



The effects of current judicial reform in Asean countries

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Introduction

[1] In order to know the effects of current judicial reforms in Asean countries, it is imperative to know what these reforms are in each member country. For Malaysia, since new Chief Justice Zaki Azmi took over the helm in October 2008, reforms initiated in the Malaysian Judiciary are bold, single minded and aggressive. They are targeted at two objectives: to reduce the backlog of cases and to improve the image of the Malaysian judiciary. The latter was needed after the Malaysian Judiciary was severely criticised both locally and abroad following a series of unpleasant scandals involving judicial misconduct of certain judges before Chief Justice Zaki Azmi took office,

[2] Unlike his predecessors, who were rose via rank and file of the Judiciary, Chief Justice Zaki Azmi was directly appointed to the Federal Court (which in other counties is known as the Supreme Court) in October 2007 without having to serve as a High Court judge nor a judge of the Court of Appeal. Within a year of his elevation to the Federal Court, he was made Chief Justice of the Federal Court of Malaysia, the highest office in the Malaysian Judiciary. Prior to his appointment to the Malaysian Bench he was in private legal practice for 22 years and before this, served as a legal officer with the Malaysian Judicial Legal Service Commission. With his extensive experience, particularly in the private sector just before his appointment, he introduced to the Malaysian Judiciary fresh ideas to meet global challenges and the demands at home.

[3] There have been many reforms instigated since Chief Justice Zaki Azmi took over as head of the Malaysian Judiciary. There is no necessity to deal with all of them except to highlight some of significance.

Change of mindset

[4] The first was to change the mindset of those in the local legal fraternity. Judges were encouraged to think outside the confines of their ivory towers and to embrace new and practical approaches introduced to increase productivity without compromising on quality. Consequently, legal practitioners and those who have dealings with the courts



followed suit. For example, a lawyer appearing before a judge would have to complete his case within an allotted time as postponements were rarely granted earning the claim by some that a postponement is only allowed “upon death or near death of a party”.

Reforms in the Kuala Lumpur High Court

[5] Reforms were initially focused on the courts in Kuala Lumpur which deal with approximately 65% -70% of all cases filed and registered in the whole country. The civil and commercial divisions of the High Court in Kuala Lumpur were reorganised to cater for speedier disposal of cases particularly those involving commercial disputes.

Centralisation of the administration

[6] To beef up these divisions, the administration of its cases was centralised. Individual judges in these two divisions no longer manage their own cases before the trial. This is taken over by a single Managing Judge, who, with the assistance of legally qualified Registrars, manages cases until they are ready for hearing before a judge. So the task of the trial judge is on disposing off the case fixed before him as other matters are now dealt with by the Managing Judge.

[7] The objective of this exercise is to maximise the use of the judge's time in disposing off cases.

The tracking system

[8] Simultaneously, judges in the civil and commercial divisions of the High Court in Kuala Lumpur are divided into two groups. One concentrates on disposing of cases or matters where affidavit evidence is involved. The other handles cases involving oral evidence. The group that handles hearing by affidavit are known as “A Track Judges; the letter “A” representing ‘affidavit’. The other group is known as “T Track Judges”. “T” represents trial. The rationale for this division is economies of scale. Rather than having all judges to deal with both A and T Tack cases, this separation will allow them to concentrate on specifics.

[9] Initially, this system was met with some scepticism, but the results proved otherwise. Cases are now disposed of at a much faster speed, particularly T Track cases since the judge is now relieved of having to deal with numerous interlocutory applications which are now taken care of by his colleague in the A Track.



Computerization

[10] The much awaited comprehensive computerization of the courts has materialized for the civil and commercial divisions of the Kuala Lumpur High Court. Soon it will be implemented throughout the country. Before this system was selected, four potential suppliers were requested to install their products for testing in selected courts. The computer system involves: (a) case management; (b) evidence recording and; (c) the e- filing. The advantage of this exercise was to allow court staff, the end users of the products, to determine which was the best and most suitable.

Judges' Code of Ethics

[11] To address the behaviour and conduct of judges in the superior court of Malaysia, a Bill has been passed in Parliament for a set of rules governing their conduct and behaviour. These rules on ethics formalises what exactly a judge can or cannot do. The objective of this exercise is to enhance transparency and to improve the image and integrity of the judiciary.

Setting up of a Commercial Court

[12] Another innovative idea which came into force on 1st of September 2009, is the introduction of a "New Commercial Court" in Kuala Lumpur. This is aimed at a speedier disposal of commercial cases in order to attract foreign investment. This new section of the commercial division of the High Court in Kuala Lumpur will deal with all commercial cases filed after the 31st of August 2009. This court is staffed with judges specialising in commercial law and is targeted to dispose off these cases within 6 to 8 months after they are filed.

[13] Existing commercial cases filed before the 1st of September 2009 in Kuala Lumpur High Court commercial division will remain in the existing division to be disposed of in the normal manner. As these cases in this division are reduced, the judges from here will then be transferred to the New Commercial Court.

[14] This system is not novel. It was mooted as early as 1935 in India and is currently practiced in the Republic of Ireland with encouraging results.

Appointment of Judicial Commissioners

[15] Surveys indicate that talented and experienced lawyers are not prepared to join the Bench when they are relatively young or for too long a period. The main reasons are: family and financial commitments. But when a lawyer enters into a more mature



phase of life, they are more inclined to volunteer. To capture these talented and experienced lawyers, particularly those specializing in the commercial law, the Malaysian Judiciary has embarked on a recruitment drive to appoint them as judicial commissioners. Appointment is set for a fixed term of 2 years, and a judicial commissioner has the same power and performs the same function as a judge of the High Court. Such an appointment is attractive to many for the following reasons: first, to fulfil their life long ambition to preside as a judge of the High Court before they finally retire from active working life; second, the prestige attached to the position and; finally to make a short yet effective contribution to the nation. Currently, many private legal practitioners over 60 years of age are appointed as Judicial Commissioners

Specialised divisions within the existing court structure

[16] Aside from already existing divisions of the High Court in Kuala Lumpur (Civil, Commercial, Criminal, Appellate and Special Powers (which deals mainly with appeals from the Subordinate Courts and Judicial Review), New Commercial Court), there are new or fresh set ups. They include the revitalization of the Intellectual Properties Court and the setting up of an Islamic Financing Court to cater to cases relating to these specialized fields of the law. They are part of the Kuala Lumpur High Court and are manned by judges who are knowledgeable in these matters.

Increase in judges pay

[17] Another important reform in the Malaysian Judiciary is the substantial increase in the pay of superior court judges. Recognizing the need to attract and maintain quality judges and judicial commissioners, the Government of Malaysia has decided to increase by a substantial amount the salary and allowances of judges and judicial commissioners. This has a great impact on the morale of existing judges and has also attracted many private legal practitioners to join the Bench.

Key Performance Index

[18] Finally, it is my humble opinion that the most notable and effective judicial reform in Malaysia is the introduction of the Key Performance Index (KPI) for judges. This has really improved the disposal rate of cases. This KPI was introduced to allow judges to gauge their own performance against the index set. This index is not arbitrarily determined; instead, fixed by the judges themselves after a meeting. If a judge's performance falls below the KPI then enquiries will be made by the Chief Justice as to the



reason why and if assistance is required, help will be rendered to that particular judge. From statistics, majority of the judges performed above their KPI.

Effects

[19] With the setting up of the KPI many judges no longer take their task lightly. They are more conscientious and dedicated to their work; their performance has improved both in quantity and quality.

[20] More reforms are in the pipe line but of those implemented, the effect is dramatic. Cases are now systematically managed resulting in speedier disposals. Consequently, backlog of cases is reduced. Everyone has welcomed this visible change.

[21] I will conclude by saying that the effects of the judicial reforms in Malaysia have brought significant change to the legal scene. Cases are moving at a much faster pace than before. Litigants are evidently pleased and so are their lawyers who can now close their files and bill their clients at quicker rate. Many lawyers are heard to say that though they are pleased with the pace set by the Malaysian courts, they now do not have the time to spend their accumulated fortune derived from this change.