

The Framework of the Judicial Cooperation in ASEAN in Case Management The Brunei Darussalam Experience

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A) INTRODUCTION

Brunei Darussalam Judiciary's main mission is to administer justice and one of its main goals is to administer justice effectively.

Managing cases efficiently poses a big challenge not only in Brunei but also in other Jurisdictions. The challenges faced are in various forms such as financial constraints, the right manpower and also technical know how.

The Case Management Society of Australia has defined case management as follows:

“Case management is a collaborative process of assessment, planning, facilitation and advocacy for options and services to meet an individual's holistic needs through communication and available resources to promote quality cost effective outcomes.”

In Brunei, the Courts have taken steps to improve the case management processes, in order to promote efficiency and cost effectiveness. This paper will highlight the steps that have been taken and introduced in the Court systems in Brunei Darussalam in managing case management.

B) JUDICIAL SYSTEM

The Judiciary is responsible for the administration of Justice through the Subordinate Courts which comprises of the Magistrates' Courts, the Juvenile Courts and the Small Claims Tribunal which sit in Brunei-Muara, Belait, Tutong and Temburong districts.

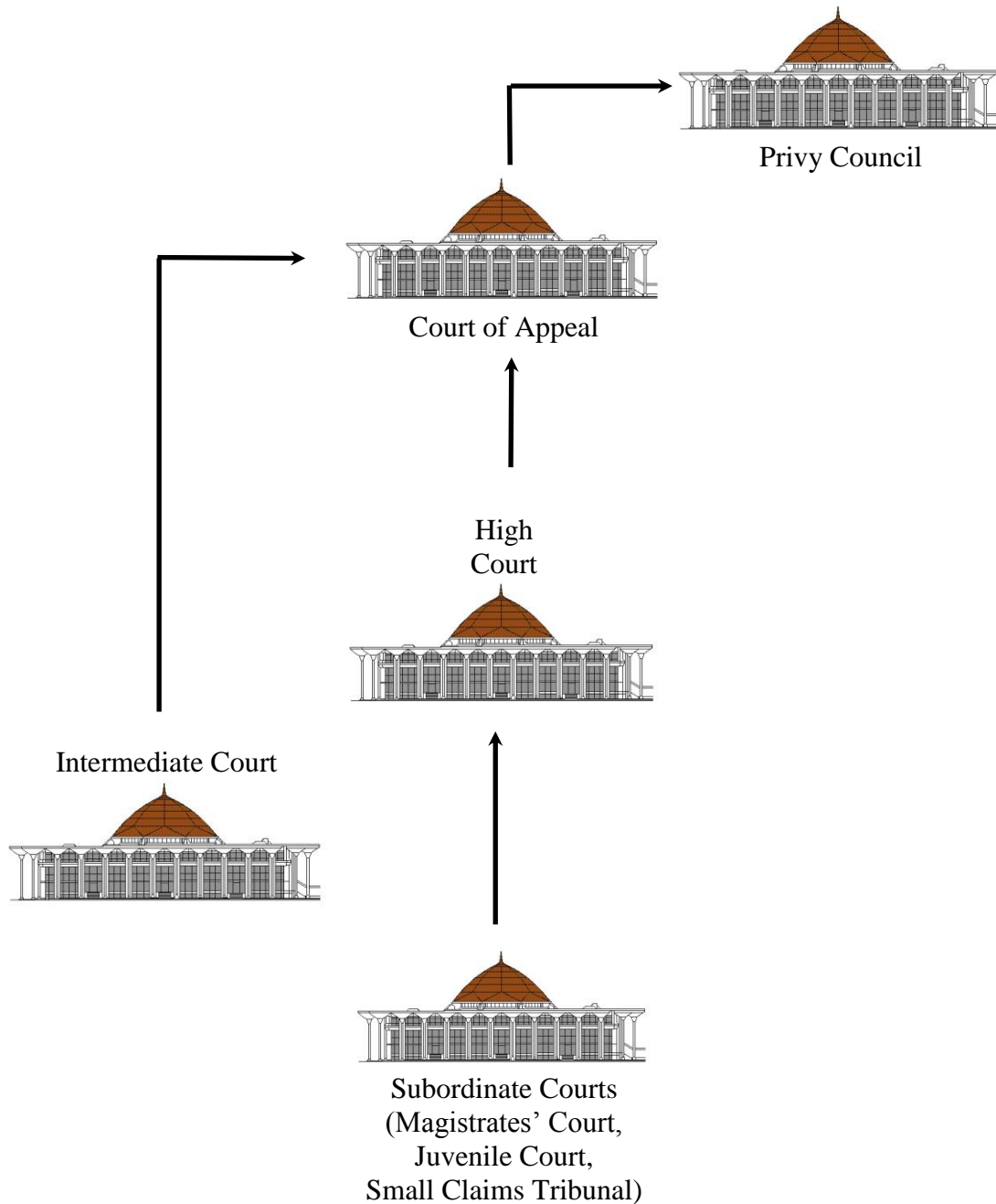
The Judiciary also administers justice through the Intermediate Court and the Supreme Court [which consists of the High Court and the Court of Appeal].

All courts hear both criminal and civil cases, with the majority of cases coming before the Magistrates' Courts. Any cases that are outside the Magistrates' Courts jurisdiction will either be heard before the Intermediate Court or the High Court.

Any appeals from the Magistrates' Courts will be heard before the High Court. Any appeals of the decisions of the Intermediate Court and the High Court will be heard before the Court of Appeal. The Court of Appeal is the Highest Appellate Court for criminal cases. However, for civil cases, appeals can also lie before the Judicial Committee of Her Majesty's Privy Council in London if all parties agree to do so before the hearing of the appeal in the Brunei Court of Appeal.

In addition to the usual civil and criminal jurisdiction, the Supreme Court also deal with cases of bankruptcy, companies winding-up, applications for Grants of Probate, Letters of Administration of deceased person's estates, issuing apostille certificates and registration of civil marriages, amongst others.

C) COURT STRUCTURE



1) SUBORDINATE COURTS

The Subordinate Court comprises of the Magistrates' Courts, the Juvenile Courts and Small Claims Tribunal.

1.1) Magistrates' Courts

The Magistrates' Courts are governed by the Subordinate Courts Act (Chapter 6). The majority of cases are heard before the Magistrates' Courts. They are situated in all four districts of Brunei Darussalam: Brunei-Muara, Belait, Tutong and Temburong.

The Magistrates' Courts adjudicate both Civil and Criminal cases which are within their jurisdiction. Those which are outside their jurisdiction will be heard either before the Intermediate Court or the High Court.

Any appeal arises out of any Magistrates' decision will be heard before the High Court.

The Magistrates' Courts consists of a Chief Magistrate, Senior Magistrates and Magistrates.

For civil cases the Magistrates handles claims up to BND 50,000.

For criminal cases, Magistrates handles offences punishable by fine not exceeding BND10,000 or not exceeding 7 years imprisonment or whipping and this will be increased if the law provides otherwise.

1.2) Juvenile Courts

On 1st March 2010, a comprehensive piece of legislation encompassing all aspects to the welfare and care as well as child justice was enforced in the form of the Children and Young Persons Order 2006. The Children Order 2000 became obsolete and the juvenile justice system in Brunei Darussalam was born.

The Juvenile Court is presided by the Juvenile Court Magistrate. The Juvenile Court sits in all 4 districts; Brunei-Muara, Belait, Tutong and Temburong. The Juvenile Court deals with 3 categories of cases namely, criminal offences committed by juveniles below 18 years old, juveniles who are beyond parental control and juveniles who are in need of care and protection orders.

The introduction of the juvenile justice system has empowered Magistrates with 'alternative sentencing' options which include the making of probation orders, community service orders, placement in an Approved School and Approved Home and placement in a Detention Centre. Prior to making these orders, the Magistrate participates in discussions with a Panel of Advisors who will deliberate over the best interests of the child in consultation with the Probation Unit officers.

With the concept of restorative justice as the underlying philosophy of the establishing legislation, the Juvenile Court is committed to rehabilitating and reintegrating young offenders back into society.

1.3) Small Claims Tribunal

The Small Claims Tribunal aims to expedite the hearing of civil claims of not more than BND 10,000. It is also to facilitate the party aggrieved to be heard in a less formal environment and at a lesser cost. The Small Claims Tribunal is governed by the Small Claims Tribunal Order, 2006, which is likely to come into force by 2012.

1.4) Case Management

Managing cases in the Subordinate Courts at present is predominantly maintained in paper format and not yet fully automated.

For criminal cases, the case filed will be given a docket number and will be registered in the case register book. The particulars of the case will then be registered in the courts' computer system to facilitate searches and to track the file movements. The system was developed in house and its uses are very limited.

In order to monitor the progress of the cases and to distribute cases equally amongst the Magistrates, cases for hearings will be given to the Chief Magistrate who acts as a Court Manager who is responsible for distributing the cases amongst the Magistrates. This ensures that cases can be heard as soon as practicable and that all Magistrates will have the opportunity to hear different types of cases in order to gain experience.

In order to reduce the waiting period for cases to be heard in **Road Traffic cases**, the Magistrates' Courts have addressed this by making changes to the previous court practice. In the past, road traffic cases were heard once a week and the public had to wait at least two hours before his case will be heard. This caused loss of time to their employers and loss of income to the public who sometimes had to take leave from their work. For these reasons, the Magistrates' courts have increased the number of hearing days, whereby the Road Traffic cases are now heard every day, early in the mornings. This has allowed more cases to be heard and disposed with and times spent in the courts by the public were cut down dramatically.

For Civil cases, the information will be filed and registered in the case register book. As opposed to the criminal registry, the civil registry does not have the computer system that can track the files. It is labour intensive and time consuming.

In order to reduce the number of errors made by Magistrates and the time spent to hear initial civil cases and road traffic cases, the Magistrates' courts have also addressed this by preparing checklists and standardized

Magistrates' notes. These checklists and standardized notes enable the Magistrates to mark on the matters and then signed off. The result has shown a reduction in the number of mistakes made by the Magistrates and the time spent on each matter mentioned. It also reduced the number appeals.

2) INTERMEDIATE COURT

The Intermediate Court was established by the Intermediate Court Act Chapter 162. They hear both Civil and Criminal cases.

For criminal cases, the Intermediate Court judge handles offences punishable with imprisonment that does not exceed 20 years and can impose whipping and fine. The Intermediate Court does not have the jurisdiction to hear capital punishment cases or death penalty cases.

In Civil cases, the Intermediate Court can hear claim that does not exceed BND 300,000 and can only hear certain types of cases as provided for in the Intermediate Courts Act, Chapter 162.

Any appeal arises out of any Intermediate Court Judge's decision will be heard before the Court Of Appeal.

2.1) Case Management

The initiation process for both civil and criminal Intermediate Court cases will be filed and managed at the High Court Registry where the cases with the information are registered into the respective registry books and given a docket number.

For criminal cases, the file is then handed over to the Intermediate Court's Judge for trial processes.

For civil cases, once the case is filed and registered, the file is then distributed equally amongst the High Court Registrars to hear any interlocutory hearings applications. If the matter goes for trial before the Intermediate Court Judge, then the High Court Registry will send the file to the appropriate judge. The Registry has a limited computerized file tracking system, whereby file tracking is available to view on a computer.

3) SUPREME COURT

The Supreme Court is governed by the Supreme Court Act Chapter 5. It consists of the Court of Appeal and the High Court. The Supreme Court Building is located in Bandar Seri Begawan, the capital city of Negara Brunei Darussalam.

3.1) High Court

The Chief Justice sits in the High Court and is assisted by the local High Court Judges, foreign visiting High Court Judges (who are retired former Hong Kong High Court Judges) and the Registrars of the Supreme Court.

The Chief Justice and Judges of the High Court hear both Civil and Criminal cases of unlimited jurisdiction. They deal with appeals of both criminal and civil cases from the Magistrates' Courts.

The foreign visiting High Court Judges assisted the local High Court Judges in disposal of cases where defendants are known to local judges. They also help to expedite disposal of cases.

3.2) Case Management

Managing cases in the High Court at present is predominantly maintained in paper format and is not yet fully automated.

Filing of cases, for both civil and criminal cases are registered into a case registry book.

For criminal cases, the case file will be given a docket number and will be registered in the case register book. The file is then handed over to a High Court Registrar before it is given to the High Court Judge. This is because the diary of the High Court Judge is overseen by a High Court Registrar who fixes dates before the Judge. **The High Court Judge will either keep the file or return it to the High Court Registrar. The record of movement of files and status of the case may be viewed through the present court's system.

As for Civil cases, the case will be registered with the information in the civil cases register book. The case file is then distributed amongst the High Court Registrars to hear interlocutory hearings applications using a fixed numbering system. This save time and avoid unequal distribution of cases. If the matter is to be heard before the High Court Judge, then the High Court Registrar will send the file to the appropriate judge for trial processes.

The registry has a file tracking system whereby file tracking can be viewed. However, this system is limited to what is recorded.

New Writs will be handed out to the Chief Registrar who acts as the Court Manager, who endorses all new Writs. As a practice to save time, files are then allocated to the High Court Registrars for interlocutory hearings applications such as for Originating Summons, Summons for Directions, Pre-Trial Conferences, Summons-in-Chambers, Notice of Taxation by using the same implemented fixed numbering system.

3.3) Court Of Appeal

The Court of Appeal is the highest appellate court. It comprises of the President and two Judicial Commissioners who are retired former Hong Kong Appellate Judges. All three judges are on circuit. Currently the Court of Appeal presides twice every year, in the months of May and November. It deals with appeals of both criminal and civil cases from the High Court and the Intermediate Court.

The Court of Appeal is the highest appellate court for criminal cases.

In civil cases, the Court of Appeal is the highest appellate court unless parties agree prior to trial at the Summons for Directions stage to appeal the decision of the Court Of Appeal to the Judicial Committee of Her Majesty's Privy Council in London.

3.4) Case Management

In view that the Court of Appeal only presides twice a year, the case management process for cases of this court differs from the other courts.

All correspondences, preparation of list and confirmation of hearing dates will be done together with the President of the Court Of Appeal through email.

As the Court of Appeal sessions are only fixed twice a year the Court takes an active role in managing the files for appeals. The President and the High Court Registrars work closely together and use several checklists to ensure that all files listed will proceed as scheduled. Very few adjournments are granted before the Court of Appeal.

Most appeals filed for the year will be heard within that one-year period.

To ensure that the cases are managed properly, one month before the session starts, the High Court Registrar will hold the "first call-over" for civil appeal cases only. This call-over is to ensure that all documentations and bundles are filed within the time directed by the High Court Registrar.

After the call-over, confirmation letters informing the dates and time of appeal will be distributed to all the parties concerned.

The Court of Appeal Judges arrive in Brunei one week prior to the commencement of the session.

As a method to manage cases, two days prior to the start of the Court of Appeal session, a second call-over will be held and presided by the President of the Court of Appeal. The purpose of the second call-over is used as a measure to manage and resolve issues before the appeals are heard.

After the appeals are heard, all judgments will be distributed to parties and the original kept in the main file, recorded in the Court of Appeal Registry Book and distributed amongst the interested parties as well as Lexis Nexis and the Malaysian Current Law Journal (MCLJ).

3.5) Privy Council

An appeal of the Court of Appeals' decision in Civil Suits may be referred to the Privy Council in instances where both parties to a Civil Suit prior to the commencement of trial agree on this course of proceedings. The appeal will be before the Judicial Committee of Her Majesty's Privy Council in London, United Kingdom.

4) NATIONAL ARCHIVE

The Judiciary has criminal and civil record rooms where all closed files are kept in cabinets for a minimum period of 5 years before it proceed to make listings for the files to be sent to the National Archive.

These files are stored in standard size boxes and ready to be sent to the National Archive.

National archive is a unit under Museums Department, Ministry of Culture, Youth and Sports headed by a Director and 22 staffs. The National Archive is governed by the Brunei National Archive Act, Cap 116.

Sec 11 Cap 116 gives the Director the power to destroy any of the records with the agreement between the Director and the Administrative head of that public office.

D) PROBLEMS OF PRESENT CASE MANAGEMENT SYSTEM

The present system is not ideal for our court case management. It possesses numerous problems and limitations such as:

- Security of the files.
- Time consuming
- Mistakes
- Labour Intensive
- Limited access to Justice

E) DEVELOPMENTS & COURT PROCESSES

1. Cause list - In order to disseminate information to court users, the court clerk prepares a daily cause list for each working day in the Subordinate Courts. As for the Intermediate Court and the Supreme Court, a monthly cause list is prepared that can span over a one-year period.

This information can be viewed in the Court official website at www.judicial.gov.bn

2. Our case management also takes into account the different type of languages and dialects used in the courts. Brunei Darussalam's official language is Malay but the language used by the courts is English. As part of the Case Management System, the Judiciary employs interpreters to assist in cases where there is a need for interpretation where the Judiciary cannot cater to specific languages; assistance is sought from foreign embassies in the country.

The Judiciary has a case recording and tracking system kept on the intranet server. At the same time manual records are also kept.

3. Measures have also been taken for ease of file identification whereby colour coding is used. The Magistrates Courts, Juvenile Courts, Small Claims Tribunal, Intermediate Court, High Court and the Court Of Appeal are identified by different coloured files. This colour coding is also used to differentiate between civil and criminal cases and also other court's businesses such as Bankruptcy and applications under the Lunacy Act.

4. Digital Audio Recording System

At present, notes of proceedings are maintained in the form of hand written notes and some judgments are still delivered through the use of tape-cassette recorders. Since 2008, the Supreme Court is installed with digital audio recording system. Therefore there is now an option to use this system for complex and lengthy cases. This system records the trial proceedings in audio files, which are stored in a memory cards in MP-3 format, which are then stored in a portable hard drive.

Court clerks listen to these audio files, transcribe them and the notes will be produced and corrected by the judge.

This system is proven to have saved courts' time. Searching is made easier from the audio files by referring to dates of recording, witnesses' testimonies. Memory cards are smaller, last longer, easier to store and cost less than tape cassettes. Once the case is completed the existing computers can be used for other purposes.

5. Revision of the existing jurisdiction of courts

In order to address any backlogs and to reduce the waiting period of cases to be heard in the High Court, the threshold of the Intermediate Court has been increased from BND 100,000 to BND 300,000 recently on 9th April 2011, so that registration of cases can be initiated and heard in the Intermediate Court. This also aims to ensure that the judges sitting days are used more efficiently.

6. Pre-Trial Conference (O. 34A, RSC)

To address any unnecessary delays, the court practices pre-trial conferences before the commencement of the hearing. The court may consider any matter including the possibility of settlement of any or all issues in the action or proceedings and desirable for securing the just, expeditious and economical disposal of the action or proceedings.

Pre-trial procedures are normally conducted before the High Court Registrars and no communication of facts disclosed or of any matter considered in the course of the pre-trial conference shall be made known to the Judges conducting the trial of the action or proceedings.

The benefits of a pre-trial conference:

- To bring the parties together to consider the possibility of settlement;
- To assist the parties in narrowing down the areas of dispute;
- To determine the readiness of the parties to proceed to trial and to make such further directions as may be necessary to get the parties ready for trial; and
- To assess the amount of time required by each party for the trial.

Counsels are now more prepared in conducting their cases and they would assist the court to speed up trial by having witnesses and their statements ready for the trial.

Where any party fails to comply with any such order or direction made during the pre-trial conference, the court may dismiss the action, strike out the defence or counterclaim or make such other order it thinks fit.

Despite these efforts, cases tend to settle at the very last minute causing allocated trial dates to be disrupted and need to be replaced with other cases (usually from the floating case list), however last minute replacement does not work because parties are not fully prepared. Unlike other jurisdictions, our courts do not have the provision to penalise last minute settlement.

7. Pre-Trial Review, Pleas and Directions Hearing

As a practice, another measure to reduce unnecessary delay is by having pre-trial reviews.

Pre-trial reviews or pleas and directions hearings have been particularly useful in serious criminal cases.

In the past, parties have often been reluctant to exchange witness statements thus causing delays during the hearing.

During the pre-trial review, both counsels are encouraged and to outline their respective positions before the hearing Judge in Chambers who will then be able to assess whether the case is ready for trial

8. Summons for Directions (O.25 RSC)

The Supreme Court rules provide that the plaintiff must (subject to certain exceptions, for example, personal injury cases where automatic directions are provided) within one month after the close of pleadings file in Summons for Direction that ought to be returned in not less than 14 days.

The Summons for Directions ensure that the file is ready for trial and that all interlocutory matters have been heard and that all other matters that ought to have been dealt with will be dealt with during the Summons for Directions.

The rules provide that in circumstance where the plaintiff fails to apply for Summons for Directions, the defendant may apply for an order to dismiss the action.

9. Use of affidavit evidence-in-chief for trials (O.38 RSC)

The use of affidavit evidence-in-chief has resulted in saving time of both the parties and the court. Parties are able to identify issues and cross-examinations have become more structured.

10. Provisions on offers to settle (O.22A RSC)

Order 22A encourages parties to make offers to settle out of Court. In particular, this provision has been useful in expediting settlements in personal injury cases.

It is during the pre-trial conference stage that parties will disclose to the Court that matter has settled (save as to costs).

11. Records of Proceedings [O.57 R5 RSC]

It is no longer necessary for the complete notes of proceedings to be distributed to parties in order to proceed with an appeal.

The Petition for Appeal is to be filed within one month. Therefore Counsels who had put in their Petition for Appeal would already be able to identify what their grounds of appeal are and not waste time in waiting for the full transcript/ notes of proceedings.

This would save time, cost, prevent adjournments (waiting for notes to be completed), and prevent the transcribers from rushing the notes of proceedings.

12. [O.63A, r.2 RSC]

As part of the transformation, the Judiciary is currently in the process of introducing a fully integrated electronic case management system coupled with an electronic filing system. Although the Judiciary is still at the early stages of tendering out the contract it has already amended the law whereby provisions have been introduced for the use of e-filing and e-services.

F) FUTURE DEVELOPMENTS

1. Increasing the number of Judicial Officers

There is a proposal to increase the number of Judges, Magistrates and Registrars of the Supreme Court, both in terms of quantity and quality.

2. Continuous Training

Both the judicial officers and staff will undergo constant training in judicial administration. These training courses will aim to improve the management of the court systems and the management of cases.

3. Build more courtrooms

There is also a proposal to increase the number of courtrooms and court buildings to hear and dispose of the cases speedily.

4. Fast Track allocation of cases

A proposal has been forwarded to set-up a committee to look into the possibility of managing cases through Fast Track Allocation.

5. Electronic Case Management And Technology Courts

The Brunei Judiciary realizes the shortcomings with its current case management system. The way forward is to invest into technology as has been done in other jurisdictions among our ASEAN counterparts.

Hence, in 2012 we are embarking on our Electronic Case Management System (ECMS) that will streamline procedures, searches, improve services and efficiency by switching from conventional paper process to electronic workflow format. The project is being coordinated by the State Judiciary Department in collaboration with the E-Government National Centre (EGNC) and Information Technology Centre.

This system will facilitate the management of cases by the usage of emerging technologies to enhance the efficiency of the workflow processes and the administration of justice in its various aspects, namely timeliness of justice and the quality of justice. Besides other abilities, the system will be able to do matter such as:

- Identify inactive cases and prompt the user regarding appropriate action;
- Generate documents (e.g. Summons - triggered by specific events);
- Distribute documents electronically;
- Track document served, returned or serviced;
- Create & maintain judges notes for Judges viewing only

As part of our continuing evolutionary process, we are also embarking on setting up our Technology Courts with the ability for video conferencing. The benefits are:

- Defendants in remand can appear for their mentions remotely from the prisons when their cases are mentioned
- Hearing testimonies from witnesses who are unable to attend court, e.g. Witnesses from outside the country

- Processing bail applications from chambers for defendants who are offered bail and are remanded in the prison within court premises
- Vulnerable witnesses can opt to give evidence remotely so as to lessen the trauma of having to physically face the offender in court
- Conducting interactive dialogues with foreign judiciaries to exchange views and knowledge and keep abreast with the developments of other jurisdictions;

We are aware of the challenges that we will be facing such as:

- Budget/Limited Resources
- Know how/Lack of qualified human resources
- Slow recruitment
- Changing of mindsets of users such as judicial officers, staff, practitioners and others

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