

# Liberalisation of the legal profession in Malaysia



**By Norhisham Abd Bahrin**

Malaysia has decided to liberalise its legal profession, reflecting the increase of cross-border trade and investment which requires transnational legal services. Access to foreign legal firms and foreign lawyers, which were previously largely restricted for a variety of reasons has begun to be gradually liberalised.

The change has been brought forth with the passing of the Legal Profession (Amendment) Bill (the Bill) in June this year which seeks to amend the Legal Profession Act 1976 (the Act). The amendment to the Act via the inclusion of Part IVA (International Partnerships, Qualified Foreign Law Firms and Registration of Foreign Lawyers) will allow foreign law firms to practise in Malaysia in certain permitted practice areas through an international partnership or via issuance of a qualified foreign law firm licence. Local law firms will also be able to employ foreign lawyers subject to certain conditions.

Generally, the aim of the liberalisation is to further develop Malaysia into an international Islamic financial hub and to expand the work, expertise and specialisation of the legal profession in the country. The prior restrictions imposed on foreign lawyers practicing in Malaysia has prevented many large-scale overseas legal firms from establishing a base of operations there, denying them an avenue to tap Malaysia's expanding cross-border investments, as well as sharing international expertise with domestic legal players.

The Bill allows senior partners of foreign legal firms to inculcate foreign working culture into the Malaysian legal scene, which may bring forth greater dynamism and morph Malaysia into a melting pot of legal practices of varying cultures. In essence, the amendment states that senior partners of foreign law firms are required to be in Malaysia for 182 days per year for the purpose of transferring expertise.

The liberalisation however, does not blindly accept lawyers from foreign jurisdictions. Approval is required to be obtained by the foreign law firms from a committee (consisting of the Malaysian Bar Council and Attorney-General's Chamber). Only duly licensed foreign law firms with good reputation, not subjected to disciplinary action and not involved in any criminal or civil prosecution will be approved to set up practice in Malaysia.

Despite the liberalisation, limitations are still maintained. Foreign lawyers are not permitted to represent cases affecting the sovereignty

of the country, particularly in matters pertaining to the Federal Constitution, the supreme law of Malaysia. The reasoning behind this is apparent, as it allows matters pertaining to the state to remain in the hands of local lawyers, who understand the local scenario better.

There are two main methods in which liberalisation may take place i.e. via a limited liberalisation, or a full-blown liberalisation. If the former is adopted, the impact is limited as the foreign lawyers would not be in direct competition with local lawyers. Foreign lawyers would be limited to merely offering legal services involving the law of their country of origin. This would mean that under this limited licensing approach, the scope of practice is limited to rendering legal advice on the law of their country of origin, excluding all court work, host country law and law of any other jurisdiction where the foreign lawyer is not qualified and licensed.

However, if the latter is adopted, it is anticipated that there will be significant repercussions. Foreign lawyers will be integrated as full members of the local profession with no restriction on their scope of practice, provided they fulfill certain basic conditions stipulated by the Malaysian Bar Council. Such complete liberalisation would involve the possibility of foreign law firms employing local lawyers who shall deal with local legal matters. In order to survive this wave of competition, local law firms, especially small firms, may need to merge with these foreign firms and the larger firms would certainly face fierce competition for their share of the legal services market.

Weighing between both the extremes, it is wise for Malaysia to progressively open up its legal market over a period of time. It is crucial that Malaysia follows this route so that the impact of liberalisation will not negatively affect the market structure. The transition period should be closely monitored to see how the domestic legal market reacts to and withstands such impact.

No doubt significant changes will take place over time such as the composition of the relative legal market and the type of firm that lawyers will wish to join. Small and large firms will have to innovate and develop a dynamic culture in order to stay solvent and afloat with the influx of foreign firms vying for market share. The opening of the gates must be dealt with a delicate hand and with a certain degree of protection afforded to local firms. But on behalf of local lawyers, we will be ready when the time finally comes, and would like to cordially welcome our foreign counterparts to Malaysia.

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