Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

LOCATION:
Malaysia, Kuala Lumpur

DATE:
10 March 2015

HOST/FACILITATOR:
Global Compact Network Malaysia and LexisNexis
Business for the Rule of Law
Executive Summary and Workshop Report

Part I: Executive Summary

1. UN Global Compact and Business for the Rule of Law Overview
   • Participants expressed a mutual appetite to delve into the significance of the incorporation of the rule of law from a business perspective in Malaysia. This comprised of learning from other businesses on ways to support the incorporation of the rule of law and to remedy the obstacles that may arise along the way.

2. Business Support for the Rule of Law in Practice [Explained]
   • Several participants elicited examples of attempts made by their respective businesses in order to assimilate the rule of law in areas involving core business activities such as public policy engagement and advocacy.

3. Business Case for Supporting the Rule of Law
   • Participants formed a consensus that the presence of the rule of law in Malaysia is that, whilst there is a framework that encapsulates its content, the rule of law per se is not seen as a profound prominence that is to be adhered to. Thus, promoting a strong rule of law and emphasising on its vitality would effectuate a sense of stability and certainty, and would create a level playing field.

4. Business Actions and Business Examples in Support of the Rule of Law
   • A widespread subject matter of discussion amongst participants made reference to the ways that proposed business actions could move towards developing the legal framework in terms of the law, to reduce the weight of reliance placed solely on judicial interpretation and land authorities.
   • From a general perspective, the proposed business actions were seen to be both, relevant and useful to the Framework.
   • Several critics were posed upon the clarity and available access of information with regard to Business Action 4, whilst the feedback on Business Action 2 was that at present, there seems to be a lack of transparency in the bills that get tabled.
5. **Call to Action (to Business and by Business) to Support the Rule of Law**

- Businesses are to recap and re-assess the vitality of pushing forward the act of incorporating the rule of law.

6. **Mobilizing Business to Support the Rule of Law**

- To actively promote and sanitize leadership and awareness of the rule of law and its importance, amongst youth movements and youth educators.

- The UN Global Compact is advised to assimilate the introduction of issuance of certificates to individuals that have joined the group, as a representation of a badge of honour. This may act as an incentive and drive for people to be a part of the UN Global Compact.

7. **Any other comments or questions (including “quotable quotes” that may be included in the Framework)**

- Overall, participants provided a positive feedback regarding the workshop.

- Participants also provided action items to be driven following the workshop.
Part II: Workshop Report

1. UN Global Compact and Business for the Rule of Law Overview

- Participants expressed a mutual desire to study the significance of the incorporation of the rule of law from a business perspective in Malaysia. Unison was formed amongst the attendees that whilst Malaysia has a framework that encapsulates the rule of law, its operation is not procured in an effective manner. An oblivious fact is that Malaysia is challenged in the context of the rule of law as the speed of justice is not as speedy as it should be. This begs the question as to whether enough is being done to remedy this point in question.

- Participants were requested to provide a brief introduction on their personal background and to share their personal objectives for attending the Workshop. One of the main intentions that accompanied the attendance of the participants at the workshop was to learn about the theorems and practical aspects of the Rule of Law from different personnel perspectives. In addition to that, several participants were interested to find out the sustainability of the Rule of Law through a business context, and the ways that it can be promoted and applied both, globally and internationally.

- Noteworthy comments:
  - One person mentioned that in situations where a large multi-national company acts as the primary sponsor for the distribution of footballs during football associated events such as the World Cup, there is a strict requirement of gaining third party certification that would need to pass through a supply chain, confirming that the footballs distributed are not made with the engagement of child labour. The necessity for this is that, in a situation whereby there is a breach from a company, the reputation of the company is tarnished, which is why the various levels of check and balance are enforced in place. As this company is a signatory of the UN Global Compact, this is a relevant example eliciting the incorporation of the Rule of Law.
  - Countries burn forests as it is the most economical method to get rid of the forests, coupled with the fact that it acts as a form of enrichment. However, vide the burning of forests, neighbouring countries are vastly affected. Malaysia has at present, been chosen by the UN Global Compact to be one of the pilot markets. Sustainability acts as the basic theory, to ponder upon the world as a whole and the effect that performances of certain acts are likely have on neighbouring countries.
  - Philanthropy does not solely focus on how an organisation’s funds are spent. It also comprises on the ways that the company earns its money. A multi-national company had approached the World Bank and offered to make a donation of US 100 MILLION for the cause of anti-corruption. Not many organisations would succumb to such acts as most organisations focus primarily on gaining profits as opposed to giving for charitable purposes.
A participant mentioned that in Myanmar, the act of gift giving became such a customary notion for fifty years that they did not realise that it was wrong and should not be done. Thus, it is a matter of perspective. The key is that perhaps businesses can play a role in awareness campaigns to make more of the public aware. Also, emphasis is placed upon top management to instil the rule of law into the rest of the organisation.

2. Business Support for the Rule of Law in Practice [Explained]

- Several participants elicited examples of attempts made by their respective businesses in order to assimilate the rule of law in areas involving core business activities such as public policy engagement and advocacy. Examples included the following:
  - One example was where a multi-national technology company publishes the laws for countries that do not possess financial stability or designated monetary funds for the publishing of laws. The aim of this is so that in the long run, when these countries are developed, they would be well aware of the available services that this company has to offer and this company would have built a good foundation for doing business in those countries, thus furthering the company’s growth strategy and supporting the rule of law.
  - A multi-national company said that they compel their contractors to manage plantations in the agreed way and conduct spot checks regularly to ensure that their contractors also adhere to employment guidelines (i.e.: children of plantation workers cannot be made to work until they are above 16 and given opportunities to attend school, etc).

3. Business Case for Supporting the Rule of Law

a. What does the rule of law mean in this country?

  - One participant opined that the Rule of Law per se cannot be segregated into right and wrong. It is based upon a subjective standard and is therefore up to the discretion of the people involved to place weight on the circumstances and to determine the level of favourability that is to be accorded to it. In lieu of looking at it as a Rule of Law per se, the concept is more profoundly to be visualised as a Rule by Law that can be reviewed at from a critical and cynical perspective with hopes of improvement. Whilst we are required to comply with the law, the citizens in Malaysia are not encouraged to question the law. The Rule of Law provides us with a level playing field by eliminating arbitrariness and granting confidence towards businesses. It further aids in various human rights issues, as well as providing the judiciary with judicial independence.
b. How does business benefit when there is a strong rule of law? Alternatively, what challenges exist for business when the rule of law is weak?

- Burrowing into the significance of the Rule of Law, a participant elicited that the obstacle that crops up is the fact that its meaning has expanded through a wide horizon thus being unclear to society, which in turn leads to it being marginalized and forgotten. A strong Rule of Law would mean that the level playing field is equal. This would grant businesses with the confidence of conducting businesses in the country as there would be clarity and consistency in the level playing field. Whenever the constitution is amended, the three issues that are taken into account include: ruler, race and religion. This however impedes the Rule of Law. Whilst the functions of regulatory bodies are to regulate and standardize the operation of rules, this would be a difficult task to adhere to in relation to the Rule of Law.

4. Business Action and Business Examples in Support of the Rule of Law

a. Proposed Business Action 2/3

- Participants in their breakout group were required to discuss the aspects of the Proposed Business Actions 2 and 3, and the implementation of such Business Actions Proposals. One participant opined that there should be consultation between all bodies prior to the passing of a bill. More often than not, bills are passed without going through a consultation process.

- In Malaysia, whilst statutes such as the Food Regulation, Consumer act, Competition Act had gone through consultation, the passing of the Goods and Services Tax was not exposed to any form of consultation prior to its passing.

- He further added that there is a lack of transparency due to the fact that there are selective discussions when laws are being passed. There is no White Paper to detail the discussions made in a formalised manner.

- Another participant shared that the laws in Malaysia are not met up to the international normalities. Businesses are expected to speak in a non-business sense.

- It was emphasised that the necessity of a consistent Rule of Law should be practised across the globe. The Rule of Law in practised in other countries should be given equal recognition. Not providing knowledge on the rule of law in other jurisdictions would raise a doubt as to whether the local laws in Malaysia run in line with the laws in other countries.

- Participants formed a consensus that a debatable factor may arise where there are conflicting views on human rights, particularly if it conflicts with the core of a
business. Multi-national companies are more likely to express a higher level of enthusiasm to follow the law, if it were elicited in a less stringent manner. These corporations are market driven and thus it is burdensome for them to incorporate the Rule of Law when it runs it conflicts with the way their businesses are performed.

b. Proposed Business Action 4

- The breakout group suggested that the Proposed Business Action should be expanded to include access to efficient, cost-effective legal aid support such as setting up a legal aid clinic and for more individuals to donate to the National Legal Aid Foundation.

- In Malaysia, it is an offence for a lawyer to practise law without the possession of a practising certificate. The application of a practising certificate is somewhat tedious and may be a put off to certain lawyers. This would in turn act as a waste of resources as individuals with legal knowledge may not want to succumb into practise as they are not appealed with the tedious efforts that need to be delved into gaining a valid practising certificate prior to being able to commence practise. Thus, a suggestion was made to make the process of gaining a practising certificate to be made somewhat easier.

- With regards to the availability of access to information, state legislation is difficult to locate on the internet. Further, alterations made to the legislations are more often than not incorporated internally within their respective departments.

- It was proposed that all the regulatory bodies should publicise all updates and/or changes made to the regulations to be available to the public. The Bar Council should publish guidelines on this albeit the likelihood of there being discretionary issues.

c. Proposed Business Action 5/6

- With reference to native people, the argument brought forward was that this group of individuals are beyond the capacity of adhering to the ambits of normalities with regards to contracts. The situation is beyond merely developing a legal framework in terms of the law. Several areas need to be developed further to reduce the level of reliance on interpretation judicially and by land authorities.

- The question that comes into play is what companies are doing to encourage a state such as Sarawak to procure a legal framework? With regards to indigenous peoples land, the Government is profoundly reluctant to make alterations towards the current policy. The Government avoids recognition of any UN principles as it is merely a declaration and not a convention. A point to note is that even if there is a convention in place, Malaysia has not signed it and is therefore not bound by the terms of it. This issue should be tackled via a voluntary interest in light of saying that Malaysia does in
fact have a system that supports the Rule of Law which should be observed by everybody.

- The role of consumers in incorporating the Rule of Law is one of extreme vitality. It is essential that all and sundry wakes up and plays a role in order to have a stable tectonic plate in place for this system.
- The majority of the group considered that an advisable approach would be to have business management. In deciding whether these are appropriate business actions to include being part of the framework, the participants opined that if these business actions were put forward to companies and if they were told that subscribing to it would be mandatory, a strong likelihood is that they would, without much hesitation, subscribe to it. The challenge that follows such subscription is whether they would implement what they are subscribing to be a part of their organisation. An advisable method to remedy this would be to have an International Standard for Organisation (ISO) in place, detailing and standardizing the compliance methods of these business actions.

5. Call to Action (to Business and by Business) to Support the Rule of Law

a. What are some concrete steps business can take to respect and support the rule of law?
- Most emphasised the necessity for a continuous recap and reassessment of the rule of law in order for it to be continuously pushed forward.

b. What actions can other actors, including Government, academia and civil society take to improve legal institutions, access to justice, equality before the law, capacity building and other such action?
- Participants suggested widening the horizon of this question to include the involvement of the following groups:
  - Consumer groups
  - Bar Council of Malaysia,
  - Malaysia International Chamber of Commerce Society
  - European Union Chamber of Malaysia,
  - Malaysian-German Chamber of Commerce and Industry [ENCHAMP]
  - Minority Shareholders Watch Dog
6. **Mobilizing Business to Support the Rule of Law**

a. **What obstacles, if any, does your organization experience that prevents it from supporting the rule of law in this country or in any other country it has an interest in, such as investments, operations, business relationships?**
   
   - A main obstacle that acts as a preventative measure from the ability of incorporating the Rule of Law with fluidity in Malaysia, is the fact that it is unclear and not well regulated.
   
   - Re-iterating what has been opined above, whilst there is a framework that elicits the Rule of Law, the public is not well aware of how it is to be incorporated.

b. **How can the UN Global Compact, and other actors, support business to take action in support of the rule of law (e.g. information sharing via webinars on specific rule of law topics, in-person events, leveraging online resources, strategic partnerships)?**
   
   - The UN Global Compact is encouraged to prepare certificates that act as a badge of honour, to create an encouraging environ for companies to have the drive to enter and be part of the UN Global Compact. It has to be driven by the public awareness.
   
   - Conservation will not occur without individuals finding the need to want the existence of conservation. The UN Global Compact is advised to come up with an index to act as a form of measurement and yardstick. Assessment made based on the respective countries and rating by the UN Global Compact’s perspective should be carried out as a desirable result would by itself promote the rule of law.
7. Additional Comments, Suggestions or Questions

- Collaboration between business and human rights has been on the agenda for quite a long span of time. Pushing both together will be a challenge that would escalate the incorporation of the rule of law forward. In Malaysia, the Government’s appetite for human rights is not as strong as it should be. Thus, the question is whether there is any attempt made to coordinate with different groups working on this such as Suruhanjaya Hak Asasi Manusia [SUHAKAM] or Malaysian Human Rights Commission, who have the similar types of resources and goals.

- There should be better coordination and utilization of the resources that we possess. In addition to that, speaking to larger crowds and gaining more feedback and views would be very beneficial as it would act as a form of direction.

- The drivers of the Business for Rule of Law should come together to formulate a consensus as to which platform the status of the Rule of Law currently sits on.

- To conduct a major dialogue on the incorporation of the Rule of Law in a business context, which would hopefully have a huge impact, and to promote it as an ASEAN involvement.

[Workshop Report End]