

The federal constitution of malaysia

[Countries](#), [United States](#)



Introduction The Malaysian Government follows the Constitution of the Federation of Malaya which was promulgated on Merdeka day, August 31, 1957 (revised in 1963) in setting up its administrative and policy making decisions. Malaysia practices parliamentary democracy and is ruled as a constitutional Monarchy with Yang di Pertuan Agong as the head of the country. Under the constitution, Malaysia as a federation is ruled as a Constitutional Monarchy with the appointment of the Yang di-Pertuan Agong (King or Supreme Sovereign) as the head of the country. The federal Constitution of Malaysia divides the authority of the federation into its Executive, Legislative, and Judiciary authority. The Yang Di-Pertuan Agong

The election of Yang Di-Pertuan Agong The Yang Di-Pertuan Agong is appointed once in every five years from a pool of nine Sultans who head the nine states in Malaysia. The appointment is systematic and each of the nine Sultans has the opportunity to ascend the throne of the Yang Di-Pertuan Agong based on his turn in the cycle. In the event of any of the circumstances below, a sultan will not automatically be elected as the Yang Dipertuan Agong even though it may be his turn in the cycle: - If he is a minor - If he has expressed his desire not to ascend the throne - If he is ailing in mind and body and has been found to be unfit in any way to lead the country as the Yang Di-Pertuan Agong When the office is not occupied, the Conference of Rulers meets to elect a Sultan to fill the vacancy. The first ruler who obtains not less than 5 votes from the members in the Conference is then elected and shall hold office for a term of five years. The Role and Privileges of the Yang Di-Pertuan Agong As mentioned earlier, the Yang Di-Pertuan Agong is the supreme head of state in Malaysia and he acts on the

advice of the Parliament and the Prime Minister, who heads the Cabinet. However; the appointment of the prime minister; the requisition of a meeting for the conference of rulers concerning the privileges and status of sultan and also the dissolution of Parliament (even against the advice of the Prime Minister) are all on his own discretion. In matters pertaining to Parliament, the Yang Di-Pertuan Agong is given the right to appoint senators on the advice of the Prime Minister. All acts that have been passed by the two main houses of Parliament have to be scrutinized by him before being made into laws. As the head of the Judicial Authority, the Yang Di-Pertuan Agong has the legal right to appoint the Chief Justice, Federal and High Court judges based on the guidelines stipulated in the Federal Constitution and acting on the advice of the Prime Minister. He is also given the privilege of pardoning wrongdoers and civil offences committed in the Federal Territories of Malaysia, and override sentences passed out by the Military Court. He is the highest commander of armed forces in the country. In states that do not have a Sultan as their head, the Yang Di-Pertuan Agong is the head of religion and thus, has the power to pardon offences and override sentences passed out by the Syariah Courts in these states. The Yang Di-Pertuan Agong also has the highest honour and is given the privilege of conferring awards, orders of chivalry and other honours. The Conference of Rulers The Conferences of Rulers was established in 1948 by the Constitution of the Federation of Malaya. It consists of nine sultans and four governors or the Yang Di-Pertua Negeri. Its main function is to appoint the Yang Di-Pertuan Agong and his Deputy. However, this task is left exclusively to the nine sultans. The Conference of Rulers has to be consulted on matters pertaining

to the alteration of state boundaries, extension of the Federation, religious matters pertaining to Islam and any Bill in the Constitution which has to be amended. Matters that affect public policy or the special privileges accorded to the sultans require consultation with the Conference of Rulers. All meetings of the Conference of Rulers have to be attended by the Prime Minister, Menteri Besar of all states and Chief Ministers or Ketua Menteri with the exception of the meeting to appoint the Yang-Di-Pertuan Agong and his Deputy. Executive Authority refers to the power to govern the country. The Yang Di-Pertuan Agong is the head of the Executive Authority. However, he acts on the advice of the Prime Minister who heads the Cabinet. Hence, the Prime Minister is the Chief Executive and the head of the Government. The Prime Minister, Cabinet and the government administrative machinery are given the task of carrying out executive functions. The Functions of the Cabinet The Yang Di-Pertuan Agong appoints a council of Ministers to form the Cabinet to advise him on the execution of his functions as the head of the Executive Authority. They are appointed based on the advice of the Prime Minister. The Cabinet comprises the Prime Minister and a number of Ministers, all of whom must be members of either the Senate or House of Representatives. Chaired by the Prime Minister, the Cabinet, being the highest policy-making body in the country, meets regularly to formulate the policy of the government. Each Minister holds a different portfolio and is responsible collectively to Parliament for every decision made by the Cabinet. The Prime Minister and Ministers of the Cabinet The Prime Minister is the head of the Government in Malaysia and is appointed by the Yang Di-Pertuan Agong from the political party that has the majority seats in the

House of Representatives. The Prime Minister has to fulfill certain criteria to fill in the position and these includes being born in Malaysia and is a citizen of the country. As the head of the cabinet, the Prime Minister is primus inter pares, or in English terms, the first among equals. As the executive head of the Government, the Prime Minister answers to the Yang Di-Pertuan Agong on all matters pertaining to the Government. The main tasks of the Prime Minister are to preside over the Cabinet, coordinate policies and efforts of each portfolio in the government to aid in the smooth administration of the country. In addition, he has other constitutional and statutory obligations, including advising the Yang Di-Pertuan Agong on the appointment of judges, ministers in the Cabinet, the service & Elections Commission and various senior positions in the Civil Service. Unlike the position of the Prime Minister, the Deputy Prime Minister's position has not been established by the Federal Constitution. He is, however, the most important person after the Prime Minister who will carry out the administration process of the country whenever the Prime Minister is not present or unable to carry out his duties.

Legislative In Malaysia, Legislative authority is in the hands of the Parliament, which comprises the Senate, House of Representatives and the Yang Di-Pertuan Agong who heads the Legislative Council. The Legislative Council functions as a law maker and has the authority to raise taxes and authorise expenditure. The Ninth Schedule of the Federal Constitution states that legislative power is shared between the Federal Government and State Government, and systematically distributes it in a Federal List, State List and a Concurrent List. The Federal List covers the areas of external affairs, defense, internal security, civil and criminal war, citizenship, finance,

commerce and industries, shipping, communication, health and labour. The State List comprises areas of land, agriculture, forestry, local government, Muslim Law and several others. In the Concurrent List, the areas covered are governed by both the Federal Government and the State Government and include social welfare, scholarship, wildlife protection, and town and country planning. It should be noted, however, that should any dispute arise in these areas or there be any inconsistency among them, the Federal law takes precedence over State law. Parliament and Its Functions As the supreme Legislative Authority in the country, Parliament formulates the laws that are enforced in the nation and controls the finances of the Government.

Parliament also has the sole authority to raise Federal taxes as stipulated by the law and use revenue channeled into the Consolidated Federal Funds.

Parliament also acts as a synchronization tool in which public opinions on national affairs are gathered and debated upon. Through this forum, the country is assured that all Government policies are in line with the wishes of the citizens. The members of the House of Representatives and the Senate are given special privileges known as "Parliamentary Privileges", which prevent them from being tried in a court of law on any offences which have taken place in Parliament. The Federal Constitution also makes a provision for these privileges as stated in Article 63(A), in which the members of parliament enjoy immunity from civil as well as criminal proceedings with regards to any utterances made or any vote given by them in Parliament.

These privileges are important since they enable the members of parliament to discuss freely and at length, and debate over any mispropriety, scandals and other issues which affect the nation. However, if any member breaches

these privileges or stands in contempt of any House, punishment will be strictly imposed on this particular person. The Senate and the House of Representatives The Senate comprises 69 members, known as Senators. Of this number, 40 are appointed by the Yang Di-Pertuan Agong, from among citizens believed to possess excellent records in public services, businesses, trade and commerce, have contributed much to the benefit of the public or are representatives of ethnic or minority groups. Each state will select two representatives from its Legislative Assembly and this accounts for the other 26 senators. The final three members of the Senate will be appointed by the Yang Di-Pertuan Agong where two will represent the Federal Territory of Kuala Lumpur, and one will represent the Federal Territory of Labuan.

Senators have to be 30 years and older and remain in their office for a three-year term, after which another senator will be appointed to serve the Senate. After the first term, they cannot be re-elected for a continuous term or become a member of the Senate again. If another Senator is appointed to replace a Senate member who is on leave or has died, then the new Senator will hold this position for the time remaining until the term expires. The Senate reviews all Bills forwarded to it after these Bills have been passed by the House of Representatives, and has the right to delay the enforcement of any bill forwarded to them for a period not exceeding one year. The exception, however, lies with any Money Bill, which has to be passed without any amendments or delay. It should also be noted that the Senate has no authority to revoke any bill. Apart from these functions, the Senate acts as a forum in which public officers and politicians are given the opportunity to discuss issues of public interest. The House of Representatives consists of

219 elected members who must be 21 years old and above. The life span of the House of Representatives is five years and members are elected every five years, consistent with the country's General Election. The political party that wins the majority of the seats contested will form the Government. The House of Representatives functions as the body that formulates laws for the country. A bill is usually formed in the House of Representatives, where it is debated upon and passed, and sent to the Senate. The House of Representatives also acts as forum for its members to debate and question government policies. No member of the Senate can become a member of the House of Representatives or otherwise. In addition to this criteria, no member of the House of Representatives is allowed to represent more than one district of election or any Senate member hold two seats in the Senate.

Legislative Proceedings A Bill may originate in any two Houses; except a Money Bill, which has to originate from the House of Representatives. Bill is required to undergo 4 stages, which are The First Reading, The Second Reading, Committee Stage & the Third Reading. The first stage known as the First Reading, is merely a formality in which a minister in the House of Representatives will stand up and table the Bill. This is followed by the Second Reading and the most important one, which may take place on the same day, (with the exception of certain bills) where the policy of the bill is presented by the Minister. If the bill is supported by another member of the House of Representatives, it is then discussed and debated in detail. At the Committee level, which comes after the Second Reading, members may reject or amend the bill. If the House finds the Bill favourable, members take a vote by balloting and the Bill then moves on to the Third Reading. In the

Third Reading, the particulars of the Bill will be debated and only errors in spelling and syntax may be amended. From here, the bill moves on to the Senate or will be sent to the House of Representatives if the Bill originates from the senate. In the Senate, the Bill goes through the same procedure and if it is approved, the Bill will be presented to the Yang Di-Pertuan Agong, who will then seal it with the Keeper of the Rulers' Seal. Only after being gazetted in the Government Gazette, the bill will then become a Law.

Judiciary As stated in the Federal Constitution, the judiciary is given the authority to hear and determine criminal matters, interpret the legality of any legislative and executive acts and the Federal and State Constitutions. The Head of the Judiciary is the Lord President of the Federal Court, which is the highest court in Malaysia. In Malaysia, Judicial Authority is vested in the Superior and Subordinate Courts. The Superior Courts comprise the Federal Court, Court of Appeal, the High Court of Malaya and High Courts of Sabah and Sarawak. In Peninsular Malaysia, the Subordinate Courts are established under the Subordinate Court Act 1948, and comprise the Penghulu's Court, Magistrate's Court and Sessions Court. In East Malaysia, based on an amendment made in 1981 to the Subordinate Court Act 1948, the Subordinate Courts comprise the Court, Magistrate's, Native Court and Sessions Court. Hierarchy of the Malaysian Judicial System [pic] [Source: (<http://www.cjljlaw.com/auth/open?url=/db/legalsys/courts.htm>) In order to execute its judiciary functions without being partial in any way, the Judiciary is independent of the Legislative Authority and Executive Authority. This is clearly meted out in the Federal Constitution of Malaysia which has provided some safeguards to ensure that judges can carry out their duties in their

capacity as the judiciary without fear or favour or acting in accordance with the desires and wishes of either the Legislative or Executive Authority. The Superior Courts The Superior Courts are divided into Federal Courts, the Court of Appeal, the High Court of Malaya, and High Court of Sabah and Sarawak. Being the highest court in Malaysia, the Lord president of the Federal Court is the head of the Judiciary. The Federal Court comprises the Chief Justice, the President of the Court of Appeal, the Chief Judge of Sabah and Sarawak, and six Federal Court Judges. In each proceeding to be heard by the Federal Court, there has to be a minimum number of three judges. According to Article 121 (1) of the Federal Constitution, the Federal Court has authority over appeals and can be referred to on various matters except those which come under the jurisdiction of the Syariah Court. Among its functions include hearing appeals on decisions meted out by the High Court in both civil and criminal cases; to hear exclusively matters between any state and the Federal Government and issues pertaining to the Federal and State legislation; matters arising from the High Court; and issues pertaining to the Federal Constitution. The Court of Appeal came into effect on 24th June 1994. The Court of Appeal is presided over by the President of the Court of Appeal and 8 judges. As stated in Article 121 (1B) of the Federal Constitution, the Court of Appeal is authorized to hear any appeal and decide on the outcome of any decision made by the High Court or criminal matter decided by the Sessions Court. There are two High Courts in Malaysia, which are the High Court of Malaya and High Court of Borneo (Sabah and Sarawak). The High Court has unlimited power in the exercise of its jurisdiction over criminal and civil cases. However, only cases that are beyond the jurisdiction

of the subordinate courts are brought before the High Court. The High Court consists of two Chief Judges (one in Peninsular Malaysia and one in Sabah and Sarawak) and more than 50 Judges and Judicial Commissioners.

Subordinate Courts The Subordinate Courts in Peninsular Malaysia are divided into the Sessions Court, Magistrate's and Penghulu's Court. In East Malaysia, the Subordinate Courts comprise the Sessions Court, Magistrate's Court and Native Court. The Sessions Court is the highest of the subordinate courts and has the authority to hear all matters criminal in nature, except those that carry the death sentence. In civil cases, the Sessions Court can hear matters pertaining to tenancy agreements, motor vehicles, accidents and many more as long as the value disputed does not exceed RM250, 000. In the case of the Magistrate's Court, there are two, known as the First Class Magistrate's Court and Second Class Magistrate's Court. In either court, one magistrate presides. The first class magistrate has jurisdiction to hear offences which carry sentences not exceeding a prison term of 10 years, offences punishable with a fine and civil cases involving claims below RM25, 000. The maximum sentence a magistrate can dish out is 5 years imprisonment, 12 strokes of the rotan, and a fine of RM10, 000 or any combination of above. The second class magistrate has the jurisdiction to hear offences of which the maximum term of imprisonment does not exceed a year or punishable with a fine only. The magistrate may sentence an offender to a maximum of 6 months' imprisonment, a fine not exceeding RM1, 000 or both. The Penghulu's Court is the lowest of the Subordinate courts in Peninsular Malaysia. This court has the jurisdiction to hear trials involving minor offences that carry a fine not exceeding RM25. In civil

matters, the Penghulu's Court may only hear disputes not exceeding RM50. In Sabah and Sarawak, the Native Courts have jurisdiction over matters pertaining to native laws and customs in which both parties are native and involve religious, matrimonial or sexual issues. For civil cases, this particular court can hear cases that involve disputes not exceeding RM50. It is under the scrutiny of the District Officer. Other Courts The Juvenile Courts have similar jurisdiction with the Magistrate's Court and hear cases involving offenders aged 18 and below. This court comprises a President and two lay assessors who advise him on the sentence. This Court is closed to the public and if an offender is found guilty, he or she is dealt with under the provisions of the Juvenile Act until the age 21. All appeals on decisions made by the Juvenile Court are heard by the High Court. The Syariah Court deals with matters pertaining to the religious laws of the Muslims and its jurisdiction is solely over Muslims. While this is true, it is also stated in Article 121 of the Federal Constitution that the secular courts of Malaysia do not have jurisdiction over matters that fall into the jurisdiction of the Syariah Court. The Court-Martial has jurisdiction over any member of the various military forces in the country. It consists of a President and at least two officers who must be present during a trial. The Special Court was set up under Article 182(2) of the Federal Constitution which states that " any proceedings by or against the Yang Di-Pertuan Agong or the Ruler of a State in his personal capacity shall be brought in a Special Court established under clause (1) of Article 182." This court has exclusive jurisdiction to hear all offences committed in the Federation by the Yang Di-Pertuan Agong or the Ruler of a State.