

MALAYSIA



AZMI & ASSOCIATES
A member of Terelex International advocates & solicitors

The case for plea bargaining in Malaysia



By Malia Afzan

In October 2008, a Minister in the Prime Minister's Department indicated that the Malaysian Government is considering amending the Criminal Procedure Code to incorporate provisions authorising plea bargaining, if such action can ensure fair and effective delivery of court judgments in Malaysia.

Unlike the present situation in Malaysia, plea bargaining is statutorily authorised in most jurisdictions around the world including India, Canada and the United States. Authorisation of plea bargaining is expected to resolve the backlog of criminal cases which has been an issue in the Malaysian criminal justice system for a very long time.

The pros and cons

It must be understood that in plea bargaining, the offer and acceptance of the plea process can work both ways. For instance, the prosecutor may withdraw offers after making them, whilst the defendant is free to reject a plea bargain. Yet opponents to the proposed authorisation argue that the plea bargaining process is unfair to criminal defendants on the premise that even though a plea of guilty towards the charge offered would often result in lighter sentence for the defendant, where a plea bargain is withdrawn or rejected and the case goes to trial and the defendant is found guilty, in many cases he/she is likely to receive a punishment more severe than that initially offered by the prosecution under the plea bargain.

Interestingly, opponents have also voiced concerns about the unintended benefits of plea bargaining to defendants. Some argue that plea bargaining violates the core foundation of the punishment principle (namely, deterrence) and empowers criminals to bargain for lesser punishments, hence weakening the proposition that a criminal should receive a punishment suited to the crime.

Some argue that plea bargaining violates the core foundation of the punishment principle (namely, deterrence) and empowers criminals to bargain for lesser punishments

To counter this point, proponents of the authorisation of plea bargaining contend that the practice offers advantages to both defendants and society: defendants benefit in the sense that they have the opportunity to assist the prosecution in devising an appropriate punishment; society, on the other hand, is spared the cost of lengthy trials whilst receiving assurance that defendants will still be punished as a result of having pleaded guilty to the crimes in question.

Although the punishment pursuant to a plea agreement is generally less severe than that imposed upon conviction after a trial, proponents argue that the process nevertheless produces a deterrent effect on criminal behavior because prosecutors are

able to obtain a higher conviction rate. Furthermore, depending on the nature of the crimes, multiple convictions may later lead to the placement of a repeat defendant under supervision, thereby decreasing their movements. In a similar vein, repeat offenders who enter guilty pleas can be punished more severely as their previous convictions would act as an aggravating factor that calls for a heavier sentence.

The current situation

The Malaysian Working Committee for Backlog cases – represented by the Attorney General's Office, the courts, the Insolvency Department of Malaysia, the Legal Aid Bureau, the Finance Ministry, the Bar Council, and those responsible for proposing the implementation of plea bargaining as a means of speeding up hearings in court – is currently studying the proposal to determine whether the practice would appeal to the Malaysian Criminal Justice System.

Azmi & Associates

Litigation and Arbitration

14th Floor, Menara Keck Seng, 203 Jalan Bukit Bintang,
55100 Kuala Lumpur, Malaysia

Tel: (603) 2118 5000 Fax: (603) 2118 5111

Email: maliaafzan@azmilaw.com

www.azmilaw.com