

**RETHINKING THE
LEGAL PROFESSION (PUBLICITY)
RULES 2001:
A Consultation Paper**

KUALA LUMPUR BAR COMMITTEE

CONSULTATION PAPER

This consultation paper sets out the Kuala Lumpur Bar Committee Firms & Group Practice Reform Committee's ("**PRC**") proposed changes to the Legal Profession (Publicity) Rules 2001.

The proposals seek to liberalise the publicity rules that govern the legal profession, whilst trying to balance the interest of the public to make a more informed choice when seeking legal representation against safeguarding the public's trust and confidence in the legal profession by ensuring only **credible information** is disseminated.

The PRC invites written feedback on the proposals in this consultation paper, including suggestions on areas to be clarified and alternative proposals that the PRC should consider. The written feedback should be supported with clear rationale or justification to facilitate a review of the proposed changes.

Responses must be submitted by 18 October 2019 to Melissa Linda Dass at melissadass@klbar.org.my

The Kuala Lumpur Bar Committee wish to acknowledge and express our gratitude to Wong Sue Wan from Wong & Partners for her contribution in this consultation paper.

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PART A

OVERVIEW

1. INTRODUCTION

- 1.1 The Legal Profession (Publicity) Rules 2001 ("**LPPR**") came into force on 16 November 2001 as a subsidiary legislation to the Legal Profession Act 1976 ("**LPA**"). It intended to regulate the manner in which advocates and solicitors would publicise and/or advertise their practice.
- 1.2 Since the introduction of the LPPR, legal practitioners are only allowed to publicise the 18 specified "approved information" in any publication, which in turn is of limited circulation.
- 1.3 This limitation is a real barrier to access to justice because lay persons simply do not know how to go about finding lawyers or assessing or judging the skill set of a particular counsel.
- 1.4 The President of the Malaysian Bar had as far back as 2017¹ advocated that "it's time to rethink the publicity rules for lawyers". The LPPR needs a "reform" to ensure that the members of the profession retain their competitive drive and innovate to distinguish themselves from one another; and through such change enable the public to make a more informed choice when seeking legal representation. The relevant professional and governing bodies of the legal profession in other Commonwealth member states such as the UK, Singapore and Hong Kong have over the years refined their publicity rules to espouse a more liberal regime - lawyers are permitted to widely advertise their specialisation and expertise in journals and electronic media.
- 1.5 This paper is intended to canvass the amendments to be made to the LPPR, and to obtain the views of the members of the Kuala Lumpur Bar in respect of the proposed changes.

2. CURRENT LEGAL REGIME

- 2.1 Malaysia's publicity rules stand apart from other Commonwealth jurisdictions (namely Hong Kong, Singapore, Australia and the UK), with the LPPR being the only set of publicity rules that prescribes specific information that advocates and solicitors are allowed to publicise. Schedule 1 sets out the 18 specified approved information.
- 2.2 To further narrow the ability of advocates and solicitors to publicise information, the LPPR restricts the persons to whom publications may be sent. To illustrate, Rule 13 of the LPPR allows an advocate and solicitor to publish journals, magazines and newsletters. However, such materials may only be distributed to the legal practitioner's (i) employees or any other advocate and solicitor practicing in his/her firm; (ii) any of the firm's clients; (iii) any potential clients; and (iv) any person with professional dealings with the firm. Further, the published materials may only be displayed at the firm. In essence, legal practitioners are not allowed to publicise to the public at large.
- 2.3 Taken as a whole, the prescriptive manner in which the LPPR is drafted leaves little room for the legal profession to distinguish themselves, thereby lowering the competitive tension and provides limited opportunity for them to share legal developments with the public at large.

3. OBJECTIVES OF THE PROPOSED AMENDMENTS

- 3.1 The underlying rationale to the proposed amendments stems from the well-established principle that a solicitor stands in a fiduciary relationship towards his client, whether or not there is a formal retainer between them.² As a client places his trust and confidence when seeking advice from an advocate and

¹ <https://www.thestar.com.my/news/nation/2017/05/29/bar-its-time-to-rethink-publicity-rules-for-lawyers/>

² *Nocton v Lord Ashburton* [1914] AC 932, H.; *Abdul Rahim Rajudin v Law Society of Singapore* [1991] 1 MLJ 256, [1991] SLR 1, PC, *Richards v The Law Society* [2009] EWHC 2087, *Day v Mead* [1987] 2 NZLR 443.

solicitor, publicity of a law firm's accreditation, specialty and experience is especially relevant for a client when determining legal representation.

- 3.2 The changes proposed in this consultation paper aims to balance the interest of the public to make a more informed choice when seeking legal representation against safeguarding the public's trust and confidence in the legal profession by ensuring only **credible information** is disseminated. We therefore endeavor, through our proposed amendments, to address the following:
- (a) **expansion of the scope** to allow law firms to provide as much information as possible; and
 - (b) **ensuring credibility** of all information provided by requiring law firms to justify any statement, claim or source of fact.

PART B

PROPOSED AMENDMENT TO THE LPPR

4. Principles-based with Select Prescriptive Rules

- 4.1 The LPPR adopts a prescriptive approach to publicity. It sets out the specific circumstances where an advocate and solicitor can publicise his/her practice.
- 4.2 However, to ensure that the LPPR remains relevant and can withstand time, we propose that the LPPR adopt a principle-based approach coupled with a prescriptive approach in limited circumstances.
- 4.3 The principle would be the overarching position and serve to guide the advocates and solicitors in respect of their conduct and action in connection with publicity and will be the aid to interpreting the selected rules prescribed in the LPPR on publicity.

5. The Principle

- 5.1 The principle that should apply to all advocates and solicitors is as follows:

An advocate and solicitor must act with integrity, act in the best interest of each client; and act in a manner that would uphold the trust and confidence placed by a client and the public in the advocate and solicitor. Any publicity by an advocate and solicitor must not affect the dignity and standing of the legal profession.

- 5.2 The principle embodies the two key aspects elaborated in paragraph 3.2 above, i.e., advocates and solicitors should be permitted to publicise or advertise his/her services; and any such publicity must not undermine the dignity and confidence placed by the public (and his/her client) in the profession.

6. The Prescriptive Rules

- 6.1 The following are the prescriptive rules that would supplement, and serve as the parameters by which an advocate and solicitor can publicise his/her practice:
- (a) An advocate and solicitor can publicise the practice of the practitioner subject to compliance with these Rules. Any such publicity can, subject to these Rules including the provisions of paragraph (c) below, include a claim to specialization.
 - (b) An advocate and solicitor shall not publicise his/her practice in a manner which would be, or be reasonably regarded as being, misleading, deceptive, false, offensive or prohibited by law. For the purpose of these Rules, publicity is misleading, deceptive, or false if:
 - (i) it contains a material misrepresentation;

- (ii) it omits a material fact;
 - (iii) it contains information that cannot be verified; or
 - (iv) it is likely to create an unjustified expectation about the results that can be achieved by the advocate and solicitor.
- (c) Where an advocate and solicitor includes a claim to specialization in his/her publicity, such claim must be justifiable having regard to, but is not limited to, the following factors:
- (i) academic qualifications;
 - (ii) experience;
 - (iii) proportion of time spent in the specialised field;
 - (iv) the level of success achieved;
 - (v) the complexity of the area of practice;
 - (vi) the significance of the matters involving the advocate and solicitor; and
 - (vii) peer reviews.
- (d) An advocate and solicitor shall not in any publicity make any comparison or criticism in relation to the fees or quality of service of any other advocate and solicitor.

- 6.2 The changes proposed are not dissimilar to the position adopted in other developed Commonwealth jurisdictions. These jurisdictions recognise that the legal profession has reached a level of maturity that does not require the professional body/association to regulate to the minutiae in respect of their stationery, brochure, leaflet and their marketing materials (including articles penned by the practitioners). Publicity should be allowed so long as it is accurate, not misleading and is not likely to diminish the trust the public places in the advocate and solicitor and in the provision of his legal services.³
- 6.3 The public is better served if there is a freer dissemination of information that will enable them to make an informed choice of counsel. This is bolstered if the publicity rules in Malaysia enable an advocate and solicitor to publicise his specialist knowledge that will serve as a filtering tool for a layperson. The rules would then be supplemented by the overarching requirements of the advocate and solicitor being able to justify his claim of specialization.
- 6.4 An overly prescriptive approach with limited avenues to provide information to the public will not augur well for the development of the profession – e.g., the current limitation on advocates and solicitors to provide their legal publications to a select audience of their employees and existing clients.

³ See the position in the UK under O(8.1) of the SRA Handbook

PART C

QUESTIONS FOR CONSULTEES

- 7. Consultees are asked whether they agree that the current legal regime on publicity by Advocates and Solicitors should be amended.**
- 8. Consultees are asked whether they agree to the proposed amendments as reflected in Schedule 2 to this Consultation Paper. If otherwise, consultees are asked to state their objections together with their reasons as well as their proposed amendments (if any) as a replacement.**

SCHEDULE 1

Rule 2 of the LPPR defines "approved information" to mean any one or more of the following:

- (a) *the name of the firm;*
- (b) *the address of the firm;*
- (c) *the telecommunication numbers of the firm;*
- (d) *the business hours of the firm;*
- (e) *the year in which the firm or its predecessor in title was established;*
- (f) *the merger or association of that firm with any other firm or law organization, whether in Malaysia or elsewhere;*
- (g) *historical data of the firm or its predecessor in title;*
- (h) *the designation "Advocate and Solicitor" or "Advocates and Solicitors";*
- (i) *the designation "Commissioner for Oaths" or "Commissioners for Oaths";*
- (j) *the designation "Notary Public" or "Notaries Public";*
- (k) *the designation "Agent for Trademarks and Patents" or "Agents for Trademarks and Patents";*
- (l) *the designation "consultant" or "consultants"*
- (m) *the area of practice engaged in by the firm or by the Advocate and Solicitor or Advocates and Solicitors practicing in the firm;*
- (n) *the language proficiency of the Advocate and Solicitors practicing in the firm;*
- (o) *the name of the Advocate and Solicitor or Advocates and Solicitors practicing in the firm and whether he is a sole proprietor, partner, legal assistance or consultant of that firm;*
- (p) *the year of admission as an advocate and solicitor of the Advocate and Solicitor or Advocates and Solicitors practicing in the firm and whether he has been admitted as a practitioner in another jurisdiction;*
- (q) *the academic and professional qualifications of the Advocate and Solicitor or Advocates and Solicitors practicing in the firm, and any award, decoration, merit or title conferred upon him or them;*
 - (qa) *information on completed cases handled by the Advocate and Solicitor or by Advocates and Solicitor practicing in the firm or by the firm subject to the prior written consent of the clients and the duty of confidentiality owed to such clients'; and*
 - (qb) *names of persons who are or have been the Advocate and Solicitor's or the Advocates and Solicitors' clients or the firm's clients subject to the prior written consent of such persons; and*
- (r) *such other information which has had the prior written approval of the Bar Council.*

SCHEDULE 2

LEGAL PROFESSION (PUBLICITY) RULES 2020

P.U.(A) /2020

Publication :

Date of coming into operation :

Preamble

In exercise of the powers conferred by subsection 77(1) of the Legal Profession Act 1976 [Act 166], the Bar Council, with the approval of the Attorney General, makes the following rules:

Rule 1. Citation.

These rules may be cited as the Legal Profession (Publicity) Rules 2001.

Rule 2. Overriding Principles

An advocate and solicitor must act with integrity, act in the best interest of each client; and act in a manner that would uphold the trust and confidence placed by a client and the public in the advocate and solicitor. Any publicity by an advocate and solicitor must not affect the dignity and standing of the legal profession.

Rule 3. Advocate and Solicitor not to Publicise in Contravention of Overriding Principles

An advocate and solicitor shall not in any publicity contravene the overriding principles as contained in Rule 2.

Rule 3. Misleading, Deception, or False Publicity

An advocate and solicitor shall not publicise his/her practice in a manner which would be, or be reasonably regarded as being, misleading, deceptive, false, offensive or prohibited by law. For the purpose of these Rules, publicity is misleading, deceptive, or false if:

- (i) it contains a material misrepresentation;
- (ii) it omits a material fact;
- (iii) it contains information that cannot be verified; or
- (iv) it is likely to create an unjustified expectation about the results that can be achieved by the advocate and solicitor

Rule 4. Specialisation

- (1) An advocate and solicitor can claim to specialisation.
- (2) Where an advocate and solicitor includes a claim to specialisation in his/her publicity, such claim must be justifiable having regard to, but is not limited to, the following factors:
 - (i) academic qualifications;
 - (ii) experience;
 - (iii) proportion of time spent in the specialised field;
 - (iv) the level of success achieved;
 - (v) the complexity of the area of practice;

- (vi) the significance of the matters involving the advocate and solicitor; and
- (vii) peer reviews.

Rule 5. Comparison or Criticism of fellow Advocate and Solicitor

An advocate and solicitor shall not in any publicity make any comparison or criticism in relation to the fees or quality of service of any other advocate and solicitor.

Rule 6. Revocation.

Legal Profession (Publicity) Rules 2001[P.U. (A) 345/2001] is revoked.

Made

Chairman of the Bar Council

Approved.
Dated

Attorney General