

## POLICY FOR PROTECTION AGAINST HARASSMENT IN THE WORKPLACE

### A. AIM

1. We \_\_\_\_\_ (the Firm”) hereby declare our responsibility as employers to ensure that our workplace is a safe and conducive work environment<sup>1</sup> for all our employees and contractors.
2. We shall ensure that our work environment is harassment-free and will adopt necessary measures to ensure that no individual or group is subjected to harassment of any form and that such conduct will not be condoned and / or tolerated.
3. The Firm understands and acknowledges that no one should be subjected to harassment in any form, and that every employee must be treated equally, with dignity and respect.
4. To ensure a safe and comfortable work environment, this policy aims to:
  - (a) prevent harassment of employees in the workplace and provide an effective mechanism to eliminate or address such harassment; and
  - (b) educate all partners, employees, agents, servants and staff to recognise that harassment in any form is a demeaning practice that constitutes a profound affront to the dignity of persons.
5. The Firm will not tolerate the harassment of its employees in any form, and any conduct that falls into the definition of “harassment” as defined below shall be contrary to this Policy and therefore prohibited.

### B. SCOPE AND LEGAL LIABILITY (OFFENCE)

1. This policy is applicable to all and every consultant, partner, legal assistant, associate, pupil in chambers, intern, staff, employee, servant and agents of the Firm and to any third party who visits the Firm for any reason whatsoever including those on full-time, part-time, probationary, seconded or term engagements with the Firm.
2. The Firm’s harassment policy will be made known to agents, vendors and contractors so that they should be aware that harassment of the Firm’s personnel will not be tolerated.
3. The Firm’s zero-tolerance position on harassment applies to all aspects of employment, and where such harassment occurs:
  - (a) it shall be a breach of the terms or conditions of employment;
  - (b) the career opportunities of any employee who makes a complaint for harassment (“the Complainant”) shall not be compromised as a result of the actions of the person committing the acts of harassment (“the Respondent); nor shall the Complainant be penalised or discriminated against in any form for lodging such a complaint; and
  - (c) all other employees are expected to behave in a non-threatening and non-offensive manner at all times.
4. Breach of this Policy shall be considered as misconduct and may result in disciplinary measures taken, including dismissal from the Firm.

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<sup>1</sup> For avoidance of doubt, “the work environment” is not limited to the premises where the victim works but extends to any place in which the victim is present as a result of or in the course of work, including any events held in conjunction with work.

5. In the context of harassment amounting to sexual harassment as defined in Clause C below, and under section 81F of the Employment Act 1955 (Act 265), any employer who fails:
  - (a) to inquire into complaints of sexual harassment under subsection 81B(1);
  - (b) to inform the Complainant of the refusal and the reasons for the refusal as required under subsection 81B(2);
  - (c) to inquire into complaints of sexual harassment when directed to do so by the Director General under paragraph 81B(5)(a) or subsection 81D(2); or
  - (d) to submit a report of inquiry into sexual harassment to the Director General under subsection 81D(2);

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand Ringgit.

### **C. DEFINITION OF HARASSMENT**

#### **1. Harassment:**

- (a) Harassment means any behaviour, whether spoken or written words, pictures or actions communicated in person or through the use of any media and/or physical conduct that is inappropriate or otherwise offensive to a person. It includes the use of any threatening, abusive or insulting words or behaviour; or by any threatening, abusive or insulting communication that is intended to cause harassment, alarm or distress to another person.
- (b) Harassment has the purpose or effect of:
  - (i) creating, directly or indirectly, an intimidating, hostile or offensive workplace;
  - (ii) interfering with the performance of an employee's functions, duties and responsibilities; or
  - (iii) affecting employment opportunities including promotion or compensation.
- (c) Harassment may be motivated by any of the following: race or ethnicity; skin colour or other physical attribute(s); religion; sex or gender; place of origin; ancestry; culture; age; mental or physical ability or disability; sexual orientation; family, marital or social status; economic or financial background; or political affiliation.

#### **2. Under this Policy, harassment shall include sexual harassment as follows:**

- (a) Section 2 of the Employment Act 1955 ("EA 1955") defines sexual harassment as,  
*"any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment"*.
- (b) For the purposes of this policy, sexual harassment shall refer to:
  - (i) "conduct of a sexual nature" includes any unwelcome behaviour or unwanted conduct of a sexual nature in any form which includes but is not limited to, implied or overt verbal, non-verbal, visual, gestural or physical conduct;
  - (ii) any unwelcome conduct of a sexual nature that a reasonable person would find offensive, humiliating or intimidating;
  - (iii) any unwelcome conduct in the form of spoken or written words, pictures or actions, communicated in person or through the use of any media;

- (iv) any behaviour that may amount to sexual harassment where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated;
  - (v) any request, whether express or implied, for sexual favours by a manager, superior, colleague or a non-employee.
- (c) With reference to the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, 1999<sup>2</sup> issued by the Ministry of Human Resources Malaysia, examples of conduct that may amount to sexual harassment include, amongst others:
- (i) Verbal harassment  
For example, offensive or suggestive remarks, comments, jokes, jesting, kidding, sounds, questioning.
  - (ii) Non-verbal/gestural harassment  
For example, leering or ogling with suggestive overtones, licking lips or holding or eating food provocatively, hand signals or sign language denoting sexual activity, persistent flirting.
  - (iii) Visual harassment  
For example, showing pornographic materials, drawing sex-based sketches or images or writing sex-based letters or texts, sexual exposure.
  - (iv) Psychological harassment  
For example, repeated unwanted social invitations, relentless proposals for dates or physical intimacy.
  - (v) Physical harassment  
For example, inappropriate touching, patting, pinching, stroking, brushing up against the body, hugging, kissing, fondling, sexual assault.
  - (vi) Online harassment<sup>3</sup>  
This may include communications via email, social media platforms, messaging apps, blogging platforms and comments sections on digital news platforms, personal blogs, YouTube pages, and Amazon book reviews amongst others, and involves threats, embarrassment, or humiliation in an online setting, including "cyberstalking" which is conduct or a course of conduct of online harassment intended to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate a target.

## **D. THE PROCESS**

### **1. THE COMPLAINT**

- (a) A complaint may be made by the Complainant involving individuals from the Firm or whom the party is in contact with reference to the work of the Firm.
- (b) The Firm encourages an incident or a complaint of harassment to be reported as soon as possible after experiencing or witnessing an incident to ensure the incident is investigated

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<sup>2</sup> Adapted from the International Labour Organisation (ILO, 1996) definition of sexual harassment at work – “... a sex-based behaviour that is unwelcome and offensive to its recipient. For sexual harassment to exist these two conditions must be present”.

<sup>3</sup> Adapted from the Online Harassment Field [Manual](#) of PenAmerica (accessed 5 July 2020)

in a timely manner.

- (c) Individuals are encouraged to report any incident or complaint of harassment to the **[designated person of the firm]**. If the **[designated person of the firm]** is the person engaging in the harassment, contact **[alternate designated person of the firm]**.
- (d) Any harassment complaint can be made to the designated person verbally or in writing. If a complaint is made verbally, the designated officer should convert it into writing, and verify the written content with the Complainant.
- (e) A complaint must contain:
  - (i) Name of the Complainant;
  - (ii) Name of the Respondent;
  - (iii) Name of any witness(es);
  - (iv) Detailed explanation of what transpired / the details of the incident(s) including date(s) / time(s) / venue(s); and
  - (v) Any documentary or other evidence that may be relevant.

## 2. THE INVESTIGATION

- (a) The Firm shall ensure that an investigation appropriate in the circumstances is conducted when any **[designated person of the firm]** becomes aware of any incident of harassment or receives a complaint of harassment at work.
- (b) Complaints or incidents of such harassment will be investigated in a fair, respectful and in a timely manner.
- (c) Upon a designated person receiving a complaint and within five (5) working days thereof, the Firm will appoint an Investigation Committee comprising of three (3) persons, from within or from outside the Firm, of which at least two persons who are of the same gender as the Complainant, to conduct an impartial investigation. Where appropriate, external consultants may be engaged to be part of the committee.
- (d) The investigation must be completed in a timely manner and generally within 60 days or less unless there are extenuating circumstances (i.e. illness, complex investigation) warranting a longer investigation.
- (e) The Investigation Committee must:
  - (i) ensure the investigation is kept confidential and that identifying information is not disclosed unless necessary to conduct the investigation. The Investigation Committee should remind all parties involved in the investigation of this confidentiality obligation at the beginning of the investigation;
  - (ii) thoroughly interview the Complainant, the Respondent and any relevant witnesses. If the Respondent is not a part of the Firm, the Investigation Committee should make reasonable efforts to interview the Respondent;
  - (iii) give the Respondent an opportunity to respond to the specific allegations raised by the Complainant. In some circumstances, the Complainant should be given a reasonable opportunity to reply to the Respondent's responses;
  - (iv) interview any relevant witnesses, whether employed by the Firm or elsewhere, who may be identified by either the Complainant or the Respondent, or as necessary to conduct a thorough investigation;
  - (v) collect and review any relevant documentation and evidence;

- (vi) take appropriate notes and statements during interviews with the Complainant, the Respondent, and any witnesses;
  - (vii) prepare a written report summarising the steps taken during the investigation, the complaint, the allegations of the Complainant, the response from the Respondent, the evidence of any witnesses, and the evidence gathered. The report must set out findings of fact and come to a conclusion about whether harassment was found or not.
- (f) With reference to section 81B(3) of the Employment Act 1955, where an employer refuses to inquire into the complaint of sexual harassment, they shall, as soon as practicable but in any case not later than 30 days after the date of the receipt of the complaint, inform the Complainant of the refusal and the reasons for the refusal in writing.

### **3. THE INVESTIGATION FINDINGS**

1. The Complainant and the Respondent must be notified in writing of the findings of the Investigation Committee within ten (10) working days of the investigation being completed including any action taken or that will be taken by the Firm.
2. The Firm will accept any findings and recommendations made by the Investigation Committee, which shall be final and binding.

### **4. DISCIPLINARY ACTION**

- (a) Disciplinary action will be taken against a Respondent found to have committed an act of harassment.
- (b) The following, amongst others, are examples of disciplinary actions that may be taken against a Respondent found to have committed any act of harassment:
  - (i) periodic monitoring of the Respondent by the designated person;
  - (ii) transfer;
  - (iii) suspension;
  - (iv) demotion including by pay cut;
  - (v) termination / dismissal;
  - (vi) attendance at a compulsory counselling and / or training;
  - (vii) handing the matter over to the police, if it warrants such an action;
  - (viii) lodging a complaint to the Bar Council;or a combination of any of the above.
- (c) According to section 81C of the Employment Act 1955, where the employer conducts an inquiry into a complaint of sexual harassment and the employer is satisfied that sexual harassment is proven, the employer shall:
  - (i) dismiss the employee without notice;
  - (ii) downgrade the employee; or
  - (iii) impose any other lesser punishment as deemed just and fit, and where the punishment of suspension without wages is imposed, it shall not exceed a period of two weeks; and
- (d) According to section 81C of the Employment Act 1955, where the employer conducts an inquiry into a complaint of sexual harassment and the employer is satisfied that sexual harassment is proven, the employer shall, in the case where the person against whom the

complaint of sexual harassment is made is a person other than an employee, recommend that the person be brought before an appropriate disciplinary authority to which the person is subject to.

## **5. INTERIM MEASURES**

Pending investigations, the Firm may take necessary interim measures during the investigation, including having persons involved in the investigation to move workstations, or in the case of serious allegations, remain off work.

## **6. RECORD KEEPING**

- (a) The **[designated person at the firm]** will keep records of the investigation including:
  - (i) a copy of the complaint or details about the incident;
  - (ii) a record of the investigation including all related documentation;
  - (iii) a copy of the investigation report;
  - (iv) a summary of the results of the investigation that was provided to the Complainant and the Respondent, if a partner or employee of the Firm;
  - (v) a copy of any corrective action taken to address the complaint or incident of harassment.
- (b) Records will be kept for a minimum of five years after the conclusion of the investigation.

## **E. MEDIATION**

1. While appropriate, but not as a primary part of handling the complaint, the Firm, within a stipulated period of time, may offer the Complainant the option of mediation with the Respondent where the act or behaviour is the result of a miscommunication or misunderstanding.
2. The Complainant shall, at all times, have the discretion about whether to accept the option of mediation, and shall not be required to provide any reason about why the Complainant chooses or does not choose this option.
3. During mediation, the following must be observed:
  - (a) A mediator must be selected with agreement of both the Complainant and the Respondent;
  - (b) the mediation must be held in private, and only those parties directly involved in the complaint are allowed to be present with the mediator;
  - (c) anything said and / or done during the mediation process is confidential and shall remain confidential;
  - (d) the mediator must record down the terms of any agreement reached by the Complainant and the Respondent;
  - (e) the agreement has to be signed by the Complainant and the Respondent;
  - (f) a copy of the agreement is to be provided to the Complainant and the Respondent; and
  - (g) the firm has to retain the original agreement for not less than five years from the date the agreement was signed.

**F. CONFIDENTIALTY**

1. All records of the investigation will be kept confidential. The investigation documents, including the findings should not be disclosed unless necessary to investigate an incident or complaint of harassment, take corrective action or otherwise as required by law.
2. While the investigation is ongoing, the Complainant, the Respondent and any witnesses should not to discuss the incident or complaint or the investigation with each other or other employees or witnesses unless necessary to obtain advice about their rights.
3. The Investigation Committee may discuss the investigation and disclose the incident or complaint-related information only as necessary to conduct the investigation.

**G. RETALIATION/DISCRIMINATION PROHIBITED**

1. This policy seeks to encourage employees, complainants and witnesses to responsibly express their opinions and feelings about any problem or complaint of harassment in the legal profession.
2. Insofar as possible, complaints will be maintained as confidential to prevent retaliation while the complaint is being investigated and/or resolved.
3. Any act / omission by an employer, staff or agents, of reprisal, interference, restraint, penalty, discrimination, coercion or harassment – overtly or covertly – against an employee for responsibly using the policy and its procedures interferes with free expression, openness and democratic space provided for in the Constitution.
4. Such act / omission violate this policy and the Firm will impose appropriate and prompt disciplinary action. Witnesses are also protected from reprisals.

**H. DUTY OF GOOD FAITH**

1. This policy shall not be misused by any employee or persons to lodge a frivolous, scandalous or vexatious complaint.
2. Disciplinary action will be taken against any employee found liable of misusing this policy.
3. However, no action will be taken against an employee who makes a complaint in good faith, even if the outcome of the complaint / investigation is not successful / in their favour.

**I. REVIEW OF THIS POLICY**

This policy must be explained thoroughly to the Firm's employees and reviewed at the minimum, annually.