
RESOURCE PAGE ON LEGAL PROCEDURE (MALAYSIA)¹

A. Resolution of Cross-Border Disputes involving Children – An Overview

No.	Information	Explanation
1.	The court system	<p>In Malaysia, there are two sets of laws applicable in personal matters of intestacy, marriage, divorce, custody of children, and division of assets on the breakdown of a marriage: one governing non-Muslims and the other governing Muslims.</p> <p>They are distinct and separate jurisdictions. The law governing non-Muslims is applied in the civil courts while that governing Muslims is applied in the religious courts i.e. the Syariah courts. By reason of Article 121(1A) Federal Constitution, one jurisdiction cannot encroach on the other. The information given here considers only the laws applicable to non-Muslims which are applied in the civil courts.</p> <p><u>Civil Courts</u></p> <ul style="list-style-type: none"> • Federal Court: The highest court in Malaysia. It hears appeals from the Court of Appeal and has original jurisdiction in constitutional matters. • Court of Appeal: Hears appeals from the High Courts in both civil and criminal cases. • High Courts: These courts have original and appellate jurisdiction over serious civil and criminal matters, including family law, bankruptcy, and

¹ Information is updated as of Oct 2025. Your attention is drawn to the disclaimers herein.

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		<p>probate cases. In Kuala Lumpur and Selangor, family disputes involving children, including custody and access, are heard in the Family Court, a specialized division of the High Court. In other states, family matters are heard in the High Court among other matters.</p> <ul style="list-style-type: none"> • Subordinate Courts <ul style="list-style-type: none"> ○ Sessions Courts: Has jurisdiction to hear maintenance matters of wives and children; adoptions. ○ Magistrates' Courts: Hears matters under the Child Act 2001. <p><u>Syariah (Islamic) Courts</u></p> <p>Malaysia operates a parallel system of Syariah Courts in each state (there being 13 states in Malaysia), which have exclusive jurisdiction over Muslims in matters such as family law (marriage, divorce, custody & inheritance), religious observances and offenses.</p>
2.	The court(s) that resolve Cross-Border Family Disputes Involving Children	<p>A Malaysian court has jurisdiction to deal with a child and the child's property if the child is physically present in Malaysia under the: -</p> <ul style="list-style-type: none"> • Courts of Judicature Act 1964 (CJA) whereby under: - <ul style="list-style-type: none"> ○ section 23(1) CJA, the High Court's general civil jurisdiction; ○ section 24(d) CJA the High Court has jurisdiction to appoint and control guardians of infants and generally over the person and property of infants; • Law Reform (Marriage and Divorce) Act 1976 (LRA), in relation to all matrimonial matters including children;

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		<ul style="list-style-type: none"> • Guardianship of Infants Act 1961 (GIA) in relations to applications in the High Court for guardianship; • Married Women and Children (Maintenance) Act 1950 (MWCMA) for maintenance applications in the Magistrates Court; • Married Women and Children (Enforcement of Maintenance) Act 1968 (MWCEM) applicable for the enforcement of maintenance orders; and • Inherent jurisdiction derived from the Crown's prerogative powers as the ultimate parent (<i>parens patriae</i>). <p>The Malaysian court retains jurisdiction over a child who is a Malaysian citizen and therefore deemed domiciled in Malaysia, even if residing overseas (See: sections 3(1) and 3(2), LRA; Nicholas Tan Chye Seng v Au Gek Wee (2013) 1 LNS 600).</p>
3.	The role (if any) of other government agencies	<p>In Malaysia, several government agencies play supporting roles in managing cross-border disputes involving children: -</p> <ul style="list-style-type: none"> • National Registration Department (NRD) <p>The NRD is responsible for issuing identity documents, citizenship status for individual and plays a critical role in cases involving citizenship disputes for children in cross-border family situations, such as applications for citizenship documents for children born abroad to Malaysian parents.</p> <p>National Registration Department of Malaysia - Division Information</p> <p>National Registration Department of Malaysia - Citizenship</p>

No.	Information	Explanation
		<ul style="list-style-type: none"> <li data-bbox="965 292 1552 323">• Immigration Department of Malaysia The Immigration Department controls entry and exit of children and parents across Malaysian borders. The Department works with the Courts and other agencies to enforce custody or access orders, particularly in cases involving international relocation or abduction. Immigration Department of Malaysia <li data-bbox="965 563 2018 595">• Ministry of Women, Family and Community Development (MWFC) The MWFC oversees child protection policies and welfare programs. It implements the National Children’s Policy to safeguard children’s rights. This Ministry also coordinates with other agencies to provide support and protection services. Ministry of Women, Family and Community Development of Malaysia <li data-bbox="965 834 1518 866">• Social Welfare Department (SWD) The SWD under the purview of the MWFC, provides social services and support to children and families involved in disputes including counselling, protection, and rehabilitation services, especially for vulnerable children. Social Welfare Department of Malaysia <li data-bbox="965 1074 1518 1106">• Ministry of Foreign Affairs (MOFA) MOFA is tasked with international coordination and communication with foreign governments and embassies, assisting in diplomatic efforts and legal coordination for cases with an international element. The MOFA is responsible for orders registrable under the Maintenance Orders (Facilities for Enforcement) Act 1949 (MOFE). Ministry of Foreign Affairs Malaysia

No.	Information	Explanation
4.	Legal representation	<p>Lawyers are generally required and highly recommended in cross-border disputes involving children in Malaysia due to the complexity of such cases. These disputes often involve multiple jurisdictions, conflicting laws, and international legal principles, requiring lawyers with expertise in both Malaysian family law and international family law to navigate issues such as custody, child abduction, relocation, and enforcement of foreign orders.</p> <p>Legal representation helps ensure procedural compliance and effective advocacy.</p> <p>Where mediation is possible, lawyers often assist clients in preparing for mediation and to ensure that mediated agreements are legally sound and enforceable.</p>
5.	Alternative Dispute Resolution (ADR) Mechanisms	<p>Mediation in Civil Family Courts</p> <ul style="list-style-type: none"> • Though not compulsory, mediation is encouraged in family law disputes. • Mediation sessions may be conducted in person or via video conference, especially when parties are in different countries. • There are different options for mediation as follows: - <ul style="list-style-type: none"> • Judge led mediation; • Court annexed mediation (https://kl.kehakiman.gov.my/); • Mediation at the Malaysian International Mediation Centre (https://www.mimc.org.my/); and • Private mediation (Mediator agreed between parties)

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		<p>Collaborative Practice</p> <ul style="list-style-type: none">• A new type of alternative dispute resolution in Malaysia. Uses an interest-based negotiation model where the parties and their lawyers together with the neutral experts (eg. divorce coach, child experts and financial experts) collaborate to find a mutually beneficial decision based on the interests of the disputants i.e., needs, goals, concerns and fears.

B. Legal procedures for applications concerning cross-border disputes involving children

Type of application	Brief description of application (e.g. typical scenario)	Legal procedure
Child custody and access disputes	<p>These are the most frequent, where courts decide on the custody of children and visitation rights, often after the parents of the child have decided to separate.</p> <p>The courts are guided by the paramount principle of the child's welfare and best interest.</p> <p>Under the LRA, there is a rebuttable presumption that it is for the good of a child below the age of seven years to be with his or her mother.</p> <p>An order for custody entitles the person given custody to decide all questions relating to the upbringing and education of the child and may contain certain conditions such as the place where the child is to reside, the manner of the child's education and the religion in which the child is to be brought up.</p>	<p>Orders relating to custody and access to a child, are typically applied for in a divorce petition when parties file for divorce. But such orders can also be applied for independently without divorce proceedings.</p> <p>An application involving custody and/or access to a child may be made under the divorce petition or by the filing of an originating summons under: -</p> <ul style="list-style-type: none"> (a) section 24(d) CJA; and (b) sections 88 & 89 LRA.
Guardianship	Under Malaysian law, the rights and authority of the mother and father to an infant are equal, until the child attains his/her majority.	An application for guardianship of the person or property of a child can be made by filing an

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	<p>Accordingly, courts consider the mother and father as joint guardians to their child.</p> <p>Under the GIA, the guardian of the person of an infant shall have the custody of the infant and shall be responsible for his/her support, health and education.</p> <p>The court exercises its powers based primarily on the welfare of the child and must consider the wishes of the parents.</p>	<p>Originating Summons pursuant to sections 5, 10 and 11 of the GIA.</p>
Relocation of a child	<p>A parent given custody may be prohibited from taking the child out of Malaysia.</p> <p>A parent who pursuant to an agreement or order of court has sole custody, can obtain consent of the other parent or apply to court for leave to take the child out of Malaysia.</p>	<p>The application is made by filing an Originating Summons in the High Court under: -</p> <p>(a) section 24 CJA 1964; and</p> <p>(b) sections 101 LRA.</p> <p>The court can give leave for the child to be taken out of Malaysia unconditionally or subject to conditions or undertakings by the applicant parent.</p> <p>The welfare of the child remains the paramount consideration in a relocation case. The primary carer's or the custodian's needs and wishes must yield to the best interest of the child and the importance of maintaining personal contact with the other parent.</p>

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<p>Return of a child in parental abduction and/or wrongful retention situations</p>	<p>Parental abduction and wrongful retention arise when a parent unilaterally removes a child from where the child was habitually resident without the consent of the other parent or an order of court.</p>	<p>Malaysia is not a signatory to the 1980 Hague Convention on the Civil Aspects of Child Abduction and 1996 Hague Convention on Parental Responsibility and Measures for the Protection of Children which means there is no mechanism in place for the automatic return of children abducted to Malaysia.</p> <p>However, Malaysia is a party and has acceded to the United Nations Convention on the Rights of the Child 1989 (UNCRC). UNCRC 1989 imposes obligations on member states, like Malaysia to deal with wrongful removal of children pursuant to Articles 9, 10, 11 and 35.</p> <p>A parent/guardian can make a formal application to the High Court via an Originating Summons, for an order for the other parent to return the child.</p> <p>The Malaysian court has jurisdiction over the child once the child is physically within the jurisdiction whether they are citizens or foreigners and regardless there is a foreign court order in relation to the child.</p> <p>A Malaysian court is not bound to give effect to the custody order of a foreign court if it would not be in the welfare and best interest of the child. It is entitled to enter into the merits afresh and form an independent judgment of its own on custody,</p>

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		<p>applying Malaysian law, on the basis of what it considers is in the best interest and the welfare of the child.</p> <p>The Malaysian Court of Appeal has held that if the Court is satisfied “no obvious real or immediate harm” would befall the child if returned, children of foreign nationals who are only transient visitors to Malaysia will be returned to the country “where the child belongs, ordinarily resides or with which they have the most real and substantial connection”, without a full inquiry into the dispute.</p> <p>The Court of Appeal held that the duration of protection afforded to a child should only be for as long as the child/children can lawfully remain in the country (See: Neduncheliyan Balasubramaniam v Kohlia Shanmugan [1997] 3 MLJ 768 and Herbert Thomas Small v Elizabeth Mary Small [2006] 6 MLJ 373).</p> <p>The situation is not so clear if one of the parents is a Malaysian national and is able to apply for rights of residence for the child/children.</p>
Maintenance for a child	A parent or guardian may seek maintenance from the other parent to support a child.	An applicant (parent/guardian) may file a formal application for child maintenance at the High Court pursuant to section 92 and 93 LRA and/or section 3 MWCMA

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		<p>Under the LRA, such maintenance can be sought for a child till he/she reaches 18 years unless: -</p> <ul style="list-style-type: none"> • the child is suffering from a physical or mental disability; or • the child is pursuing further or higher education or training; <p>in which case, it expires on the ceasing of the disability or on completion of education or training (section 95 LRA).</p> <p>Child maintenance is assessed based on the means or station in life of the parents and needs of the child.</p>
<p>Enforcement of Cross Border Maintenance Orders</p>		<p>A foreign maintenance order may be enforceable in Malaysia and vice versa if the foreign country is a reciprocating country and the necessary conditions are met (See: Maintenance Orders (Facilities for Enforcement) Act 1949 (MOFE)).</p> <p>Enforcement of Foreign Maintenance Orders in Malaysia</p> <ul style="list-style-type: none"> • The MOFE provides the mechanism for a certified copy of the maintenance order made in a reciprocating country to be registered in the appropriate Malaysian local court by the Minister charged with responsibility for the

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		<p>Judiciary. Once registered, the maintenance order has the same effect as if it had been originally obtained in the local court and is enforceable in Malaysia.</p> <ul style="list-style-type: none"> • If not a reciprocating country, the applicant may file a fresh action in court via an Originating Summons, the foreign court order being the basis for the application, in order to enforce the foreign order. <p>Enforcement of Malaysian Maintenance Order Overseas</p> <ul style="list-style-type: none"> • Under the MOFE, upon proof to the Malaysian court that the person against whom the order was made is a resident in a reciprocating country, the court sends a certified copy of the order to the Minister in charged with responsibility for foreign affairs for transmission to the appropriate authority in the reciprocating country for enforcement. • The MOFE also gives the court discretion to make provisional orders of maintenance against persons resident in reciprocating countries, even in the absence of that person. This provisional order has no effect unless and until confirmed by a competent court in

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		<p>the reciprocating country by a summons being issued, calling on the person to show cause why that order should not be confirmed. Similarly, a local court can enforce provisional orders from reciprocating countries against persons resident in Malaysia.</p>
Jurisdiction	<p>Applications to stay proceedings and/or challenge the jurisdiction of another country to hear a matter where there are parallel proceedings in Malaysia.</p>	<p>A parent/guardian may challenge the jurisdiction of the Malaysian court or of a foreign court to make orders pertaining to their child by filing the following applications in the High Court: -</p> <ul style="list-style-type: none"> a) <u>a forum stay application</u> – to stay the pending Malaysian proceeding on ground that Malaysia is not the proper forum for this dispute (there being a foreign jurisdiction which is more suitable); or b) <u>an anti-suit injunction</u> – to restrain the other parent/guardian from filing or proceeding with the proceedings in the foreign court. Note: there must be pending proceedings in Malaysia on the matter before an anti-suit injunction can be filed. <p>Both applications may be made by filing a Notice of Application supported by an affidavit in the existing Malaysian proceedings.</p>

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Injunctive relief	Urgent applications may be made to prevent the removal of a child from the jurisdiction.	<p>A parent/guardian may apply for an urgent <i>ex parte</i> order in the High Court <i>vide</i> an Originating Summons or a Notice of Application with supporting affidavits and a certificate of urgency pursuant to section 101 LRA and Order 29 of the Rules of Court 2012 for injunctive relief involving the welfare of a child, e.g. to restrain removal from Malaysia.</p> <p>If such Order is obtained, a notice of the Order can be given to the Immigration Department so that the child can be stopped from leaving the country at the various immigration checkpoints.</p>

C. Information on legal aid and assistance

Legal Aid/Assistance	Availability	Criteria for Eligibility
<p>Legal Aid Department (LAD)</p>	<p>The LAD is funded by the government and handles certain criminal and civil cases. The Legal Aid Act 1971 services are strictly for Malaysian citizens.</p> <p>With the LAD, individuals are required to pay financial contribution as stated in the Legal Aid (Fees and Contributions) (Amendment) Regulations 2023 to the Director General of Legal Aid if the individual's financial resources are more than RM30,000.00 per annum.</p> <p>Legal Aid Department - Availability</p> <p>Legal Aid Department - General FAQ on Legal Aid Services</p>	<p>To be eligible for legal aid, the LAD employs the means test. The means test is essentially to find out if the individual's financial capabilities fall within the necessary boundaries before legal aid is granted.</p> <p>The LAD allows individuals to try out an online test on its official website to see if their financial capacity makes them eligible for legal aid. However, the results from the online test are not considered final.</p> <p>The second test by the LAD is known as the merits test. The merits test is where the LAD weighs the merits of an individual's case and considers whether or not there are reasonable grounds to grant the individual legal aid.</p> <p>Legal Aid Department - Process of Applying for Legal Aid</p> <p>Legal Aid Department - Means Test</p>
<p>Bar Council Legal Aid Centres (BCLAC)</p>	<p>BCLAC is a legal aid service established by the Malaysian Bar to provide free legal advice and representation to those who cannot afford private legal services. Its services are extended to Malaysian citizens as well as non-citizens.</p> <p>Malaysian Bar Legal Aid Centres in Malaysia</p>	<p>To be eligible for legal aid, the BCLAC also employs the means test. With BCLAC, the applicants must meet strict financial criteria. Any interested applicants may visit the nearest BCLAC together with supporting documents and the applicant can then fill out a form for BCLAC to assess financial capabilities.</p> <p>The BCLAC also implements the merits test where the merits of an individual's case are reviewed by</p>

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	<p>No professional fees are payable by successful applicants, though there may be nominal disbursement/processing fees.</p> <p>In December 2024, the Malaysian Bar introduced a collaboration between the Malaysian Bar and the Embassy of Indonesia known as the Indonesian Citizens' Legal Aid Scheme ("I-CLAS") with an objective to ensure that Indonesian nationals in Malaysia will have access to legal representation through BCLAC.</p> <p>Malaysian Bar Press Release - The Malaysian Bar and Embassy of the Republic of Indonesia in Kuala Lumpur Join Hands to Enhance Access to Justice for Indonesian Nationals</p>	<p>counsellors to provide guidance on the actions required.</p> <p>The Selangor Bar - Information on Legal Aid</p>
<p>Yayasan Bantuan Guaman Kebangsaan (YBGK)</p>	<p>YBGK is Malaysia's national legal aid foundation primarily established to provide free legal assistance in criminal matters at all stages, from arrest to trial especially for individuals unable to afford legal counsel.</p> <p>YBGK is empowered to provide free legal aid to any families in conflict with the law, regardless of the context, including those arising from cross-border family or custody</p>	<p>YBGK provides free legal aid services to all Malaysian citizens (regardless of their income) and to non-citizens below the age of 18 for matters involving arrest, remand, bail applications and/or mitigation of sentences.</p> <p>Malaysian citizens and non-citizens below the age of 18 who has an income below RM36,000.00 per annum is eligible for legal aid from YBGK for trial and/or appeal matters.</p>

Legal Aid/Assistance	Availability	Criteria for Eligibility
	<p>disputes that lead to criminal allegations such as abduction, illegal entry, or related offences.</p>	<p>For legal aid services involving trials and/or appeals, a means test will be conducted to determine the eligibility of persons who can receive legal aid.</p> <p>Yayasan Bantuan Guaman Kebangsaan (YBGK) Malaysian Bar Council - Information of YBGK</p>
<p>Welfare Department of Malaysia</p>	<p>Individuals may reach out to the Welfare Department of Malaysia to request for assistance and support.</p> <p>Several key services provided by the Welfare Department include counselling, referrals for legal aid, shelter and emergency assistance.</p> <p>Welfare Department of Malaysia MyGovernment Portal</p>	<p>Individuals may seek certain types of assistance from the Welfare Department, especially if they are vulnerable or in need of protection. The department can be approached to register cases where there are welfare concerns for children, regardless of the nationality of the parents or parties involved.</p> <p>The Welfare Department focuses on the welfare and protection of a child in child disputes. They manage cases where children may be at risk or require intervention, including custody disputes involving foreign parents.</p>
<p>Non-Government Organizations (NGOs)</p>	<p>Malaysia is home to several NGOs that provide free and confidential services to help individuals involved in children disputes to navigate the justice system and access services from various agencies, including the</p>	<p>Individuals including children can seek assistance from NGOs around Malaysia, regardless of the individual's race, religion, age or nationality.</p> <p>Malaysian NGOs which specify in assisting vulnerable individuals include, amongst others, the following: -</p>

Legal Aid/Assistance	Availability	Criteria for Eligibility
	<p>police, hospitals, welfare department, courts, etc.</p> <p>In Malaysia, NGOs may assist by providing protection, advocacy, and support services.</p>	<p>(a) Women's Aid Organisation (WAO) Women's Aid Organisation (WAO)</p> <p>(b) Family Frontiers Family Frontiers</p> <p>(c) Women's Centre for Change Women's Centre for Change</p> <p>(d) Yayasan Chow Kit Yayasan Chow Kit</p> <p>(e) Suka Society Suka Society</p> <p>(f) All Women's Action Society All Women's Action Society</p> <p>(g) P.S. The Children P.S. The Children</p>

Legal Aid/Assistance	Availability	Criteria for Eligibility
		<p>(h) Voice of the Children Voice of the Children</p> <p>(i) Perak Women for Women Perak Women For Women</p> <p>(j) Father's Rights Association of Malaysia Father's Rights Association of Malaysia</p>

D. Other Resources

Note: The URLs to further resources are provided in the relevant sections above.

E. Disclaimers

1. The Resource Page will provide disclaimers along these lines:
 - a. The information in the above write-up is provided only for general guidance and is not intended to be taken as legal advice. Readers and/or users should refrain from acting on the above information without first seeking independent legal advice.
 - b. The availability of legal aid and assistance is subject to the law and policy of each jurisdiction.
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