bars

Malaysia's professional legal environment is deliberately decentralized, reflecting the country's federal composition. Under Article 1(2) of the Federal Constitution¹, the Federation comprises:

- The States of Malaya (Peninsular Malaysia) namely Johor, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Terengganu; and

¹ Federal Constitution of Malaysia

https://lom.agc.gov.my/ilims/upload/portal/akta/outputaktap/1721506_BI/Act%20A1642.pdf

- The Borneo States, namely, Sabah and Sarawak.

Federal Constitution Provisions: The existence of multiple Bars is rooted in Malaysia's supreme law. Upon the formation of Malaysia, amendments to the Federal Constitution entrenched special clauses for Sabah and Sarawak's legal autonomy:

- Article 161B: Prohibits the extension of legal practice rights to outsiders in Sabah/Sarawak without their consent. Specifically, any Act of Parliament removing or altering a local residence qualification to practice in Sabah or Sarawak will not take effect there unless adopted by the respective State legislature². This effectively prevents any national law from automatically overriding Sabah/Sarawak's control over legal admissions.
- Article 95C: Permits federal laws to be applied differently to East Malaysia (Sabah/Sarawak) or even exempted, recognizing that these states can maintain distinct laws on matters including the legal profession.

Malaysia Agreement 1963 (MA63) and IGC Report 1962: The Inter-Governmental Committee (IGC) Report 1962, which laid the groundwork for MA63, explicitly recommended preserving Sabah and Sarawak's local Bar restrictions. It assured that entry of non-resident lawyers to the Sabah/Sarawak Bar would remain restricted (except by local agreement), so that practice in each Borneo State's courts is limited to its own advocates³. These safeguards were paramount to securing Sabah and Sarawak's agreement to join the new Federation⁴. MA63 and subsequent legal instruments thus guaranteed that Sabah and Sarawak retain separate legal professions as an essential aspect of their autonomy within Malaysia.

Separate Statutory Frameworks: In practice, each Bar is governed by a different statute:

- Legal Profession Act 1976 (Act 166) – establishing the Malaysian Bar and Bar Council of Malaysia for Peninsular Malaysia's lawyers⁵.

² Federal Constitution of Malaysia <https://lom.agc.gov.my/federal-constitution.php>

³ Inter-Governmental Committee (IGC) Report 1962: see Annex A (Legislative Lists), Federal List, Item 4(d) and related discussion on safeguards for Borneo States (official reprint).

<https://sagc.sabah.gov.my/?q=en/content/report-inter-governmental-committee>

⁴ Agreement relating to Malaysia (Malaysia Agreement 1963), signed 9 July 1963; UN Treaty Series, Vol. 750, I-10760 <https://treaties.un.org/doc/publication/unts/volume%20750/volume-750-i-10760-english.pdf>

⁵ Legal Profession Act 1976 (Act 166) see s. 2 (Application) and Part V (Malaysian Bar).
<https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20166.pdf>

- Advocates Ordinance (Sabah Cap. 2) – a federal law applicable only in Sabah that regulates admission and practice in that state⁶. Amended in 2016, it formally constituted the Sabah Law Society effective 1 July 2017 as the statutory body for Sabah’s legal profession.
- Advocates Ordinance (Sarawak Cap. 110) – a federal law governing legal practice in Sarawak. Local advocates in Sarawak organise under the Advocates Association of Sarawak (AAS), historically an incorporated voluntary association recognized as representing Sarawak’s Bar⁷.

These laws operate independently: the LPA 1976 explicitly does *not* extend to Sabah or Sarawak, and conversely the Advocates Ordinances apply only within their respective states⁸. In all three jurisdictions, practicing lawyers must be enrolled in that jurisdiction’s Bar and hold a valid practicing certificate issued under that jurisdiction’s law.

Three Fully Independent Bars in Practice

Admission & Practice Restrictions: Each Bar has its own admission criteria and membership. Admission to one does not confer rights to practice in the others. For example:

- A lawyer admitted in Peninsular (Member of the Malaysian Bar) cannot practice in Sabah or Sarawak unless separately admitted there via special *ad hoc* or full admission procedures. “Sabah connections” or “Sarawak connections” (birth, long residence, or domicile in the state) are required for full admission to those Bars.
- Similarly, Sabah and Sarawak advocates cannot practice in Peninsular Malaysia without obtaining separate admission as members of the Malaysian Bar under the LPA 1976 and fulfilling its requirements.

Hence, each Bar’s membership and practice rights are territorially exclusive. This autonomy extends to regulations, professional discipline, and governance:

- Each Bar has its own governing council or committee empowered by its statute (the Bar Council for the Malaysian Bar; the Executive Committee of the Sabah Law Society; the Central Committee of Advocates Association of Sarawak).

⁶ Advocates Ordinance (Sabah Cap. 2) : see ss. 4–7 (admission/roll), s. 7A (Sabah Law Society), Part IV (practice) and Part V (discipline/offences).

<https://sagc.sabah.gov.my/sites/default/files/law/Advocates%20Ordinance%20Cap.%202.pdf>

⁷ Advocates Ordinance (Sarawak Cap. 110) : see ss. 4–7 (admission/enrolment), ss. 8–10 (practice/certificates) and s. 16 (offences).

https://lawnet.sarawak.gov.my/lawnet_file/Ordinance/ORD_ADVOCATES%20LawNet%202024.pdf

⁸ Circular No. 337 of 2022, Malaysian Bar

https://www.malaysianbar.org.my/cms/upload_files/document/Circular%20No%20337-2022.pdf

- Each sets rules for professional conduct and discipline applicable to its members through local Disciplinary Boards and procedures.
- Each has its own fee structures and practicing certificate issuance procedures. For instance, in Sabah, SLS now issues Annual Practicing Certificates to advocates as authorized by the 2017 Ordinance amendments⁹, similar to the Bar Council’s role under the LPA for West Malaysia.

Sovereignty of Each Bar: This tripartite structure means none of the three Bars has authority over the others. All three are equally sovereign within their own jurisdictions. For example:

- Rights of audience: A Peninsular (Malayan) lawyer has no automatic right of audience in Sabah’s or Sarawak’s courts without local admission, and vice versa. Even in Malaysia’s national appellate courts, East Malaysian advocates *retain audience rights in cases originating from their states*, whereas West Malaysian lawyers remain restricted from cases arising in Borneo unless specially admitted.
- Localised practice of law: Each state’s laws define practice and offences for unauthorised practice by outsiders in detail. *E.g.*, Sabah’s Ordinance (s.15 & s.16(1)(e)) criminalizes acting as an advocate or preparing land dealings without being on the Sabah roll. *Similarly, Sarawak’s Ordinance (s.16)* imposes fines for unqualified practice or even *implying* one is an advocate in Sarawak without admission. These provisions underscore the protective ring-fence around each territory’s practice rights (a direct product of Article 161B’s spirit).

Functional Differences: There are also practical divergences due to this split. For instance, some federal laws and procedures differ between Peninsular and East Malaysia – e.g., certain land laws, powers of attorney registration, etc., making it imperative that local lawyers in each state handle local matters. This further reinforces why Sabah and Sarawak have distinct legal communities with knowledge tailored to their own legal regimes.

No National Bar

Unlike a typical “one country, one bar” model, Malaysia has no single unified Bar covering the entire nation. Each region’s Bar stands as an autonomous body, with no national umbrella Bar above them. Sabah and Sarawak’s Bars are not subordinate to the Malaysian Bar; they are co-equal on their own turf. The Sabah Law Society and Advocates Association of Sarawak are

⁹ Advocates Ordinance (Sabah Cap. 2) see ss. 7C–7E (Annual Certificate / certificate to practise in Sabah) and Part III (Sabah Law Society).

https://sage.sabah.gov.my/sites/default/files/law/AdvocatesOrdinanceCap2_2_0.pdf

not chapters or subordinate units of the Malaysian Bar, but independent entities created by different laws.

Respectfully, the “Malaysian Bar” is a misnomer in that it only represents West Malaysian lawyers (Peninsular) and does not include lawyers from Sabah or Sarawak. This reality has at times caused misunderstanding in international contexts.

Implication for Representation: As a consequence, any forum that assumes a single representative from “the Malaysian Bar” inherently excludes the voices of Sabah’s and Sarawak’s legal professions. Indeed, the West Malaysian Bar cannot speak on behalf of or bind the East Malaysian Bars, as they have entirely separate membership, authority, and interests.

In the context of an ASEAN Bar Leaders Summit, where each country typically sends a representative body, Malaysia’s case requires special consideration. To truly reflect Malaysia’s legal community, all three Bars should be included as separate participants, much as multiple Bars from one country are recognized in other international legal forums.

Historical Consett – 2018 ASEAN Bar Council 2018

It is also important to clarify the historical context surrounding the 2018 Memorandum of Understanding establishing the ASEAN Bar Council (“ABC”) in Singapore on 25 July 2018.

SLS and AAS were not invited to participate in the discussions leading to that meeting, nor were they invited to attend or sign the MOU itself. The only Malaysian signatory reflected in the 2018 MOU was the Bar Council Malaysia.

Accordingly, neither SLS nor AAS were parties to the negotiations, deliberations, or consensus underlying the formation of the ASEAN Bar Council framework in 2018. Their absence as signatories should therefore not be interpreted as acquiescence to, acceptance of, or recognition of any proposition that the Malaysian Bar represents the legal profession of Sabah and Sarawak at the ASEAN level.

This historical omission in fact reinforces the present position advanced in this Paper. The absence of Sabah and Sarawak representation in the 2018 process illustrates precisely why a more constitutionally accurate and inclusive structure is now necessary. Given Malaysia’s unique federal and legal arrangement, any ASEAN-level framework concerning the Malaysian legal profession should include direct participation from all three independent Bars

of Malaysia, namely the Malaysian Bar, the Sabah Law Society, and the Advocates Association of Sarawak.

Comparative Perspectives: International Precedents

Malaysia's multi-Bar arrangement is exceptional globally. Only a handful of countries share a somewhat similar structure:

- United Kingdom: Comprises *three separate jurisdictions* (England & Wales, Scotland, Northern Ireland), each with its own Bar and Law Society. No single “British Bar” exists, and each jurisdiction’s legal body is recognized independently in regional and international legal associations. For instance, the Law Society of England & Wales, Law Society of Scotland, and Law Society of Northern Ireland all participate separately in Commonwealth legal forums and international conferences. This is a close parallel to Malaysia’s situation – a union of regions with distinct legal systems.
- People’s Republic of China: Under the “One Country, Two Systems” framework, Mainland China, Hong Kong, and Macau each have separate legal systems and professional bodies (e.g., the Law Society of Hong Kong, Macau Lawyers Association, etc.). They often engage in international legal dialogues as distinct entities.

Notably, Malaysia, the UK, and China are often cited as the only three countries maintaining multiple co-equal legal jurisdictions without a single unified national Bar. Even in other federal nations such as the United States, Canada, or Australia – which have sub-national bar admissions – there typically exist national-level lawyer associations (e.g., American Bar Association) or unified representations in international gatherings. No other country in the world besides Malaysia, the UK, and China requires this multi-representation to capture all its legal professions.

This comparative lens validates Malaysia’s request: *If multi-jurisdiction countries like the UK are afforded multiple seats or recognition in international legal forums, so too should Malaysia’s distinct Bars.* The ASEAN community prides itself on respecting the diversity and sovereignty of its member states’ institutions; in Malaysia’s case, that should extend to acknowledging its distinct Bars as well.

Conclusion & Recommendations

Malaysia's constitutional framework makes it unambiguously clear that the Malaysian Bar, Sabah Law Society, and Sarawak's Advocates Association are three separate pillars of the legal profession. The independence of each is rooted in the nation's founding documents and has been maintained for over 60 years. This tripartite structure ensures regional autonomy and has served to protect local legal communities and practices in line with the assurances given to Sabah and Sarawak upon joining Malaysia.

However, on the regional ASEAN stage, treating the "Malaysian Bar" as the sole representative of Malaysia's lawyers would misrepresent this reality. To uphold the integrity and inclusiveness of the ASEAN Bar Leaders Summit, the Sabah Law Society and Advocates Association of Sarawak must be accorded independent membership alongside the Malaysian Bar. This approach will:

- **Ensure Full Representation:** All Malaysian lawyers – West Malaysian, Sabahan, and Sarawakian – will have their interests and perspectives represented through their respective Bar leaders, preventing any region from being inadvertently silenced or marginalized.
- **Honour Constitutional & Historical Commitments:** Acknowledge the spirit of Malaysia's Constitution and MA63, which envisage Sabah and Sarawak as equal partners in key matters including the legal profession. Recognizing SLS and AAS as separate members would be a symbol of respect for Malaysia's federal structure and the special status of its Bornean states.
- **Enrich Regional Collaboration:** The inclusion of all three Bars can enhance ASEAN legal cooperation. Sabah and Sarawak's Bars often face different legal challenges (due to distinct state laws and contexts) and can contribute unique insights. Their voices at the table will broaden the collective understanding and foster stronger ties among ASEAN's legal fraternities.

In summary, Malaysia's case is *sui generis* in ASEAN and should be treated as such. *Sabah and Sarawak's legal professional bodies are not breakaway factions; they are co-equal founding components of Malaysia's legal system, similar in stature to the Malaysian Bar.* We respectfully urge the ASEAN Bar Leaders Summit to formally recognize the Sabah Law Society and Advocates Association of Sarawak as independent members, alongside the Malaysian Bar. This inclusive step will validate Malaysia's unique legal makeup and strengthen the ASEAN legal community by ensuring every jurisdiction's voice is heard.

As for the Council representation is concerned, we propose a practical governance arrangement: each ASEAN member state would be accorded two (2) seats on the

ASEAN Bar Council, thereby enabling internal diversity to be represented without unduly enlarging the Council. Specifically for Malaysia: one seat would be permanently held by the Malaysian Bar, and the second seat would rotate between the Sabah Law Society and the Advocates Association of Sarawak. *This arrangement reflects, recognises and respects Malaysia's Federal Constitution and its dual High Court system, while ensuring that Sabah and Sarawak's Bars have regular direct input.* It treats Malaysia equitably with other ASEAN countries (each having two Council representatives) and simultaneously guarantees that all three Malaysian Bars can participate over time in advancing ASEAN's legal cooperation.

By adopting this inclusive approach, the ASEAN Bar Council will fulfill its founding purpose more completely – fostering *true friendship, mutual respect, and collaboration* among all ASEAN Bars, including *every part of Malaysia's legal profession*. This forward-looking solution honours Malaysia's unique federal structure, strengthens ASEAN unity in diversity, and ultimately benefits the entire Southeast Asian legal community through broader representation and shared commitment to the rule of law.

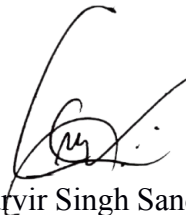
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