



# LAWS OF MALAYSIA

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REPRINT

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**Act 166**

## **LEGAL PROFESSION ACT 1976**

*Incorporating all amendments up to 1 January 2006*

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**LEGAL PROFESSION ACT 1976**

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# LAWS OF MALAYSIA

## Act 166

### LEGAL PROFESSION ACT 1976

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**LAWS OF MALAYSIA****Act 166****LEGAL PROFESSION ACT 1976**

An Act to consolidate the law relating to the legal profession in Malaysia.

[*Peninsular Malaysia—1 June 1977, P.U. (B) 327/77*]

**BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

**PART I****PRELIMINARY****Short title and commencement**

1. (1) This Act may be cited as the Legal Profession Act 1976.

(2) The Minister may appoint different dates for the coming into operation of the different parts or provisions of this Act and different dates may be appointed for the coming into operation of this Act in Peninsular Malaysia, Sabah and Sarawak.

**Application**

2. This Act shall apply throughout Malaysia but shall only be made applicable to Sabah and Sarawak with such modifications as the Yang di-Pertuan Agong may by order make; and such Order shall be published in the *Gazette*.

**Interpretation****3.** In this Act unless the context otherwise requires—

“advocate and solicitor”, and “solicitor” where the context requires means an advocate and solicitor of the High Court admitted and enrolled under this Act or under any written law prior to the coming into operation of this Act;

“articled clerk” has the meaning assigned to it in section 20;

“Bahasa Malaysia Qualifying Examination” means an examination conducted by the Board or other persons appointed by the Board for that purpose;

“Bar Council” and “Council” mean the central council of the Malaysian Bar established under section 47;

“Bar Committee” means a Bar Committee elected under section 70;

“the Board” means the Qualifying Board established under section 4;

“client” includes—

- (a) in relation to contentious business, any person who as a principal or on behalf of another person retains or employs, an advocate and solicitor, and any person who is or may be liable to pay a solicitor’s costs;
- (b) in relation to non-contentious business, any person, who as a principal or on behalf of another, or as a trustee, executor or administrator, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, an advocate and solicitor, and any person for the time being liable to pay an advocate and solicitor for his service and costs;

“Compensation Fund” and “the Fund” mean the fund maintained and administered in accordance with section 80;

“contentious business” means business done by an advocate and solicitor, in or for the purpose of proceedings begun before a Court of justice, tribunal, board, commission, council, statutory body or an arbitrator;

“costs” includes fees, charges, disbursements, expenses and remuneration;

“Court” means the High Court or a Judge thereof when sitting in open Court, and “Judge” means a Judge of the High Court sitting in Chambers;

“legal officer” means a qualified person in the judicial and legal service;

“Malaysian Bar” and “Bar” means the body corporate established under section 41;

“the Ordinance” means the Advocates and Solicitors Ordinance, 1947 [*M.U. 4 of 1947*];

“pleader” means a pleader entitled to practise at the date of coming into operation of this Act;

“practising certificate” means a certificate issued by the Registrar under section 29;

“qualified person” means any person who—

- (a) has passed the final examination leading to the degree of Bachelor of Laws of the University of Malaya, the University of Malaya in Singapore, the University of Singapore or the National University of Singapore;
- (b) is a barrister-at-law of England; or
- (c) is in possession of such other qualification as may by notification in the *Gazette* be declared by the Board to be sufficient to make a person a qualified person for the purposes of this Act;

“Register of Practitioners” means the annual register kept by the Registrar under section 31;

“Registrar” means the Registrar of the High Court and includes a Deputy Registrar, Senior Assistant Registrar and an Assistant Registrar;

“Roll” means the Roll of advocates and solicitors of the High Court kept by the Registrar under section 28;

“Rules Committee” means the Rules Committee constituted under any written law and empowered to make rules regulating the procedure in the High Court;

“Sijil Annual” means the certificate issued by the Council under section 32;

“Solicitors Costs Committee” means the Solicitors Costs Committee constituted under section 113.

## PART II

### QUALIFYING BOARD

#### **Qualifying Board**

4. There is established a body to be called the Qualifying Board.

#### **Functions of Board**

5. The Board shall have the following functions:

- (a) to prescribe the qualifications required for the entry of any person into articles with a view to his admission as an advocate and solicitor;
- (b) to provide courses of instruction for, and to regulate the training and instruction of, articled clerks;
- (c) to provide for the examination of articled clerks wishing to become qualified persons;
- (d) to decide on the qualifications, if any, other than those set out in paragraphs (a) and (b) of the definition of “qualified person” in section 3, which may entitle a person to become a qualified person for the purposes of this Act;
- (e) to provide courses of instruction for, and for the examination of, persons whose qualifications are not sufficient to make them qualified persons for the purposes of this Act except after undergoing the courses and passing the examination;



- (f) to provide for the management and conduct of the Bahasa Malaysia Qualifying Examination.

### **General power of Board and power to make rules**

**6.** (1) In addition to any other powers conferred by this Act the Board may make rules and do all things which are necessary and incidental in order to carry out into effect the objects of this Part and the functions of the Board.

(2) Without prejudice to the generality of subsection (1) but subject to this Part, the Board may in particular make rules—

- (a) for regulating the meetings and proceedings of the Board;
- (b) for the taking and retaining of articled clerks by principals and for the conduct, duties and responsibilities of the parties;
- (c) for regulating the manner in which articled clerks serve their period of articleship;
- (d) specifying the subjects in which articled clerks are required to be proficient in;
- (e) for the examination from time to time of articled clerks;
- (f) for the exemption of articled clerks from courses of instruction or from examination;
- (g) for the appointment of lecturers and examiners and for the payment of fees to them;
- (h) for the management and conduct of, and the exemption of certain categories of qualified persons and articled clerks from, the Bahasa Malaysia Qualifying Examination;
- (i) for prescribing the forms to be used and the fees to be paid under this Part.

### **Membership of Board**

**7.** The Board shall consist of—

- (a) the Attorney General who shall be the Chairman;
- (b) two Judges nominated by the Chief Justice;

- (c) the Chairman of the Bar Council; and
- (d) a Dean of a Faculty of Law nominated by the Minister of Education.

### **Election of acting Chairman**

**8.** (1) The Chairman shall preside at meetings of the Board; and in the absence of the Chairman, the members of the Board present at the meeting shall elect an acting Chairman who shall have and exercise all the powers of the Chairman.

(2) The Chief Registrar shall be the Secretary of the Board.

(3) The Board shall appoint such officers as it considers necessary and shall have power to pay remuneration to its employees.

### **Meetings of Board and quorum**

**9.** (1) The Board shall meet at such times and such places as the Chairman may appoint.

(2) The Board shall have power to fix a quorum for its meetings.

(3) Each member of the Board shall have one vote and the Chairman of the meeting shall have a casting vote.

### *Qualified Persons*

#### **Admission of advocates and solicitors**

**10.** The High Court may at its discretion and subject to this Act admit as an advocate and solicitor of the High Court—

- (a) any qualified person; and
- (b) any articled clerk who has complied with section 25:

Provided that no person who is a qualified person by reason of his having passed the final examination for the degree or other qualification which makes him a qualified person under paragraph (a), (b) or (c) of the definition of “qualified person” in section 3 shall be admitted as an advocate and solicitor before the degree or other qualification has been conferred upon him.

## **Qualifications for admission**

**11.** (1) Subject to section 14, a qualified person may be admitted as an advocate and solicitor if he—

- (a) has attained the age of eighteen years;
- (b) is of good character; and
  - (i) has not been convicted in Malaysia or elsewhere of a criminal offence as would render him unfit to be a member of his profession, and in particular, but not limited to, an offence involving fraud or dishonesty;
  - (ii) has not been adjudicated bankrupt and has not been found guilty of any of the acts or omissions mentioned in paragraph 33(6)(a), (b), (c), (e), (f), (h), (k) or (l) of the Bankruptcy Act 1967 [Act 360];
  - (iii) has not done any other act which, if being a barrister or solicitor in England, would render him liable to be disbarred, disqualified or suspended from practice; or
  - (iv) has not been, or is not liable to be, disbarred, disqualified or suspended in his capacity as a legal practitioner in any other country;
- (c) is either a Federal citizen or a permanent resident of Malaysia;
- (d) has satisfactorily served in Malaysia the prescribed period of pupillage for qualified persons.

(2) As from the 1 January 1984, no qualified person shall be admitted as an advocate and solicitor unless, in addition to satisfying the requirements of subsection (1), he has passed or is exempted from the Bahasa Malaysia Qualifying Examination.

## **Period of pupillage of qualified person**

**12.** (1) For the purposes of this Part, a qualified person shall during his period of pupillage be known as a “pupil”, and a person with whom a pupil serves his period of pupillage or any part thereof shall be known as a “master”.

(2) A qualified person shall, before he is admitted as an advocate and solicitor, serve a period of pupillage and, subject to this section and section 13, the prescribed period of pupillage shall be nine months.

(3) No qualified person shall, without the special leave in writing of the Bar Council, hold any office or engage in any employment of any kind, whether full-time or otherwise, during his period of pupillage, but nothing in this subsection shall preclude a pupil from receiving remuneration from his master.

### **Exemption from period and qualification for pupillage**

**13.** (1) Subject to subsection (4) a pupil shall serve his period of pupillage with an advocate and solicitor who is and has been in active practice in Malaysia for a total period of not less than seven years immediately preceding the date of commencement of his pupillage:

Provided that the Bar Council may on special grounds allow a pupil to serve his period of pupillage with an advocate and solicitor of less than seven years' standing.

(2) The Bar Council may allow a qualified person to serve different parts of his period of pupillage with different masters.

(3) The Bar Council may, in its sole discretion, exempt a qualified person from any period up to six months' pupillage upon application made to it supported by satisfactory evidence that—

- (a) there are special circumstances justifying a shortening of the period of pupillage; or
- (b) the applicant has for a period of not less than six months been a pupil or read in the chambers of a legal practitioner in active private practice, in the Commonwealth, of more than seven years' standing; or
- (c) the applicant is an articled clerk in Malaysia; or
- (d) the applicant has been engaged in active practice as a legal practitioner by whatever name called in any part of the Commonwealth for a period of not less than six months.

(4) A qualified person who has served in the Judicial and Legal Service for seven years shall be exempted from serving any period of pupillage provided his application for admission as an advocate and solicitor is supported by a certificate from the Attorney General to the effect that he is a fit and proper person to be admitted as an advocate and solicitor.

(5) The Bar Council may, in its sole discretion, upon an application made to it supported by satisfactory evidence in writing given by the Attorney General, exempt a qualified person who has served in the Judicial and Legal Service for at least three years from any period up to a maximum of six months' pupillage.

**Filing of admission petition and enquiries, etc.**

**14.** (1) Upon any petition for admission and enrolment as an advocate and solicitor being filed, the Bar Council shall make or cause to be made full inquiries into the character of the petitioner and, upon such petition being set down for hearing, to forward to the Chief Justice a confidential report of the result of such inquiries.

(2) All the State Bar Committees (if more than one) in the States in which a person applying to be admitted pursuant to section 15 has served his pupillage, shall upon the person's petition being set down for hearing make or cause to be made full inquiries into the character of the petitioner and the confidential report of the result of the inquiries shall be forwarded to the Chief Justice with such comments upon it as the Bar Council may consider necessary.

(3) If any of the reports referred to in subsection (1) or subsection (2) is unfavourable to the petitioner the Chief Justice may, if he thinks fit, direct such report to be filed in Court and a copy thereof to be served on the petitioner and, subject to such directions as the Court may give, such report shall be taken into consideration on the hearing of the petition.

(4) All reports and communications under this section shall be absolutely privileged.

**Petition for admission with affidavit**

**15.** (1) This section shall apply to every person who proposes to apply to be admitted and enrolled as an advocate and solicitor.

(2) An application for admission under this section shall be by a petition to the Court and verified by affidavit.

(3) Every petitioner shall, not less than fourteen days before his petition is to be heard or such shorter period as the Court may allow, file an affidavit exhibiting—

- (a) where applicable, true copies of any documentary evidence showing that he is a qualified person;
- (b) two recent certificates as to his good character;
- (c) a certificate of diligence from his master with whom he served his pupillage in cases where he is required to serve a period of pupillage, or in the absence of such certificate any other evidence as the Court may require showing that he has served such pupillage with diligence;
- (d) where applicable, a certificate signed by the Secretary of the Board that the petitioner has attended the courses of instruction and passed the examinations, if any, required in his case under this Act;
- (e) where applicable, a certificate from his principal that he has satisfactorily served the appropriate period as an articulated clerk;
- (f) true copies of any documentary evidence showing that he is either a Federal citizen or a permanent resident of Malaysia; and
- (g) true copies of any documentary evidence that he has passed or is exempted from the Bahasa Malaysia Qualifying Examination.

(4) The petition, notice, affidavit and certificates referred to in this section shall be in the forms prescribed by the Board.

(5) The petitioner shall file his petition at the Registrar's Office at the Central Registry accompanied by notices intimating that he has so petitioned; such notices shall be posted and continue to be posted at all the High Courts for three months before the petitioner is admitted and enrolled as an advocate and solicitor.

### **Filing of petition and objection**

**16.** (1) A copy each of the petition and the affidavit required to be filed under section 15 together with the true copies of each document exhibited pursuant to that section shall, within seven days of the filing thereof in the Registrar's Office, and not less than ten days or such shorter period as the Court may allow before the date fixed for hearing the petition, be served on the Attorney General, the Bar Council and the State Bar Committee of the State in which the pupil has served any part of his period of pupillage.

(2) If the Attorney General, the Bar Council or any State Bar Committee intends to object to any petition, there shall be served on the petitioner and filed in the Registrar's Office, not less than three clear days or any shorter period as the Court may allow before the date fixed for hearing the petition, a notice of objection which shall set out in brief terms the grounds of objection.

(3) On a notice of objection being filed the petition shall be fixed for hearing within one month or as soon as may be before a Judge of the High Court.

(4) The Attorney General, the Bar Council or the State Committee need not be represented at the hearing of any petition unless the Attorney General, the Bar Council or the State Bar Committee, as the case may be, intends to object to that petition, but no order shall be made upon any petition unless the Court is satisfied that the petition, affidavit and true copies of each document have been duly served as required by subsection (1).

### **Entering of caveat against admission**

**17.** (1) Any person may enter a caveat against the admission of any petitioner and upon such caveat being entered no application for the admission of the petitioner shall be heard unless a notice of hearing of not less than 3 clear days has been served on the person entering the caveat.

(2) Every caveat under this section shall be entered in the Registrar's Office and shall contain the full name, occupation and address of the caveator, a brief statement of the grounds of his objection and an address for service.

(3) If at any time after the admission and enrolment of any petitioner as an advocate and solicitor, it is shown to the satisfaction of the Court that any petition, affidavit, certificate or other document filed by a petitioner contains any statement which is false or misleading in substance or a suppression of any material fact the name of the petitioner may be removed from the Roll.

(4) Where an advocate and solicitor has been removed from the Roll pursuant to subsection (3), the Registrar shall upon any further petition for admission made by the same person bring this fact to the notice of the Court and the Court shall, in the absence of special circumstances refuse to grant such further petition.

### **Admission in special cases**

**18.** (1) Notwithstanding anything contained in this Act, the Court may, for the purpose of any one case and subject to the following subsections, admit to practise as an advocate and solicitor any person who, if he was a citizen of, or a permanent resident in, Malaysia, would be eligible to be admitted as an advocate and solicitor of the High Court and no person shall be admitted to practise as an advocate and solicitor under this subsection unless—

- (a) for the purpose of that particular case he has, in the opinion of the Court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia; and
- (b) he has been instructed by an advocate and solicitor in Malaysia.

(2) Any person applying to be admitted under this section shall do so by originating motion verified by his own affidavit, or that of the advocate and solicitor instructing him, stating the names of the parties and the brief particulars of the cause or matter in which the applicant intends to appear, and exhibiting in the affidavit the consent of the applicant to appear in the cause or matter; the originating motion and affidavit shall be served on the Attorney General, the Secretary of the Bar Council and of the State Bar Committee in the State where such cause or matter is to be heard and the other party to the cause or matter; at the time of such service the applicant shall pay one hundred ringgit each to the Secretary of the Bar Council and of the State Bar Committee to cover their costs incurred in the application.



(3) Before admitting a person under this section the Court shall have regard to the views of each of the persons served with the application.

(4) The Registrar shall on payment of the prescribed fee, issue to every person admitted under this section a certificate to practice specifying in it the causes or matters in which he is permitted to appear; and any person to whom a certificate to practise has been issued under this subsection shall for the purpose of his employment in such causes or matters be deemed to be a person to whom a certificate to practise has been issued under section 29.

(5) The Registrar shall not enter upon the Roll but shall keep a separate roll for the names of persons admitted under this section.

(6) In this section the words “cause or matter” include any interlocutory or appeal proceedings connected with any cause or matter.

### **Right of appeal by objectors**

**19.** The petitioner under section 15 and the applicant under section 18 and any one or more of the following namely—the Attorney General, the Board, the Secretary of the Bar Council or the Secretary of any State Bar Committee objecting to any petition or to the making of any order on an originating motion pursuant to section 18 shall have a right of appeal to the Supreme Court:

Provided that a Judge who have made the order appealed from shall not be a member of the Federal Court.

### *Articled Clerks*

### **Qualification for articled clerks**

**20.** (1) Except as authorized by this Act and any rules made by the Board no person shall enter into articles with a view to his admission as an advocate and solicitor unless he—

(a) has attained the age of seventeen years;

(b) is of good character; and

(c) has the necessary educational qualifications as may be prescribed by the Board.

(2) For the purposes of this Part, a person who has entered into articles with an advocate and solicitor shall be known as an “articled clerk” and an advocate and solicitor who takes an articled clerk shall be known as a “principal”.

### **Conditions to be a principal and discharge of clerk**

**21.** (1) No advocate and solicitor shall, without the special leave in writing of the Board, qualify as a principal unless he has been in active practice as an advocate and solicitor in Malaysia for a period of not less than seven years immediately preceding the commencement of the articles and is in active practice.

(2) No principal shall have more than two articled clerks at the same time.

(3) No principal shall take or retain any articled clerk after he has ceased from active practice as an advocate and solicitor in Malaysia or while the articled clerk is employed by another advocate and solicitor.

(4) If any advocate and solicitor takes an articled clerk in contravention of this section the Board may of its own motion discharge the articles of the articled clerk upon such terms, including terms as to return of any premium, as the Board thinks fair and reasonable.

### **Discharge of clerk for unfitness**

**22.** If any allegation is made to the Board as to the unfitness of an articled clerk to be an advocate and solicitor, and the Board, after inquiring into that allegation is satisfied that the articled clerk is unfit to be an advocate and solicitor, the Board may of its own motion discharge the articles of that articled clerk upon such terms, including terms as to return of any premium, as the Board thinks fair and reasonable.

### **Discharge of clerk generally**

**23.** If the Board is satisfied on application made either by a principal or an articled clerk that the articles ought to be discharged, the Board may discharge the articles upon such terms, including terms as to return of any premium, as the Board thinks fair and reasonable.

**Period of articles and condition of articles**

**24.** (1) The period of articles for an articled clerk who is a graduate of a University recognized by the Board for the purpose of this section shall be three years.

(2) The period of articles for every other person shall be five years.

(3) No articled clerk shall, without the special leave in writing of the Bar Council, hold any office or engage in any employment of any kind, whether full time or otherwise, during his articles but nothing in this subsection shall preclude an articled clerk from receiving remuneration from his principal.

**Condition of admission of articled clerk**

**25.** (1) Subject to sections 22 and 23 and any rules made by the Board no articled clerk shall be admitted and enrolled as an advocate and solicitor unless he—

(a) has satisfactorily served the prescribed period of articles;

(b) has attended such courses of instruction as may generally or specially be prescribed by the Board; and

(c) has passed such examination as may be prescribed by the Board.

(2) As from the 1 January 1984, no articled clerk shall be admitted and enrolled as an advocate and solicitor unless, in addition to satisfying the requirements of subsection (1), he has passed or is exempted from the Bahasa Malaysia Qualifying Examination.

*Reviews*

**Appeal from the decision of Board to Judge**

**26.** (1) Any person dissatisfied with any decision of the Board may apply to a Judge for a review of the decision.

(2) If the Board fails to determine any request within six weeks after it has been first submitted to it, the applicant may apply under this section as if the request had been determined adversely to him.

(3) Every application under this section shall be made by summons in chambers on the petition of the appellant if he has filed a petition, otherwise by originating summons; the Judge hearing the application may in his discretion adjourn the application into open Court.

(4) Every summons in chambers or originating summons, as the case may be, shall be supported by evidence on affidavit and shall be served together with the affidavit on the Board; such summons in chambers or originating summons shall not be heard before the expiry of twelve days after the date of service on the Board.

(5) At or before the hearing of the application the Board may submit to the Judge a confidential report on the applicant; such report shall not be filed in Court but a copy thereof shall be furnished to the applicant.

(6) A confidential report under this section shall be privileged.

(7) At the hearing the Judge may dismiss the application or make any order under this Act as he considers fair and reasonable.

(8) A Judge who is a member of the Board shall not hear any application under this section.

### *Hearing of Petitions and the Roll*

#### **Hearing by Judge, a member of Board**

**27.** A Judge who is a member of the Board shall not hear any petition for admission.

#### **Roll of advocates and solicitors**

**28.** (1) The Registrar shall keep a Roll of advocates and solicitors with the dates of their respective admission.

(2) The name, with the date of admission, of every person admitted shall be entered upon the Roll in the order of admission.

(3) Every person admitted as an advocate and solicitor shall pay the prescribed fee and the Registrar shall deliver to him an instrument of admission signed by the Chief Justice or the Judge who admitted the petitioner.

(4) This section shall not apply to persons admitted under section 18.

(5) The Roll shall be open to inspection without payment by any person during office hours.

\*PART IIA

SPECIAL PROVISIONS RELATING TO ADMISSION OF  
ADVOCATES AND SOLICITORS

**Attorney General's power to issue Special Admission Certificates**

**28A.** (1) The Attorney General may issue a special certificate for admission as an advocate and solicitor of the High Court (hereinafter referred to as a "Special Admission Certificate") to any person who, in his opinion, satisfies the following requirements:

- (a) (i) is a qualified person; or
- (ii) is not a qualified person, but is in possession of a qualification which renders him eligible to practise as a barrister, or as a solicitor, or as an advocate and solicitor, or otherwise as a legal practitioner by whatever name called, or to be employed in a legal or judicial capacity in the service of any government, in any country, or in a part or division of any country, or in any territory or place, outside Malaysia; and
- (b) has been practising as a barrister, or as a solicitor, or as an advocate and solicitor, or otherwise as a legal practitioner by whatever name called, or has been employed in a legal or judicial capacity by any government or by any authority, organization or body, constituted under any law, or has been sometimes so practising or sometimes so employed, wholly or partly within Malaysia or wholly or partly outside Malaysia, for a period of, or for periods which amount in the aggregate to, not less than seven years.

(2) Where the Attorney General issues a Special Admission Certificate he shall specify therein the period for which the person issued with such Certificate shall be admitted as an advocate and solicitor.

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\*NOTE—This Part come into force on 1 February 1999—see P.U. (B) 33/1999.

(3) A Special Admission Certificate shall be conclusive evidence that the requirements of paragraphs (1)(a) and (b) have been satisfied, and the validity of such Certificate shall not be reviewed or called in question in any court.

(4) In subsection (1)—

“government” includes—

- (i) the Government of Malaysia;
- (ii) the Government of any State in Malaysia; and
- (iii) the government of any country, or of a part or division of any country, or of any territory or place, outside Malaysia; and

“law” includes—

- (i) written law as defined in section 3 of the Interpretation Acts 1948 and 1967 [*Act 388*]; and
- (ii) the law of any country, or of a part or division of any country, or of any territory or place, outside Malaysia.

### **Admission and enrolment as an advocate and solicitor of a person issued with a Special Admission Certificate**

**28B.** (1) A person issued with a Special Admission Certificate may apply by *ex-parte* originating summons to a Judge of the High Court in Chambers to be admitted as an advocate and solicitor of the High Court.

(2) A Judge hearing an application under subsection (1) shall, upon being satisfied as to the genuineness of the Special Admission Certificate and the identity of the applicant, admit the applicant as an advocate and solicitor of the High Court for the period specified in the Certificate; and a person so admitted as an advocate and solicitor shall be enrolled and given an instrument of admission under section 28.

(3) The admission and enrolment of a person as an advocate and solicitor under subsection (2) shall not be reviewed or called in question in any court.

(4) An advocate and solicitor admitted under subsection (2) shall be entitled to renew his admission from time to time upon presenting to the Registrar within a period of two months before the expiry of the period of admission or renewed admission, as the case may be, a Certificate of Renewal issued by the Attorney General at the discretion of the Attorney General:

Provided that, with the leave of the Attorney General in writing, the Certificate of Renewal may be presented to the Registrar at any time after the expiry of the period of admission or renewed admission, as the case may be.

(5) A Certificate of Renewal issued under subsection (4) shall be for renewal of the admission or the renewed admission, as the case may be, for such period as may be specified in such Certificate, and the renewal under subsection (4) shall accordingly be for the period so specified.

(6) The validity of a Certificate of Renewal issued under subsection (4) shall not be reviewed or called in question in any court.

(7) Sections 10 to 19, both inclusive, shall not apply to the admission of a person as an advocate and solicitor under this Part, or to the renewal of the admission or the renewed admission, as the case may be, of such advocate and solicitor.

**Provisions as to Sijil Annual not to apply to an advocate and solicitor admitted under this Part**

**28c.** Sections 32 and 33, or any other provision of this Act relating to a Sijil Annual, shall not apply to an advocate and solicitor admitted under this Part.

**Power of Attorney General to make orders**

**28d.** The Attorney General may, by order published in the *Gazette*, make such provision as he may deem necessary or expedient for giving effect to this Part or carrying out its purposes, and without prejudice to the generality of the foregoing, an order made under this section may provide for—

- (a) any supplemental, incidental or consequential matters in relation to this Part; and

- (b) the removal of any difficulty or anomaly whatsoever in any provision of this Act or in any other written law, or otherwise, that may be occasioned by any provision or provisions in this Part.

### **Provisions of this Part to prevail**

**28E.** This Part or of any order made under this Part shall have effect notwithstanding anything to the contrary or inconsistent therewith contained in any provision of this Act other than this Part, or in any other written law, and this Act (other than this Part) or of any other written law shall be read—

- (a) *mutatis mutandis* with this Part and of any order made under this Part; and
- (b) with all such modifications, adaptations, alterations or changes whatsoever as may be necessary to have the same to accord with this Part and of any order made under this Part.

## PART III

### PRACTISING CERTIFICATES

#### **Advocate and solicitor to make declaration yearly**

**29.** (1) Every advocate and solicitor shall in each year before he does any act in the capacity of an advocate and solicitor deliver or cause to be delivered to the Registrar:

- (a) a declaration in writing stating—
- (i) his full name;
  - (ii) the name under which he practises or the name of the advocates and solicitors or firm of advocates and solicitors employing him; and
  - (iii) the principal and any other address or addresses at which he practises in Malaysia;
- (b) the last Sijil Annual or a true copy thereof, if any, issued to him by the Bar Council; and
- (c) the prescribed fee,

and the Registrar shall on being satisfied that all the necessary documents are in order and that the firm name under which the



advocate and solicitor is practising is on the register maintained under section 85 (1) issue to the advocate and solicitor a practising certificate.

(2) Subject to subsection (3), every practising certificate shall be signed by the Registrar and shall be valid from the date of issue to the end of the year:

Provided that—

- (a) where the name of an advocate and solicitor is removed from, or struck off, the Roll the practising certificate, if any, of that advocate and solicitor shall expire forthwith and the date of such expiration shall be entered by the Registrar on the Register of Practitioners;
- (b) where an advocate and solicitor is adjudicated bankrupt or a receiving order is made against him, the practising certificate, if any, of that advocate and solicitor shall be suspended forthwith, until the consent of the Bar Council to reinstate it is obtained.

(3) Where an advocate and solicitor has duly complied with subsection (1) in the month of January of any year, the practising certificate issued to him in respect of that year shall be deemed to have been in operation from the 1st day of January of that year.

(4) In this section the word “year” shall mean the period from the 1 January in any calendar year to the 31 December in the same calendar year.

### **Disqualification for practising certificate**

**30.** (1) No advocate and solicitor shall apply for a practising certificate—

- (a) unless he is practising or intends to practice either on his own account or in partnership in Malaysia; or
- (b) unless he is or is about to be employed full time in his practice in Malaysia by an advocate and solicitor or a firm of advocates and solicitors in practice in Malaysia;  
or

(c) if he is gainfully employed by any other person, firm or body in a capacity other than as an advocate and solicitor.

(2) For the purpose of this section a qualified person shall not be construed as being gainfully employed if he is serving in the Judicial and Legal Service.

(3) Any qualified person who is gainfully employed in accordance with paragraph (1)(c) shall surrender his practising certificate to the Registrar.

### **Register of Practitioners**

**31.** (1) Upon the issue of every practising certificate the Registrar shall cause to be entered in an annual register known as the Register of Practitioners, the particulars contained in the declaration delivered under paragraph 29(1)(a), and any person may inspect the Register of Practitioners during office hours without payment.

(2) If there is any change with respect to any advocate and solicitor in the particulars referred to in subsection (1) that advocate and solicitor shall within one month thereafter notify the Registrar and the Bar Council, and the Registrar shall thereupon cause the entry to be made in respect of that advocate and solicitor in the Register of Practitioners.

### **Issue of Sijil Annual**

**32.** (1) Subject to this section and sections 33 and 34, the Bar Council shall at any time after the month of June in the preceding year issue a Sijil Annual to an advocate and solicitor within twenty-one days of the receipt of an application under subsection (2) if—

- (a) the Bar Council is satisfied that the application complies with that subsection and any rules made under this section;
- (b) the Bar Council is satisfied that the applicant is not prohibited from holding a practising certificate under section 30;
- (c) the advocate and solicitor has delivered or is exempted from delivering an accountant's report in accordance with section 79;

- (d) the advocate and solicitor is not in arrears in respect of any contribution to the Compensation Fund, or of any subscription or levy lawfully due to the Bar Council or his State Bar Committee under this Act; and
- (e) the advocate and solicitor intends to practise under an approved name.

(2) An application by an advocate and solicitor for a Sijil Annual shall be made in such form or forms as may be prescribed by and in accordance with rules made under this section and shall be accompanied by appropriate certificates showing that paragraph (1)(d) has been complied with.

(3) Disciplinary proceedings may be taken against any advocate and solicitor if in, or in relation to, an application under this section he makes a false statement material to the application.

(4) Subject to this Act, the Bar Council may make rules regulating the issue of Sijil Annual.

(5) Any rules made by the Bar Council under this section shall be signed by the Chairman of the Bar Council.

### **Issue of Sijil Annual in certain conditions**

**33.** (1) Subsection (2) shall have effect with respect to an application for a Sijil Annual made by an advocate and a solicitor—

- (a) after more than twelve months have elapsed since his admission and where he has held no valid practising certificate during that period;
- (b) who has held a practising certificate subject to terms and conditions at any time in the three years immediately preceding his application;
- (c) after more than twelve months have elapsed since he held a valid practising certificate;
- (d) after the \*Disciplinary Committee has ordered a penalty or costs to be paid by him;

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\*NOTE—Any reference to the term of “Disciplinary Committee” or “Inquiry Committee” in this Act before it is amended in 1992 by Act A812 must be construed as a reference to the term “Disciplinary Board” pursuant to the amendment—see *Legal Profession (Amendment) Act 1992 [Act A812] s.2(2)*.

- (e) when having been suspended from practice or having had his name removed from the Roll or struck off the Roll the period of suspension has expired or his name has been restored to the Roll, as the case may be;
- (f) whilst he is an undischarged bankrupt or a receiving order in bankruptcy is in force against him;
- (g) after having been adjudicated a bankrupt and obtained his discharge or after having entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors;
- (h) after having had an order of committal or an order for the issue of a writ of attachment made against him.

(2) In any of the circumstances mentioned in subsection (1), the applicant shall, unless a Judge or the Bar Council otherwise orders, give to the Bar Council not less than four weeks before his application for a Sijil Annual notice of his intention to apply there for and the Bar Council may in its discretion—

- (a) issue a Sijil Annual; or
- (b) notify the applicant that he is required to make an application under section 34.

### **Applicant to apply to Court**

**34.** (1) An advocate and solicitor who is required to make an application under this section or any advocate and solicitor who is dissatisfied with the refusal, neglect or delay in the issue to him of a Sijil Annual may apply to a Judge by originating summons for an order directing the Bar Council to issue him with a Sijil Annual.

(2) A Judge hearing an application under this section may make an order for the payment of costs by or to either the Bar Council or the applicant as he considers fair and reasonable.

PART IV

PRIVILEGES OF ADVOCATES AND SOLICITORS

**Right of advocate and solicitor**

**35.** (1) Any advocate and solicitor shall, subject to this Act and any other written law, have the exclusive right to appear and plead in all Courts of Justice in Malaysia according to the law in force in those Courts; and as between themselves shall have the same rights and privileges without differentiation.

(2) Nothing herein contained shall affect the right which is hereby declared of—

- (a) legal officers, whose duties so require them to do, and qualified persons appointed temporarily to perform the duties of legal officers to appear and plead on behalf of the Government in the Courts;
- (b) the \*Public Trustee, Director General of Insolvency, \*Assistant Public Trustees and †Insolvency Officers to appear and plead in the Courts under any written law relating to such offices; and
- (c) existing pleaders.

**Advocate and solicitor to have name on the Roll before practice**

**36.** (1) Subject to this section, no person shall practise as an advocate and solicitor or do any act as an advocate and solicitor unless his name is on the Roll and he has a valid practising certificate authorizing him to do the act; a person who is not so qualified is in this Act referred to as an “unauthorized person”.

(2) A Judge may, upon application made in Chambers by a Master at the commencement of the pupillage of the Master’s pupil, make an order that the pupil be permitted to appear on behalf of the Master or of the firm in which the Master is practising—

- (a) during the period of three months from the date of the order—
  - (i) before a Judge or a Registrar of the High Court, in Chambers;

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\*NOTE—Any references to the Public Trustee be constructed as the references to the Corporation—see subsection 43(3) of Public Trust Corporation Act [Act 532].

†NOTE—see section 70 Act A1197 which come into force on 1.10.2003.

(ii) before a Sessions Court Judge or a Magistrate, in Chambers;

(iii) before a Registrar of the Subordinate Courts,

to mention a case, including entering judgment in default, or to apply for bail or to take a consent judgment or order; and

(b) at the expiration of the said period of three months in chambers in the High Court and in the Subordinate Courts and before any Magistrate, to conduct any cause or matter.

(3) The Judge shall make the order referred to in subsection (2) if he thinks it fair and reasonable to do so provided always that both the Bar Council and the State Bar Committee have been served with the application and have had an opportunity to be heard on the application.

(4) The period of pupillage shall commence on the date of the filing of the petition referred to in subsection 15(5).

(5) The Master of the pupil, the Bar Council or the State Bar Committee may apply at any time during the pupillage of any pupil to any Judge in Chambers for a variation or rescission of the order referred to in subsection (2) and the Judge shall make such order on such application as in all the circumstances seems to be in the best interest of the profession.

(6) Nothing in this section shall be construed to prevent a legal officer from performing any of his duties without holding a practising certificate or make a legal officer who has no valid practising certificate an unauthorized person.

### **No unauthorized person to act as advocate and solicitor**

**37.** (1) Any unauthorized person who—

(a) acts as an advocate and solicitor or an agent for any party to proceedings or in any capacity, other than as a party to an action in which he is himself a party, sues out any writ, summons or process, or commences, carries on, solicits or defends any action, suit or other proceedings in the name of any other person in any of the Courts in Malaysia or draws or prepares any instrument relating to any proceedings in any such Courts; or

- (b) wilfully or falsely pretends to be, or takes or uses any name, title, addition or description implying that he is duly qualified or authorized to act as an advocate and solicitor, or that he is recognized by law as so qualified or authorized,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand five hundred ringgit or to imprisonment for a term not exceeding six months or to both.

(2) Without prejudice to the generality of subsection (1), any unauthorized person who either directly or indirectly—

- (a) draws or prepares any document or instrument relating to any immovable property or to any legal proceedings or to any trust; or
- (b) takes instructions for or draws or prepares any document on which to found or oppose a grant of probate or letters of administration; or
- (c) draws or prepares any document or instrument relating to the incorporation or formation of a limited company; or
- (d) on behalf of a claimant or person alleging himself to have a claim to a legal right writes, publishes or sends a letter or notice threatening legal proceedings other than a letter or notice that the matter will be handed to an advocate and solicitor for legal proceedings; or
- (e) solicits the right to negotiate, or negotiate in any way for the settlement of, or settles, any claim arising out of personal injury or death and founded upon a legal right or otherwise,

shall, unless he proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence under this subsection.

(3) Any unauthorized person who offers or agrees to place at the disposal of any other person the services of an advocate and solicitor shall be guilty of an offence under this subsection:

Provided that this subsection shall not apply to any person who offers or agrees to place at the disposal of any other person the services of an advocate and solicitor pursuant to a lawful contract of indemnity or insurance.

(4) Every person who is convicted of an offence under subsection (2) or (3) shall, on conviction, be liable for the first to a fine not exceeding five hundred ringgit or in default of payment to imprisonment for a term not exceeding three months and for the second or subsequent offence to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(5) Any act done by a body corporate which if done by a person would be an offence under subsection (1), (2) or (3) or is of the nature or in the manner as to be calculated to imply that the body corporate is qualified, or recognized by law as qualified, to act as an advocate and solicitor shall be an offence under this section and the body corporate shall, on conviction, be liable for the first offence to a fine not exceeding one thousand ringgit and for the second or subsequent offence to a fine not exceeding three thousand ringgit and where the act is done by a director, officer or servant thereof the director, officer or servant shall, without prejudice to the liability of the body corporate, be liable to the punishment provided in subsection (4).

(6) Where any firm does an act which if done by a person would be an offence under subsection (1), (2) or (3) every member of the firm shall be deemed to have committed the offence unless he proves that he was unaware of its commission.

(7) Any person who does any act in relating to a contemplated or instituted proceeding in the High Court which act is an offence under this section shall also be guilty of a contempt of the Court in which the proceeding is contemplated or instituted and may be punished accordingly irrespective of whether he is prosecuted for the offence or not.

### **Certain persons can act as advocate and solicitor**

**38.** (1) Section 37 shall not apply to—

- (a) the Attorney-General or the Solicitor-General or any other person acting under the authority of either of them;
- (b) the \*Public Trustee, Director General of Insolvency, \*Assistant Public Trustee and †Insolvency Officers acting in the course of their duties under any law relating to their offices;

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\*NOTE—Any references to the Public Trustee be constructed as the references to the Corporation—see subsection 43(3) of Public Trust Corporation Act [Act 532].

†NOTE—see section 70 Act A1197 which come into force on 1.10.2003.



- (c) any other public officer drawing or preparing instruments in the course of his duty;
- (d) any person acting personally for himself only in any matter or proceeding to which he is a party or acting solely for a company or organization which he serves as a full time paid employee in any matter or proceeding in which the company or organization is a party, but such person shall have no right to represent the company or organization in Court or in Chambers or attest documents for the company or organization which are required to be attested by an advocate and solicitor;
- (e) any *bona fide* and full-time employee of an insurance company negotiating for the settlement of or settling a claim made or contemplated against any person or body corporate in cases where the claim arising out of personal injury or death relates to a risk insured by that insurance company;
- (f) any arbitrator or umpire lawfully acting under any written law relating to arbitration, settling or attempting to settle the dispute between the parties to the arbitration;
- (g) any full-time member of the academic staff of the Faculty of Law of the University of Malaya acting solely in an advisory capacity upon instructions from a practising advocate and solicitor;
- (h) any accountant drawing or preparing documents in the exercise of his profession;
- (i) any proceeding before the Industrial Arbitration Court or the Syariah Court;
- (j) any person merely employed to engross any instrument or proceeding;
- (k) any approved company auditor drawing or preparing any instrument referred to in paragraph 37(2) (c) or which he is empowered to do under any written law relating to companies;

- (l) any agent duly authorized to the satisfaction of the Registrar of Trade Marks drawing or preparing documents in any matter relating to trade marks;
- (m) any full-time employee of an advocate and solicitor drawing or preparing any document under the authority of a practising advocate and solicitor and for the purposes of his employer.

(2) The words “document” and “instrument” in section 37 do not include a will or other testamentary documents.

### **Instrument and document to be endorsed**

**39.** Every person who draws or prepares any instrument or document referred to in section 37 shall endorse or cause to be endorsed thereon his name and address or the name and address of his firm or the firm employing him and any such person omitting so to do or falsely endorsing or causing to be endorsed any of the instruments shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit.

### **No cost payable to unauthorized person**

**40.** (1) No costs in respect of anything done by an unauthorized person as an advocate and solicitor or in respect of any act which is an offence under section 37 or 39 shall be recoverable by any person in any action, suit or matter.

(2) Any payment to an unauthorized person for anything done which is an offence under section 37 or 39 may be recovered in a Court of competent jurisdiction by the person who has paid the money.

## PART V

### MALAYSIAN BAR

#### **Establishment of Malaysian Bar**

**41.** (1) There is established a body corporate to be called the “Malaysian Bar”.

(2) The Malaysian Bar shall be a body corporate with perpetual succession and a common seal, and with power subject to this Act to sue and be sued in its corporate name and to acquire and dispose of property both movable and immovable and to do and to perform such other acts as bodies corporate may by law perform.

### **Object and powers of the Bar**

**42.** (1) The purpose of the Malaysian Bar shall be—

- (a) to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour;
- (b) to maintain and improve the standards of conduct and learning of the legal profession in Malaysia;
- (c) to facilitate the acquisition of legal knowledge by members of the legal profession and others;
- (d) where requested so to do, to express its view on matters affecting legislation and the administration and practice of the law in Malaysia;
- (e) to represent, protect and assist members or of the legal profession in Malaysia and to promote in any proper manner the interests of the legal profession in Malaysia;
- (f) to establish libraries and to acquire or rent premises to house the libraries and offices of the Malaysian Bar or amenities for the use of members either alone or in conjunction with any other body or society;
- (g) to protect and assist the public in all matters touching ancillary or incidental to the law;
- (h) to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors;
- (i) to award prizes and scholarships and to establish and subsidise lecturership in educational institutions in subjects of study relating to law;
- (j) to grant pecuniary or other assistance to any association, institute, board or society in Malaysia in the interest of the legal profession or of the law students;

- (k) to afford pecuniary and other assistance to members or former members of the Malaysian Bar and to the wives, widows, children and other dependants, whether of members, former members or deceased members who are in need of any such assistance;
  - (l) to promote good relations and social intercourse amongst members and between members and other persons concerned in the administration of law and justice in Malaysia;
  - (m) to encourage, establish and maintain good relations with professional bodies of the legal profession in other countries and to participate in the activities of any local or international association and become a member thereof; and
  - (n) to establish a Compensation Fund.
- (2) In addition to any other powers given by this Act, the Malaysian Bar may—
- (a) purchase or lease any land or building required for any of the purpose of the Malaysian Bar;
  - (b) sell, surrender, grant, lease, exchange or alter any land or building as may be found most convenient or advantageous;
  - (c) borrow money whether by way of bank overdraft or otherwise for such of the purposes of the Malaysian Bar as the Malaysian Bar may from time to time consider desirable;
  - (d) make rules governing the manner of convening general meetings of the Malaysian Bar and the procedure thereat which rules shall be approved and may be amended by ordinary resolution at a general meeting of the Malaysian Bar; and
  - (e) do all such other things as are incidental or conducive to the achievement or betterment of the purposes of the Malaysian Bar.
- (3) In addition to any other rules that it may make under this Act the Malaysian Bar may make rules for giving effect to this Part.

*Members of the Malaysian Bar and Subscriptions*

**Advocate and solicitors members of the Bar**

**43.** Every advocate and solicitor shall without election, admission or appointment become a member of the Malaysian Bar and shall remain a member under this section so long as he has a valid practising certificate.

**Eligibility of a member**

**44.** All members who are not in arrears with their subscription under section 46 shall be eligible—

- (a) to attend and vote at any general meeting;
- (b) subject to section 46A, to be elected to the Bar Council; and
- (c) to vote on the election of members to the Bar Council.

**Disqualification of a member**

**45.** Any member of the Malaysian Bar on ceasing to be qualified for membership shall thereupon cease to be a member.

**Annual subscription**

**46.** (1) The amount of the annual subscription to be paid by members of the Malaysian Bar shall, subject to subsections (4) and (5), be fixed from time to time by the Bar Council.

(2) In fixing the amount of its subscription, the Bar Council shall be at liberty to divide members into classes, and to provide that different amounts shall be paid by different classes and for different periods and generally to regulate and to vary from time to time the subscriptions payable by members or by different classes of members, as the Bar Council may think fair and reasonable.

(3) The Bar Council may from time to time fix levies payable by members for any of the purposes of the Malaysian Bar.

(4) The total of the subscriptions payable under subsection (1), the levies payable under subsection (3) and the annual contribution

payable under section 80 shall not in any calendar year exceed three hundred ringgit for each member without the approval of two-thirds of the members present and voting in person at a general meeting of the Malaysian Bar.

(5) Liability to pay any annual subscription to the Malaysian Bar shall arise when the subscription has been fixed by the Bar Council. All annual subscriptions to the Malaysian Bar shall be paid by the 30 day of June of each year.

(6) An advocate and solicitor shall, if he pays his annual subscription after the date mentioned in subsection (5), pay to the Bar Council, in addition to the subscription due, an amount equivalent to the subscription so due.

*Disqualification for Membership of Bar Council,  
Bar Committee, etc.*

**Disqualification for membership of the Bar Council, a Bar Committee, or of any committee thereof**

**46A.** (1) A person shall be disqualified for being a member of the Bar Council or a Bar Committee, or of any committee of the Bar Council or a Bar Committee—

- (a) unless he is and has been an advocate and solicitor for a period of not less than seven years, or for periods which in the aggregate amount to not less than seven years; or
- (b) if he is a member of either House of Parliament, or of a State Legislative Assembly, or of any local authority; or
- (c) if he holds any office in—
  - (i) any trade union; or
  - (ii) any political party; or
  - (iii) any other organization, body or group of persons whatsoever, whether or not it is established under any law, whether it is in Malaysia or outside Malaysia, which has objectives or carries on activities which can be construed as being political in nature, character

or effect, or which is declared by the Attorney General by order published in the *Gazette*, to be an organization, body or group of person which has such objectives or carries on such activities.

(2) An order made by the Attorney General under subparagraph 1(c) (iii) shall not be reviewed or called in question in any Court.

(3) Where a member of the Bar Council or a Bar Committee, or of any committee of the Bar Council or a Bar Committee, becomes disqualified under subsection (1), he shall immediately thereupon be deemed to have vacated his membership thereof and any office that he may hold therein.

*The Bar Council*

**Establishment of Bar Council**

**47.** (1) For the proper management of the affairs of the Malaysian Bar and for the proper performance of its functions under this Act there shall be a Council to be known as the Bar Council.

(2) The Bar Council shall consist of the following—

- (a) the immediate past President and Vice-President of the Malaysian Bar;
- (b) the chairman of each State Bar Committee and the members elected to represent each State Bar Committee pursuant to section 70(7);
- (c) members elected pursuant to section 50.

**Period of holding office**

**48.** Subject to this Act, every member of the Bar Council shall hold office for one year but shall be eligible for re-election.

*Election of Members of the Bar Council Members*

**Election of Bar Council Members**

**49.** (1) Every year at least one week before the month of October the Bar Council shall inform all members of the Malaysian Bar

that nominations for the election of the members of the Bar Council referred to in section 47(2)(c) may be made and must reach the office of the Malaysian Bar during the month of October.

- (2) Every nomination of a candidate for election—
- (a) shall be of a person qualified to be a candidate under this Act;
  - (b) shall be in writing signed by not less than three members;
  - (c) shall name only one candidate and his consent shall be endorsed thereon.

(3) The names of candidates for election nominated in accordance with subsection (1) shall be sent to or deposited at the office of the Malaysian Bar in the month of October in each year.

### **Annual election of Bar Council**

**50.** (1) The annual election of members of the Bar Council referred to in section 47(2)(c) shall, subject to section 51, be by postal ballot.

(2) The Bar Council shall fix and publish during the first week of November in every year and notify every member of the Malaysian Bar by letter of—

- (a) the names of the candidates nominated for election in accordance with section 49;
- (b) the number of persons for whom each member is entitled to vote;
- (c) the last day for the return of the postal ballot which shall be the last day of November;
- (d) the address to which the postal ballot shall be returned;
- (e) the names of three scrutineers.

(3) The Bar Council shall at the same time also forward to every member a ballot paper containing the names of all the candidates nominated under section 49.



(4) All envelopes containing ballot papers received by the Bar Council shall be kept unopened and shall be delivered to the scrutineers on the first working day after the last day of November.

(5) The scrutineers shall count the ballots and declare to the Secretary of the Bar Council the persons elected not later than the end of the first week of December of each year and thereupon the Secretary of the Bar Council shall forthwith advise each State Bar Committee of the persons so elected.

(6) Any accidental failure on the part of the Bar Council to comply with this section or of any rules made with respect to elections to the Bar Council shall not invalidate an election.

### **When election deemed to be election**

**51.** (1) If only so many candidates are nominated for election to the Bar Council as are required to be elected, those candidates shall be deemed to be elected; if fewer, the candidates nominated shall be deemed to have been elected and they together with the other members of the Council shall appoint such further members as may be necessary to satisfy the requirements of paragraph 47(2)(c).

(2) If no nominations are made for the election of members of the Bar Council the other members of the Bar Council shall appoint as members of the Council twelve persons qualified to be candidates under this Act.

(3) Members of the Council appointed under subsections (1) and (2) shall, for the purposes of this Act, be deemed to be elected members.

### **Bar Council when constituted**

**52.** Every incoming Bar Council constituted under this Part shall take office on the conclusion of the annual general meeting next following and shall hold office until the conclusion of the annual general meeting in the following year.

### **Casual vacancy to be filled by qualified person**

**53.** (1) Any casual vacancy arising amongst the elected members of the Bar Council shall be filled by the Bar Council by the

appointment of a person qualified under this Act, and the new member shall hold office for the remainder of the term of office of the member he replaces.

(2) Notwithstanding any vacancy in the Council the continuing members of the Council may act if there is a quorum; and no act done by or under the authority of the Bar Council shall be invalid in consequence of any defect subsequently discovered in the election or qualification of the members or any of them.

### *Officers*

#### **President, Vice-President and Secretary of the Bar**

**54.** (1) There shall be a President, a Vice-President and a Secretary of the Malaysian Bar to be elected by the Bar Council from amongst its members; but no President, Vice-President or Secretary shall hold office for more than two consecutive years, and in the event of any casual vacancy arising in respect of the office of the President, the Vice-President or the Secretary of the Malaysian Bar, the Bar Council shall at its next meeting or as soon as may be thereafter elect one of its members to fill the vacancy.

(2) The President or in his absence the Vice-President shall be the Chairman of the Bar Council and shall preside at all meetings of the Bar Council and of the Malaysian Bar.

(3) In the absence of both the President and the Vice-President, the Bar Council shall elect a Chairman from amongst its members.

#### **When a member of the Council to vacate office**

**55.** A member of the Bar Council shall vacate his office if—

- (a) he is struck off the Roll or is suspended from practising as an advocate and solicitor; or
- (b) he becomes bankrupt or insolvent or enters into composition with any creditor or takes or attempts to take the benefit of any written law to liquidate his assets or affairs; or
- (c) he becomes of unsound mind; or
- (d) he resigns his seat on the Council; or

- (e) he is absent from three consecutive meetings of the Bar Council without reasonable cause and the Bar Council resolves that he be removed from office.

*Powers of the Council*

**Powers and acts of Bar Council**

**56.** The management of the Malaysian Bar and of its funds shall be vested in the Bar Council; and all the powers, acts or things which are not by this Act expressly authorized, directed or required to be exercised or done by the Malaysian Bar in general meeting may, subject to this Act or any rules made thereunder or any resolution passed from time to time by the Malaysian Bar in general meeting, be exercised or done by the Bar Council:

Provided that no such resolution of the Malaysian Bar shall invalidate the previous exercise of any powers or the previous doing of any act or thing by the Bar Council which would have been valid if the resolution had not been passed.

**Specific powers of the Bar Council**

**57.** Without prejudice to the general powers conferred by section 56 or the specific powers to make rules conferred by any other provisions of this Act the Bar Council shall have power—

- (a) to make rules to provide for all matters not expressly reserved to the Malaysian Bar in general meeting whether the same be expressed amongst its powers or not;
- (b) to answer questions affecting the practice and etiquette of the profession and the conduct of members;
- (c) to take cognizance of anything affecting the Malaysian Bar or the professional conduct of its members and to bring before any general meeting of the Malaysian Bar any matter which it considers material to the Malaysian Bar or to the interests of the profession and to make any recommendations and take any action as it considers fit in relation thereto;
- (d) to examine and if it considers fit to report upon current or proposed legislation and any other legal matters;

- (e) to represent members of the Malaysian Bar or any section thereof or any particular member in any matter which may be necessary or expedient;
- (f) with the prior approval of the Malaysian Bar in general meeting, to award prizes and scholarships for students of law and to lay down the conditions for their award;
- (g) to appoint officers, clerks, agents and servants for permanent, temporary or special services as it may from time to time consider fair and reasonable and to determine their duties and terms of service;
- (h) to purchase, rent or otherwise acquire and furnish suitable premises for the use of the Malaysian Bar;
- (i) to communicate from time to time with other similar bodies and with members of the profession in other places for the purpose of obtaining and communicating information on all matters likely to be beneficial or of interest to members;
- (j) to institute, conduct, defend, compound or abandon any legal proceedings by and against the Malaysian Bar or its officers or otherwise concerning the affairs of the Malaysian Bar and to compound and allow time for payment or satisfaction of any debts due or of any claims or demands made by or against the Malaysian Bar;
- (k) to invest and deal with any moneys of the Malaysian Bar from time to time in securities authorized for the investment of trust funds by any written law;
- (l) from time to time to borrow or raise money by bank overdraft or otherwise by the issue of debentures or any other securities founded or based upon all or any of the property and rights of the Malaysian Bar or without any such security and upon such terms as to priority or otherwise as the Bar Council shall consider fit; and
- (m) to exercise all such powers, privileges and discretions as are not by this Act expressly and exclusively required to be exercised by the members of the Malaysian Bar in general meeting.

### **Appointment of Committees**

**58.** (1) The Bar Council may appoint one or more committees for any general or special purpose as in the opinion of the Bar Council may be better regulated or managed by means of a committee and the Bar Council may delegate to any committee so appointed, with or without restrictions or conditions, the exercise of any functions of the Bar Council.

(2) The number and term of office of the members of a committee appointed under this section, and the number of these members necessary to form a quorum, shall be fixed by the Bar Council and unless so fixed shall not be less than three.

(3) A committee appointed under this section may include persons who are not members of the Bar Council.

(4) The Bar Council shall not delegate to a committee appointed under this section any of its functions unless at least two thirds of the members of the committee (including the Chairman thereof) are members of the Council.

### **Rights to inspect file and copies of proceedings in bankruptcy**

**59.** The Bar Council shall be entitled, without payment of any fee, to inspect the file of proceedings in bankruptcy relating to any advocate and solicitor against whom proceedings in bankruptcy have been taken, and to be supplied with office or certified copies of the proceedings on payment of the usual charge for such copies.

### **Power of Bar Council to accept gifts**

**60.** (1) The Bar Council may on behalf of the Malaysian Bar accept by way of grant, gift, testamentary disposition or otherwise property or moneys in aid of the finances or purposes of the Malaysian Bar on such conditions as the Bar Council may determine.

(2) Registers shall be kept of all donations to the Malaysian Bar including the names of donors and any special conditions on which any donation has been given.

(3) All property, moneys or funds donated to the Malaysian Bar for any specific purposes shall, subject to the law relating to

charities, be applied and administered in accordance with the purposes for which they have been donated and shall be separately accounted for.

### **Representation in court**

**61.** The Malaysian Bar may be represented or appear in any court by any advocate and solicitor whether he is a member of the Bar Council or not.

### *Proceedings of the Bar Council*

### **Meeting of the Council**

**62.** (1) The Bar Council may decide to call a meeting at any time and place and as often as may be necessary, and the Chairman of the Bar Council may on his own or at the request in writing of not less than one half of its members call an emergency meeting of the Bar Council to consider any urgent matter.

(2) Nine members personally present at any meeting of the Bar Council shall constitute a quorum for the transaction of any business.

(3) A decision of the majority of the members of the Bar Council present and voting at any meeting of the Bar Council shall be deemed to be a decision of the Bar Council.

(4) At any meeting of the Bar Council the Chairman shall have a casting vote.

(5) Subject to any rules of the Malaysian Bar, the Bar Council may regulate its own proceedings and in particular the holding of meetings, the notice to be given of any meetings, the proceedings at the meeting, the keeping of minutes and the custody, production and inspection of the minutes.

### **Expenses of members**

**63.** No fees shall be paid to any member of the Bar Council but a member may be reimbursed from the funds of the Malaysian Bar for travelling expenses incurred by him in relation to the affairs of the Malaysian Bar.

*General Meeting of the Malaysian Bar*

**Annual general meetings**

**64.** (1) The Bar Council shall each year convene an annual general meeting of the Malaysian Bar to be held before the first day of April.

(2) The Bar Council shall cause to be prepared and presented to the annual general meeting—

- (a) a report on the activities of the Malaysian Bar during its term of office; and
- (b) proper accounts, duly audited, of all funds, property and assets of the Malaysian Bar for the twelve months terminating on the 31 day of December immediately preceding such general meeting.

**General meeting**

**65.** (1) The Bar Council may convene a general meeting of the Malaysian Bar other than the annual general meeting at any time the Bar Council considers it necessary or expedient.

(2) Any fifty members of the Malaysian Bar may at any time requisition a general meeting by written notice in that behalf signed by them and served on the President, Vice-President or the Secretary of the Malaysian Bar; and the Bar Council shall convene a general meeting to be held within thirty days of such service.

(3) The written notice shall specify the object or objects of the proposed meeting.

(4) If the Bar Council fails to convene a general meeting in accordance with the requisition within thirty days of the service of such requisition, the requisitioning members may convene the general meeting within sixty days of such service.

(5) If any member of the Malaysian Bar desires to propose any motion to be considered at the annual or other general meeting to be convened under this section, he shall not less than seven days before the date of the meeting serve upon the Secretary of the Malaysian Bar notice of such motion in writing.

## Voting

**66.** At every general meeting other than an annual general meeting, every member present shall have one vote and the Chairman of that meeting shall have a casting vote.

## Quorum

**67.** (1) The quorum for a general meeting of the Malaysian Bar shall be one-fifth of the total number of members of the Malaysian Bar personally present of any greater number as shall be provided under any rules made pursuant to paragraph 42(2)(d); and no business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.

(2) Any general meeting, whether convened on the requisition of members pursuant to subsection 65(2) or convened pursuant to subsection 65(4), shall be dissolved if a quorum is not present within half an hour from the time appointed for holding the meeting.

(3) Any question at a general meeting of the Malaysian Bar shall be decided by the votes of not less than two-thirds of the members present and voting.

## State Bar Committee

### Combined Bar - State Bar Committee

**68.** (1) In this Part—

“combined Bar” means a State Bar which combines all the members in any two or more States and recognized as such under section 69.

(2) For the purpose of this Part, a member of the State Bar is deemed to be practising in a State if he ordinarily practises in that State. The opinion of the State Bar Committee shall be *prima facie* evidence that the member ordinarily practises in the State.

(3) A member may ordinarily practise in more than one State and all members practising in the Federal Territory shall be deemed to be members of the Selangor State Bar.



(4) Members practising in the Federal Territory of Kuala Lumpur shall be entitled to establish a separate bar for the Federal Territory of Kuala Lumpur to be known as the Kuala Lumpur Bar. The decision to have a separate bar shall be made by a majority vote of the members present at a general meeting called for this purpose.

(5) At the time of establishment of the Kuala Lumpur Bar any member who had paid the annual subscription for that calendar year to the Selangor State Bar Committee shall not be required to pay a second annual subscription for the same year to the Kuala Lumpur Bar Committee.

(6) The assets of the Selangor State Bar, which is commonly known as the Selangor and Federal Territory Bar, shall, upon establishment of the Kuala Lumpur Bar, be apportioned between the Selangor State Bar and the Kuala Lumpur Bar in the proportions that their respective memberships bear to the membership of the former combined Bar.

### **Combination of members as State Bar**

**69.** The combination of any ten or more members in a State or of any ten or more members in two or more States for the purposes of Part IV of the Ordinance shall be recognized as a State Bar for the purposes of this Act provided that not less than ten of the members representing the State Bar have been practising in the relevant State or States for the whole of the period of the twelve months immediately before the coming into operation of this Act.

### **Annual general meeting of State Bar**

**70.** (1) The Secretary of each State Bar shall, before the first day of March in each year, summon all members of the State Bar to an annual general meeting to be held in that month at a time and place to be fixed by him. Only members of the State Bar shall be entitled to attend and vote at the meeting.

(1A) The State Bar Committee shall cause to be prepared and presented to the annual general meeting—

- (a) a report on the activities of the State Bar during its term of office; and

(b) proper accounts, duly audited, of all funds, property and assets of the State Bar for the twelve months ending on the 31 day of December immediately preceding such general meeting.

(2) At every annual general meeting, the Chairman of the State Bar Committee shall preside and in his absence the most senior member present who is willing to preside shall preside, and the quorum shall be one-third of the total number of members of the State Bar. If a quorum is not present within half an hour from the time appointed for holding the meeting it shall stand adjourned to the same day in the week next following at the same time and place unless otherwise notified to members by the State Bar Committee.

(3) Any question at that meeting shall be decided by the votes of not less than two-thirds of the members present and voting and the presiding member shall have a casting vote.

(4) The meeting shall elect from among the members of the State Bar a Chairman and not less than four and not more than six members to form the State Bar Committee.

(5) The Chairman and the members of the Committee so elected shall hold office until the conclusion of the next annual general meeting of the State Bar.

(6) Every State Bar Committee shall appoint a Secretary who shall be a Member of the State Bar.

(7) After the election of the State Bar Committee the meeting shall elect one member of the State Bar (who need not be a member of the State Bar Committee) to represent the State Bar on the Bar Council:

Provided that where the Chairman of the State Bar Committee elected pursuant to subsection (4) is also the current President or Vice-President of the Malaysian Bar, the meeting shall elect two members instead of one under this subsection.

(7A) If for any reason a member elected under subsection (7) vacates office, the State Bar Committee shall appoint another member of the State Bar to take his place and the member so appointed shall hold office for the remainder of the term of office of the member he replaces.

(8) The Chairman of the State Bar Committee shall inform the Registrar and the Secretary of the Malaysian Bar the names of the persons elected and appointed as Chairman, members and Secretary respectively of the State Bar Committee and of the persons elected as representatives of the State Bar on the Bar Council.

(9) The Secretary of the Malaysian Bar shall, in the month of October in each year send to all Assistant Registrars in each State a list of all the representatives elected to represent the State Bars on the Bar Council; and the lists shall be made available for inspection by all members without charge.

### **General meeting of State Bar**

**70A.** (1) Every State Bar Committee may convene a general meeting of the State Bar other than the annual general meeting at any time the Bar Committee considers it necessary or expedient.

(2) The quorum at every such meeting shall be one-third of the total members of the State Bar.

(3) Any ten members of the State Bar or one-third of the members of the State Bar whichever shall be the greater may at any time requisition a general meeting by written notice in that behalf signed by them and served on the Chairman or the Secretary of the State Bar Committee and the State Bar Committee shall convene a general meeting to be held within thirty days of such service.

(4) The written notice shall specify the object or objects of the proposed meeting.

(5) If the State Bar Committee fails to convene a general meeting in accordance with the requisition within thirty days of the service of such requisition, the requisitioning members may convene the general meeting within sixty days of such service.

(6) Any general meeting convened under subsection (3) or (5) shall be dissolved if a quorum is not present within half an hour from the time appointed for holding the meeting.

(7) At every general meeting every member present shall have one vote and the Chairman of that meeting shall have a casting vote.

(8) Any question at the meeting shall be decided by not less than two-thirds of the members present and voting.

### **Severance of combined Bar**

**71.** (1) Where the number of members in each of the States forming a combined Bar exceeds ten, the members of the Bar of a State may, at any general meeting called for the purpose, pass by a majority of the members present and voting a resolution that such combined Bar be severed.

(2) One month after the passing of such resolution, the combined Bar shall be severed, and the members in each of the States forming the combined Bar shall thereafter form a separate State Bar.

(3) The chairman of the meeting referred to in subsection (1) shall report the passing of any resolution to the Registrar and to the Bar Council.

(4) Where the number of members in one of the State forming a combined Bar does not exceed ten, the members of the Bar of that state may sever themselves from the members of the Bar of the other State if—

(a) the number of members in the other State exceeds ten; and

(b) the members of the Bar of the first-mentioned State have found another State the members of whose Bar have expressed their willingness by a vote of a simple majority of their members at a general meeting to combine with the members of the Bar of the first-mentioned State.

(c) (*Deleted by Act A567*).

(5) Subsections (2) and (3) shall apply *mutatis mutandis* to a severance of a combined Bar effected pursuant to subsection (4).

(6) Where severance takes place pursuant to this section, the assets of the former combined Bar shall be apportioned as provided in subsection (6) of section 68 *mutatis mutandis*.

### **Meeting of the State Bar Committee**

**72.** (1) Each State Bar Committee shall meet at such time and place as the Chairman may appoint.

(2) Each State Bar Committee shall regulate its proceedings in any manner that it considers fit; except that the quorum shall not be less than three members personally present:

Provided that a resolution circulated and signed by not less than three members or all the members present in Malaysia whichever is the greater at the date of the passing of the resolution shall be deemed to have been passed at a properly constituted meeting of the State Bar Committee.

### **Powers of the State Bar Committee**

**73.** Each State Bar Committee shall have the following powers:

- (i) to levy subscriptions from its members of an amount not exceeding in any one year one hundred ringgit from each member unless it has been agreed to by the State Bar Committee at its annual general meeting that the subscription shall be in excess of one hundred ringgit; and subscriptions shall be payable in each year to the appropriate State Bar Committee by each advocate and solicitor by the 30 day of June;
- (ii) to promote and safeguard the interests of advocates and solicitors who are members of the State Bar;
- (iii) to make appropriate representations to the Malaysian Bar upon matters concerning the State Bar;
- (iv) to entertain and deal with such matters as may from time to time be referred to it either generally or specifically by the Bar Council or the State Bar in general meeting;
- (v) to provide amenities for and generally to promote the welfare of members of the State Bar;
- (vi) to inquire into and proceed with any complaint of the conduct of an advocate and solicitor in his professional capacity or of any pupil or articled clerk under Part VII;

- (vii) to co-opt as members of the Committee not more than two members of the State Bar who shall have no right to vote at any meeting of the Committee.

### **Fees not allowed to State Bar Committee**

**74.** No fees shall be paid to any member of a State Bar Committee, except for any travelling expenses incurred by any member of the State Bar Committee. Such expenses may with the approval of the State Bar Committee, be reimbursed to the member from the funds of that Committee.

### **Casual vacancy**

**75.** (1) Any casual vacancy in a State Bar Committee shall be filled by the continuing members of the State Bar Committee by the appointment of a member of the State Bar concerned and any member so appointed shall hold office for the remainder of the term of office of the member he replaces.

(2) Notwithstanding any vacancy in the State Bar Committee the continuing members of the Committee may act if there is a quorum; and no act done by or under the authority of the State Bar Committee shall be invalid in consequence of any defect subsequently discovered in the election or qualification of the members or any of them.

### *General*

### **Names of Council and Committee members to be published in the *Gazette***

**76.** (1) The names of the members of the Bar Council and of the Secretary of the Malaysian Bar and of the Chairman and members of the State Bar Committees and of the Secretaries appointed by them including that of any persons appointed to fill any vacancies shall be published in the *Gazette*.

(2) Except and in so far as may be necessary for the purpose of giving effect to any resolution passed or decision made, secrecy shall be maintained in all proceedings conducted by the Bar Council, the State Bar Committee, the \*Inquiry Committee and their staff.

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\*Note: See note on "Disciplinary Committee" or 'Inquiry Committee' in paragraph 33(1)(d).

PART VI

PROFESSIONAL PRACTICE, ETIQUETTE, CONDUCT AND  
DISCIPLINE OF ADVOCATE AND SOLICITOR AND CLERKS

**Power to make rules regulating practice, etc.**

**77.** (1) Without prejudice to any other power to make rules provided under this Act, the Bar Council may, with the approval of the Attorney General make rules for regulating the professional practice, etiquette, conduct and discipline of advocates and solicitors.

(2) Any rules made pursuant to this section shall not come into operation until they have been published in the *Gazette*.

(3) Any advocate and solicitor who fails to comply with any rules made under this section may be liable to disciplinary proceedings.

(4) The Attorney General may, by order published in the *Gazette*, make such modifications as he deems necessary to any rules made and published under this section before the coming into operation of this subsection.

**Power to make particular rules**

**78.** (1) The Bar Council shall make rules—

- (a) providing for the opening and keeping by advocates and solicitors of accounts at banks for clients' moneys;
- (b) providing for the keeping by advocates and solicitors of accounts containing particulars and information as to moneys received, held or paid by them for or on account of their clients; and
- (c) empowering the Bar Council to take such action as may be necessary to enable it to ascertain whether or not the rules are being complied with.

(2) The Bar Council shall also make rules—

- (a) providing for the opening and keeping by every advocate and solicitor who is a sole trustee, or who is co-trustee with one or more of his partners, clerks or servants, of an account at a bank for moneys of any trust of which he is such a sole trustee or co-trustee;

- (b) providing for the keeping by every such advocate and solicitor of accounts containing particulars and information as to moneys received, held or paid by him for or on account of any such trust; and
- (c) empowering the Bar Council to take such action as may be necessary to enable it to ascertain whether or not the rules are being complied with.

(3) (a) Rules made under this section shall make provision for requiring an advocate and solicitor, in such cases as may be prescribed by the rules, either—

- (i) to keep on deposit in a separate account at a bank for the benefit of the client moneys received for or on account of a client if the client should so request; or
- (ii) to make good to the client out of his own moneys a sum equivalent to the interest which would have accrued if the moneys so received had been so kept on deposit.

(b) Except as provided by any rules made pursuant to this section, an advocate and solicitor shall not be liable by virtue of the relation between advocate and solicitor and client to account to any client for interest receive by him on moneys deposited at a bank being moneys received or held for or on account of his clients generally.

(c) Nothing in this subsection, or in any rules made pursuant to this section, shall—

- (i) affect any arrangement in writing, whenever made, between an advocate and solicitor and his client as to the application of the client's moneys or interest thereon;
- (ii) apply to moneys received by an advocate and solicitor being moneys subject to a trust of which he is a trustee.

(4) Any rules made pursuant to this section shall not come into operation until they have been published in the *Gazette*.

(5) Disciplinary proceedings may be taken against any advocate and solicitor who fails to comply with any rules made under this section.



(6) In this section, the words “trust” and “trustee” extend to implied and constructive trusts and to cases where the trustee has a beneficial interest in the trust property and to the duties incident to the office of a personal representative, and “trustee”, where the context admits, includes a personal representative.

### **Power to make rules on professional indemnity**

**78A.** (1) The Bar Council may, with the approval of the Attorney General, make rules concerning the taking out of professional indemnity for advocates and solicitors against any class of professional liability and the rules may for the purpose of providing such indemnity do all or any of the following:

- (a) authorize the Bar Council to take out and maintain insurance in the name of the Malaysian Bar with any person permitted by law to carry on professional liability insurance business or pecuniary loss insurance business and covering every practising advocate and solicitor;
- (b) authorize the Bar Council to establish and maintain a fund for the aforesaid purpose; or
- (c) require advocates and solicitors to take out and maintain insurance.

(2) Without prejudice to the generality of subsection (1), rules made under this section may—

- (a) specify the terms and conditions on which professional indemnity is to be available;
- (b) provide for the management, administration and protection of any fund established under subsection (1) and require advocates and solicitors to make payments to any such fund;
- (c) require advocates and solicitors to make payments by way of premiums on any policy taken out under subsection (1) and provide for proceedings by the Malaysian Bar or its insurers against any advocate and solicitor who fails to do so for recovery of the appropriate premiums;
- (d) prescribe the conditions which an insurance policy must satisfy for the purpose of paragraph (1)(c);

- (e) authorize the Bar Council to determine the amount of any payment required by the rules;
- (f) specify the circumstances in which where an advocate and solicitor has failed to comply with the rules, proceedings in respect of any sum paid by way of indemnity may be taken against him by the Malaysian Bar or its insurers;
- (g) prescribe that an advocate and solicitor shall not be entitled to a Sijil Annual unless he is insured as required by the rules for the period to which the Sijil Annual relates;
- (h) empower the Bar Council to take such steps as it considers necessary or expedient to ascertain and ensure that the rules are complied with; and
- (i) contain such procedural, incidental or other provisions as may be necessary or expedient for the purposes of the rules.

(3) Nothing in this section shall affect the right of any advocate and solicitor, in addition to the indemnity provided in the rules made under this section, to insure himself further against loss arising from such claims as may be instituted against him.

(4) Any rules made under this section shall not come into operation until they have been published in the *Gazette*.

### **Advocate and solicitor to deliver accountant's report**

**79.** (1) Every advocate and solicitor shall, unless exempted by the Bar Council, deliver to the Secretary of the Malaysian Bar with every application made by him for a Sijil Annual a report signed by an accountant, referred to as an "accountant's report" in this section.

(2) The accountant's report shall—

- (a) state that the accountant in compliance with this section and any rules made thereunder has examined the books, accounts and documents of the firm of the advocate and solicitor for such accounting period as may be specified in the report;

- (b) state whether or not the accountant is satisfied, from his examination of the books, accounts and documents produced to him and from the information and explanations given to him, that during the said accounting period of the advocate and solicitor or his firm has complied with any rules made under subsection 78(1);
- (c) state, if the accountant is not satisfied, the matters in respect of which he is not so satisfied;
- (d) contain such information as may be prescribed by rules made by the Bar Council under this section; and
- (e) be delivered to the Secretary of the Malaysian Bar not more than twelve months (or such other period as may be prescribed by rules made under this section) after the end of the accounting period specified in the report.

(3) Subject to any rules made under this section, the accounting period for the purposes of an accountant's report shall—

- (a) begin at the expiry of the last preceding accounting period for which an accountant's report has been delivered or from the date the advocate and solicitor commenced practice as the case may be;
- (b) cover not less than twelve months;
- (c) terminate not more than twelve months before the date on which the report is delivered to the Bar Council; and
- (d) where possible, consistent with paragraphs (a), (b) and (c), correspond to a period or consecutive periods for which the accounts of the advocate and solicitor or his firm are ordinarily made up.

(4) In this section "accountant" means an approved company auditor as defined in the Companies Act, 1965 [*Act 125*]. If in any particular case there shall not be an approved company auditor practising in the State in which an advocate and solicitor ordinarily practises and the Bar Council shall be of the view that by reason of the difficulty or expense involved in securing the services of an approved company auditor from outside such State it would be unreasonable to expect the advocate and solicitor to secure his service, the Bar Council may approve any other auditor whom it shall consider competent for the purposes of this section.

(5) The Bar Council shall make rules to give effect to this section and without prejudice to the generality of the foregoing such rules shall prescribe the nature and extent of the examination to be made by the accountant of the books and accounts of the firm of an advocate and solicitor and of any other relevant documents with a view to the preparation of the report to be delivered by the advocate and solicitor under this section.

(6) Any such rules may include provisions for—

- (a) permitting in any special circumstances as may be defined in the rules a different accounting period from that specified in subsection (3); and
- (b) regulating any matters of procedure or matters incidental, ancillary or supplemental to this section.

(7) Any rules made by the Bar Council under this section shall not come into operation until they have been published in the *Gazette*.

(8) Any advocate and solicitor who fails to comply with this section or any rules made thereunder may be liable to disciplinary proceedings.

### *Compensation Fund*

#### **Compensation Fund**

**80.** (1) The Malaysian Bar shall maintain and administer in accordance with this section a fund to be known as the “Compensation Fund”.

(2) Every advocate and solicitor shall on each occasion he applies for a Sijil Annual pay to the Malaysian Bar a contribution of such sum as the Bar Council may from time to time determine and the Malaysian Bar shall pay that contribution into the Fund:

Provided that an advocate and solicitor who applies for a Sijil Annual shall be required to pay only half the contribution so determined if the practising certificate for which he proposes to apply is valid for less than six months.

(3) The Malaysian Bar may invest any moneys out of the Fund which are not immediately required for any other purposes and, for the purposes of this section, the Malaysian Bar shall have all the powers of trustees under any written law.

(4) The Malaysian Bar may for the purposes of the Fund borrow from any lender and may charge any investments of the Fund by way of security for such loan.

(4A) The Bar Council may, for such of the purposes of the Malaysian Bar as the Bar Council deems fit, borrow moneys from the Fund and shall, in respect of any money so borrowed, pay to the Fund interest at the prime rate laid down by the Association of Banks in Malaysia, prevailing from time to time.

(5) The Malaysian Bar may insure the Fund with any registered insurance business in Malaysia for any purpose and on any terms as the Malaysian Bar may consider expedient.

(6) These shall be carried to the credit of the Fund—

- (a) all annual contributions paid to the Malaysian Bar in pursuance of subsection (2);
- (b) all interests, dividends and other income or accretions of capital arising from the investments of the Fund;
- (c) the proceeds of any realization of any investments of the Fund;
- (d) all moneys borrowed for the purposes of the Fund;
- (e) all sums received by the Malaysian Bar under any insurance effected by the Malaysian Bar under subsection (5); and
- (f) any other moneys which may belong or accrue to the Fund or be received by the Bar Council in respect of the Fund.

(7) All moneys from time to time forming part of the Fund and all investments of the Fund shall be applicable—

- (a) for payment of any costs, charges and expenses of establishing, maintaining and administering the Fund;

- (b) for payment of any costs, charges and expenses of the Bar Council in ascertaining whether the rules made under section 78 have been complied with, pursuant to the powers given by such rules;
- (c) for payment of any premiums on insurance effected by the Malaysian Bar under subsection (5);
- (d) for repayment of any moneys borrowed by the Malaysian Bar and for payment of interest on any moneys so borrowed;
- (e) for payment of any grants which the Malaysian Bar may make under subsection (8); and
- (f) for payment of any other sums payable out of the Fund by virtue of this section.

(8) Where it is proved to the satisfaction of the Bar Council that any person has sustained loss in consequence of dishonesty on the part of any advocate and solicitor or any clerk or servant of an advocate and solicitor in connection with that advocate and solicitor's practice in Malaysia as an advocate and solicitor, or in connection with any trust of which that advocate and solicitor is a trustee, then subject to this section, the Malaysian Bar may, if the Bar Council thinks fair and reasonable, makes a grant to that person out of the Fund for the purpose of relieving or mitigating that loss.

(8A) If in any year there has been neither an application made for a grant from the Fund nor a grant made from the Fund, the Bar Council may in its discretion transfer from the Fund all interests, dividends and other accretions of capital arising from the Fund, or any part thereof, to a Fund of the Malaysian Bar established for the purposes of purchasing or maintaining a library for the use of members of the Malaysian Bar.

(9) A grant may be made under this section whether or not the advocate and solicitor had a valid practising certificate when the act of dishonesty was committed, and notwithstanding that subsequent to the commission of the act the advocate and solicitor has died or had his name removed from or struck off the Roll or has ceased to practise or been suspended from practice.

(10) On any grant made by the Malaysian Bar under this section to any person in respect of any loss—

(a) the Malaysian Bar shall to the extent of the amount of the grant be subrogated to all such rights and remedies as the person to whom the grant is made may be against the advocate and solicitor, clerk or servant in respect of the loss;

(b) the person to whom the grant is made shall have no right by way of bankruptcy or other legal proceedings or otherwise to receive any sum out of the assets of the advocate and solicitor, clerk or servant in respect of the loss until the Fund has been reimbursed with the full amount of the grant.

(11) Reference in paragraphs (10)(a) and (b) to the person to whom the grant is made or to the advocate and solicitor, clerk or servant shall include, in the event of this death, insolvency or other disability, reference to his personal representatives or any other person having authority to administer his estate.

(12) The Bar Council may make rules in respect of the procedure to be followed in giving effect to this section and in respect of any matters incidental, ancillary or supplemental thereto or concerning the administration or protection of the Fund.

(13) The income derived from the Compensation Fund shall be exempted from income and all other taxes, and the Fund shall be an institution approved for the purposes of section 45 of the Income Tax Act 1967 [*Act 53*] payments to which shall be good deductions for income tax purposes in arriving at the aggregate income of the person making the payment for the relevant year.

**Advocate and solicitor shall not act as commissioner or notary without certificate**

**81.** No advocate and solicitor who is a commissioner for oaths or a notary public shall do any act as such commissioner or notary, as the case may be, unless he has a valid practising certificate.

**Advocate wilfully and knowingly acting as agent**

**82.** (1) No advocate and solicitor shall wilfully and knowingly act as agent in any legal proceedings of any kind or in any matter which under this Act can be done only by an advocate and solicitor who has a valid practising certificate for another advocate and solicitor who does not have a valid practising certificate or permit his name to be made use of in any such proceedings or matter on the account or for the profit of such other advocate and solicitor or send any process to such other advocate and solicitor or do any other act enabling such advocate and solicitor to appear, do, practise or purport to practise as an advocate and solicitor in any such proceedings or matter.

(2) No advocate and solicitor shall authorize any unauthorized person to operate any bank account in his name or in the name of his firm and maintained by him or his firm in connection with his practice as an advocate and solicitor.

(3) Any advocate and solicitor who has acted in contravention of subsection (1) or (2) may be liable to disciplinary proceedings.

(4) Any unauthorized person who acts or practises or purports to practise as an advocate and solicitor shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

**Advocate and solicitor not to employ undischarged bankrupt**

**83.** (1) No advocate and solicitor shall, in connection with his practice, without the consent of the court obtained on an application by originating summons served upon the Attorney General and upon the Malaysian Bar, employ or remunerate any person who to his knowledge is an undischarged bankrupt or has been—

- (a) struck off the Roll otherwise than at his own request in any part of Malaysia or in Singapore or elsewhere and remains struck off;
- (b) suspended from practising as an advocate and solicitor in any part of Malaysia or in Singapore or elsewhere and remains suspended;



- (c) convicted of an offence involving dishonesty or fraud or has been found guilty of an offence under the Prevention of Corruption Act 1961 [Act 57];
- (d) convicted of an offence under section 15A of the Minor Offences Act 1955 [Act 336] or under this Act;
- (e) a person in respect of whom an order under subsection (2) has been made; or
- (f) employed as a public officer:

Provided that paragraph (f) shall not apply to any public officer who is an advocate and solicitor or a qualified person.

(2) On application made by or on behalf of the Attorney General of the Malaysian Bar, the Court may make an order directing that, as from a date to be specified in the order, no advocate and solicitor shall in connection with his practice employ or remunerate any person who—

- (a) has been a party to any act or default of an advocate and solicitor in respect of which a complaint has been or could have been made against him under this Act; or
- (b) has so conducted himself whilst employed by an advocate and solicitor that, had he himself been an advocate and solicitor, his conduct might have formed the subject of a complaint against him under this Act.

(3) Every application under subsection (2) shall be served not less than ten days before the application is to be heard upon the person in respect of whom it is made and upon his employer or previous employer who is an advocate and solicitor.

(4) Every order made under subsection (2) shall be filed in a file to be kept for this purpose by the Registrar which may be inspected by any advocate and solicitor without fee.

(5) Before an advocate and solicitor employs or remunerates any person (other than an advocate and solicitor or a qualified person) in connection with his practice as such, he shall require that person to make a statutory declaration stating that he is not an undischarged bankrupt and that he does not come within the class of persons enumerated in paragraphs (1)(a) to (f) and that he is not a person in respect of whom an order has been made under subsection (2).

(6) Any advocate and solicitor who acts in contravention of this section may be liable to disciplinary proceedings.

### **Advocate and solicitor acting for developer not to act for purchaser in housing development**

**84.** (1) Where an advocate and solicitor acts for a housing developer in a sale of immovable property developed under a housing development neither he nor any member or assistant of the firm of which he is a member either as partner or employee shall in the same transaction act for the purchaser of that property, and a written agreement prepared by an advocate and solicitor or any member or assistant of the firm acting for the developer in respect of such transaction shall be scrutinised by an advocate and solicitor acting for the purchaser:

Provided that if any such written agreement in respect of the transaction is not scrutinised by an advocate and solicitor acting for the purchaser, the advocate and solicitor acting for the housing developer shall obtain a certificate signed by the Purchaser showing that the Purchaser does not intend to engage an advocate and solicitor to scrutinise the agreement for him.

(2) For the purpose of this section a certificate shall not be valid unless it is signed by the Purchaser in the presence of a Commissioner for Oaths who is not an advocate and solicitor practising in partnership with, or as the employee of, the advocate and solicitor acting for the housing developer.

(3) The developer and the purchaser shall each pay for the fees of its own advocate and solicitor.

(4) In subsection (1)—

(a) the term “housing development” has the meaning assigned to it in the \*Housing Development (Control and Licensing) Act 1966 [*Act 118*]; and

(b) “sale of immovable property” includes the grant of a lease for a term exceeding three years.

(5) Subsection (1) is without prejudice to any law affecting an advocate and solicitor who acts for parties where there is a conflict of interest or whenever a conflict of interest may arise.

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\*NOTE—Previously referred to as “Housing Developers (Control and Licensing) Act 1966”—See Act A1142.

(6) An advocate and solicitor who acts in contravention of subsection (1) may be liable to disciplinary proceedings.

(7) Subsection (1) shall not apply to any transaction where the contract for sale was entered into before the coming into operation of this Act.

### **Registrar to maintain register of firm names**

**85.** (1) The Bar Council shall maintain a register of firm names under which advocates and solicitors practise. No firm name shall be registered or struck off the register without a certificate from the Bar Council. The Bar Council may refuse a certificate for registration on the grounds that the proposed firm name is likely to be confused with a registered firm name or is likely to mislead the public. An advocate and solicitor who is dissatisfied with a decision of the Bar Council may appeal to the High Court whose decision shall be final.

(2) No person shall practise as an advocate and solicitor under a name that is not—

- (a) his own name;
- (b) the names of advocates and solicitors who are or were his partners;
- (c) the names of his predecessors whose goodwill he has, or his partners have, acquired;
- (d) any one or the combination of the names specified in paragraphs (a), (b) and (c).

(3) In any case where a name which complies with subsection (2) cannot be registered without contravening subsection (1) then the person may practise under such name as he wishes which is approved by the Bar Council.

(4) An advocate and solicitor who acts in contravention of subsection (3) may be liable to disciplinary proceedings.

(5) The Bar Council shall, at the request of the partners practising under a firm name, and may, if it is satisfied that no one is practising under that name, remove a firm name from the register.

**Where solicitor and client relationship exists**

**86.** (1) Where the relationship of advocate and solicitor and client exists, or has existed, a summons may be issued by the client or his representative for the delivery of a cash account, or the payment of moneys, or the delivery of securities.

(2) The Court or a Judge may order an advocate and solicitor to deliver to the applicant a list of the moneys or securities which he has in his custody or control on behalf of the applicant, or to bring into court the whole or any part of the same, within such time as the Court or Judge orders.

(3) In the event of the advocate and solicitor alleging that he has a claim for costs, the Court or Judge may make such provision for the payment thereof or security therefor or the protection of the advocate and solicitor's lien, if any, as the Court or Judge thinks fair and reasonable.

**Where money is due from advocate and solicitor to the client**

**87.** (1) If, during the taxation of any bill of costs or the taking of any account between the advocate and solicitor and client, it appears to the Registrar that there are moneys due from an advocate and solicitor to the client, the Registrar may make an interim certificate as to the amount so payable by the advocate and solicitor.

(2) Upon the filing of such certificate the Court or a Judge may order the moneys so certified to be paid forthwith to the client or brought into court.

*Control of Property***Guilty advocate and solicitor, etc.**

**88.** (1) The Bar Council may if it has reasonable cause to believe that an advocate and solicitor, or a clerk or servant of an advocate and solicitor, has been guilty of dishonesty in connection with that advocate and solicitor's practice as an advocate and solicitor or in connection with any trust of which that advocate and solicitor is a trustee, issue a certificate to that effect and thereupon the Schedule, except paragraph 7 thereof, shall apply in relation to that advocate and solicitor.

(2) Where the name of an advocate and solicitor is removed from the Roll or an advocate and solicitor is suspended from practice, he shall, within twenty-one days from the material date, satisfy the Bar Council that he has made suitable arrangements for making available to his client or to some other advocate and solicitor or advocates and solicitors instructed by his client or by himself—

(a) all deeds, wills, documents constituting or evidencing title to any property, papers, books of account, records, vouchers and other documents in his or his firm's possession or control, or relating to any trust of which he is the sole trustee or co-trustee with one or more of his partners, clerks or servants; and

(b) all sums of money due from him or his firm to, or held by him or his firm on behalf of, his clients or subject to any such trust as aforesaid.

(3) If he fails so to satisfy the Bar Council, the said Schedule shall apply in relation to him.

(4) In subsection (2), the expression "the material date" means the latest of whichever of the following dates—

(a) the date when the order of the \*Disciplinary Committee or of the Court by or in pursuance of which the advocate and solicitor's name is removed from, or struck off, the Roll, or the advocate and solicitor is suspended from practise, is to take effect;

(b) the last date on which an appeal against the order in paragraph (a) may be lodged;

(c) the date on which an appeal under paragraph (b) is dismissed or abandoned.

(5) In this section and in the Schedule, the words "trust" and "trustee" have the same meanings as in subsection 78(6).

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\*See Footnote on "Disciplinary Committee" or 'Inquiry Committee' under paragraph 33(1)(d)

**Suspension of advocate and solicitor**

- 88A.** (1) Where an advocate and solicitor—
- (a) has been found guilty by a court of law of any offence involving dishonesty, misuse of his client's moneys or dishonesty towards a client or in respect of any property belonging to a client;
  - (b) has been disbarred, struck off, suspended or censured in his capacity as a legal practitioner in any other country;
  - (c) in respect of whom a complaint has been made to the Bar Council concerning any dishonest act committed by him in his capacity as an advocate and solicitor;
  - (d) has left the country or has not attended at his office in such circumstances that the Bar Council may reasonably presume that he has absconded; or
  - (e) is otherwise incapable, from infirmity of body or mind or any other cause, of effectively performing the functions of an advocate and solicitor,

and the Bar Council considers that it would be in the public interest or in the interest of his clients or of the profession that such advocate and solicitor be suspended from practice, the Bar Council may apply by summons to the Chief Judge *ex parte* for an order suspending such advocate and solicitor from practice until further order.

(2) The Chief Judge may order that the application be served on such advocate and solicitor.

(3) The Chief Judge if satisfied that such advocate and solicitor should be suspended from practice may make an order to that effect until any further order of the Court.

(4) Such advocate and solicitor may within one month of the making of the order appeal against that order to the Federal Court whose decision shall be final.

(5) There shall be no stay of execution of the order pending appeal.

(6) Unless the order is reversed upon appeal, subsections 88(2) and (3) shall apply *mutatis mutandis* to the advocate and solicitor in question; and for the purpose of subsection (4) of that section the expression “the material date” means the date of the order.

(7) The Bar Council shall as soon as possible refer to the Disciplinary Board a complaint against the advocate and solicitor in question.

### **Taking of possession of documents in the possession of advocate and solicitor**

**89.** (1) Where—

- (a) a complaint is made to the Bar Council that there has been undue delay on the part of an advocate and solicitor in connection with any matter in which he or his firm has been instructed on behalf of a client or any matter which relates to the administration of a trust of which that advocate and solicitor is the sole trustee or co-trustee with one or more of his partners, clerks or servants;
- (b) the Bar Council has by notice in writing invited the advocate and solicitor to give an explanation in respect of that matter;
- (c) the advocate and solicitor has, within a period of not less than twenty-one days specified in the said notice, failed to give an explanation in respect of that matter which the Bar Council regard as sufficient and satisfactory; and
- (d) the advocate and solicitor has been notified in writing by the Bar Council that he has so failed,

the Schedule to this Act, other than paragraph 7 thereof, shall apply in relation to that advocate and solicitor, but as regards the documents specified in paragraph 1, and the sums of money specified in paragraph 9, of the Schedule, only in so far as they relate to the matter complained of:

Provided that for the purposes of the proviso to paragraph 6 of the Schedule, the Bar Council may take copies of, or extracts from, documents which relate to the matter complained of or to that matter and to other matters in that advocate and solicitor’s practice.

(2) In this section, the words “trust” and “trustee” have the same meanings as in subsection 78(6).

**Taking of possession of property in Counsel’s possession when he is undischarged bankrupt, etc.**

**90.** (1) Where an advocate and solicitor practises in his own name or as a sole advocate and solicitor under a firm name and—

- (a) is an undischarged bankrupt or a receiving order in bankruptcy is in force against him;
- (b) has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors;
- (c) has had an order of committal or an order for the issue of a writ of attachment made against him; or
- (d) is a mentally disordered person or patient as defined by the\* Mental Disorder Ordinance 1952 [*Ord. 31 of 1952*],

and the Bar Council or State Bar Committee have reasonable cause to believe that in consequence of the act, default or disability of the advocate and solicitor or of any clerk or servant of his—

- (i) there has been undue delay in connection with any matter in which the advocate and solicitor or his firm has been instructed on behalf of a client on any matter which relates to the administration of a trust of which the advocate and solicitor is the sole trustee or co-trustee with one or more of his clerks or servants; or
- (ii) any sum of money due from that advocate and solicitor or his firm to, or held by him or his firm on behalf of, his clients or subject to any trust of which he is such sole trustee or co-trustee as aforesaid is in jeopardy while in the control or possession of that advocate and solicitor or his firm,

the Schedule to this Act, other than paragraph 7 thereof, shall apply in relation to that advocate and solicitor:

Provided that for the purposes of the proviso to paragraph 6 of the Schedule, the Bar Council may take copies of, or extracts from, documents which relate to any matter referred to in subparagraph (i) of this section or to any sum of money referred to in subparagraph (ii) of this section or to that matter or sum of money, as the case may be, and to other matters in the advocate and solicitor’s practice.

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\*NOTE—This Ordinance would be repealed and replaced by the Mental Health Act 2001 which has not yet come into force—See section 93 Act 615.



(2) In this section, the words “trust” and “trustee” have the same meanings as in subsection 78(6).

**Personal representative liable for acts of advocate and solicitor**

**91.** (1) Where—

- (a) the Bar Council has reasonable cause to believe that the personal representatives of a deceased advocate and solicitor who immediately before his death was practising as an advocate and solicitor in his own name, or as a sole advocate and solicitor under a firm name, have been guilty of dishonesty or undue delay in administering the affairs of that advocate and solicitor’s practice or in connection with any trust of which that advocate and solicitor was the sole trustee or co-trustee only with one or more of his clerks or servants; or
- (b) an advocate and solicitor dies and immediately before his death the Schedule applied to him,

the Schedule, other than paragraph 7 thereof, shall apply in relation to the personal representatives and shall continue to apply to the personal representatives of the advocate and solicitor last mentioned as they apply or applied, as the case may be, in relation to the advocate and solicitor referred to in those provisions and as if the words “the personal representatives” were, with the necessary adaptations, substituted for the words “the advocate and solicitor” wherever these words occur in those provisions.

(2) In this section, the words “trust” and “trustee” have the same meanings as in subsection 78(6).

**Bar Council to operate bank account of deceased solicitors’ client**

**92.** On the death of an advocate and solicitor who immediately before his death was practising as an advocate and solicitor in his own name or as a sole advocate and solicitor in a firm name the right to operate, or otherwise deal with, any banking account in the name of the advocate and solicitor or his firm, being an account into which has been paid any clients’ money shall, notwithstanding anything to the contrary contained in this Act, vest in the Bar Council to the exclusion of any personal representatives of the advocate and solicitor and shall be exercisable as from the death of the advocate and solicitor.

## PART VII

## DISCIPLINARY PROCEEDINGS

**Disciplinary Board**

**93.** (1) For the purposes of disciplinary proceedings under this Part, there shall be established a Disciplinary Board.

(2) The Disciplinary Board shall have the same powers as those exercised by the Bar Council before the coming into force of this Part.

(3) The Disciplinary Board shall consist of the following:

- (a) the chairman of the Disciplinary Board appointed by the Chief Judge and such person shall be a Judge of the High Court or Federal Court, a retired Judge of the High Court or Supreme Court or any other person who is qualified to be a Judge of the High Court or Federal Court:

Provided that in a case where a Judge of the Federal Court is to be appointed as the chairman, such appointment shall be made by the Chief Judge in consultation with the Chief Justice;

- (b) the President of the Bar Council with the Vice-President as his alternate; and
- (c) fifteen practitioner members of not less than fifteen years' standing appointed by the Chief Judge for a term of two years:

Provided that the Chief Judge may extend their term for a period not exceeding a further two years or reappoint them.

(4) The quorum of the Disciplinary Board shall be seven members of which one member shall be from paragraph (a), one member from paragraph (b) and five members from paragraph (c) of subsection (3).

(5) The secretary to the Disciplinary Board shall be a full-time employee of the Bar Council appointed under section 98 and such person shall be an advocate and solicitor of not less than five years' standing.

(6) The Disciplinary Board may make rules relating to its quorum and to regulate its procedure.

**Power of Disciplinary Board to strike off the Roll, suspend for misconduct, etc.**

**94.** (1) All advocates and solicitors shall be subject for the purposes of all disciplinary actions to the control of the Disciplinary Board.

(2) Any advocate and solicitor who has been guilty of any misconduct shall be liable to be struck off the Roll or suspended from practice for any period not exceeding five years.

(3) For the purposes of this Part, “misconduct” means conduct or omission to act in Malaysia or elsewhere by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety and includes—

- (a) conviction of a criminal offence which makes him unfit to be a member of his profession;
- (b) breach of duty to a court including any failure by him to comply with an undertaking given to a court;
- (c) dishonest or fraudulent conduct in the discharge of his duties;
- (d) breach of any rule of practice and etiquette of the profession made by the Bar Council under this Act or otherwise;
- (e) being adjudicated a bankrupt and being found guilty of any of the acts or omissions mentioned in paragraph 33(6)(a), (b), (c), (e), (f), (h), (k) or (l) of the Bankruptcy Act 1967;
- (f) the tendering or giving of any gratification to any person for having procured the employment in any legal business of himself or any other advocate and solicitor;
- (g) directly or indirectly procuring or attempting to procure the employment of himself or any other advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;

- (h) accepting employment in any legal business through a tout;
  - (i) allowing any unauthorised person to carry on legal business in his name without his direct and immediate control as principal or without proper supervision;
  - (j) the carrying on by himself, directly or indirectly, of any profession, trade, business or calling which is incompatible with the legal profession or being employed for reward or otherwise in any such profession, trade, business or calling;
  - (k) the breach of this Act or of any rules made thereunder or any direction or ruling of the Bar Council;
  - (l) the disbarment, striking off, suspension or censure in his capacity as a legal practitioner in any other country or being guilty of conduct which would render him to be punished in any other country;
  - (m) the charging, in the absence of a written agreement, in respect of professional services rendered to a client, of fees or costs which are grossly excessive in all the circumstances;
  - (n) gross disregard of his client's interests; and
  - (o) being guilty of any conduct which is unbecoming of an advocate and solicitor or which brings or is calculated to bring the legal profession into disrepute.
- (4) Where an advocate and solicitor—
- (a) has been found guilty by a court of law of any offence involving dishonesty, misuse or misappropriation of any money or property of a client or of any other person;
  - (b) has been disbarred, struck off, suspended or censured in his capacity as a legal practitioner in any other country;
  - (c) is the subject of a complaint concerning any dishonest act committed by him in his capacity as an advocate and solicitor;
  - (d) has left the country or has not attended at his office in such circumstances that the Bar Council may reasonably presume that he has absconded; or

- (e) is otherwise incapable from infirmity of body or mind or any other cause of effectively performing the functions of an advocate and solicitor,

and the Bar Council considers that it would be in the public interest or in the interest of his clients or of the profession that such advocate and solicitor be suspended from practice, the Bar Council may apply to the Disciplinary Board for an order suspending such advocate and solicitor from practice until further notice.

(5) A pupil shall *mutatis mutandis* be subject to the same control by the Disciplinary Board as is by virtue of this section exercised over an advocate and solicitor but in lieu of an order striking him off the Roll or suspending him, an order may be made prohibiting the pupil from petitioning the Court for admission until after a date to be specified in the order.

### **Disciplinary Committee Panel and Investigating Tribunal Panel**

**95.** For the purposes of disciplinary proceedings under this Part, there shall be established a Disciplinary Committee Panel with a Disciplinary Committee established under it and an Investigating Tribunal Panel with an Investigating Tribunal established under it.

### **Appointment of Disciplinary Committee Panel**

**96.** (1) The Disciplinary Board shall, from time to time as may be required, appoint a Disciplinary Committee Panel, from a list supplied by the Bar Council, comprising thirty members of whom twenty members shall be advocates and solicitors of not less than ten years' standing and having valid practising certificates and ten members who are lay persons:

Provided that the Disciplinary Board may, whenever it deems it necessary or expedient, and after consulting the Bar Council, vary the number of members of the Disciplinary Committee Panel. Any variation of the number of members shall be in the same proportion of advocates and solicitors and lay persons as described above.

(2) Every member of the Disciplinary Committee Panel shall serve for two years:

Provided that the Disciplinary Board may extend his term for a period not exceeding a further two years or reappoint him.

**Appointment of Investigating Tribunal Panel**

**97.** (1) The Disciplinary Board shall, from time to time as may be required, appoint an Investigating Tribunal Panel, from a list supplied by the Bar Council, comprising sixty members of whom forty members shall be advocates and solicitors of not less than seven years' standing and having valid practising certificates and twenty members who are lay persons:

Provided that the Disciplinary Board may, whenever it deems it necessary or expedient, and after consulting the Bar Council, vary the number of members of the Investigating Tribunal Panel. Any variation of the number of members shall be in the same proportion of advocates and solicitors and lay persons as described above.

(2) Every member of the Investigating Tribunal Panel shall serve for a term of two years:

Provided that the Disciplinary Board may extend his term for a period not exceeding a further two years or reappoint him.

**Director of the Complaints Secretariat**

**98.** (1) The Bar Council shall, from time to time as may be required, appoint an advocate and solicitor of not less than five years' standing to the office of the Director of the Complaints Secretariat.

(2) The Director shall serve as the Secretary to the Disciplinary Board, the Disciplinary Committee and the Investigating Tribunal.

(3) The Bar Council shall be responsible for the remuneration of the Director and shall have the power to revoke his appointment.

(4) The Director shall be responsible for the daily administration of complaints against advocates and solicitors under this Part.

**Complaint against advocate and solicitor or pupil**

**99.** (1) Any complaint concerning the conduct of any advocate and solicitor or of any pupil shall be in writing and shall in the first place be made or referred to the Disciplinary Board which shall deal with such complaint in accordance with such rules as may from time to time be made under this Part.

(2) Any court, Judge, Sessions Court Judge or Magistrate or the Attorney General may at any time refer to the Disciplinary Board any complaint against an advocate and solicitor or a pupil.

(3) Nothing in this section shall be taken to preclude the Bar Council or a State Bar Committee from making any complaint of its own motion to the Disciplinary Board against an advocate and solicitor or a pupil.

### **Investigating Tribunal**

**100.** (1) Where a written application or complaint is referred to the Disciplinary Board, the Disciplinary Board shall, if it considers that there is merit in the application or complaint, forthwith constitute an Investigating Tribunal.

(2) An Investigating Tribunal to be appointed by the Disciplinary Board to inquire into the application or complaint shall consist of three members of whom shall be—

(a) two advocates and solicitors; and

(b) one lay person,

appointed from the Investigating Tribunal Panel.

(3) The Disciplinary Board shall appoint a member from paragraph (2)(a) to be the chairman of the said Investigating Tribunal.

### **Investigation**

**101.** (1) An Investigating Tribunal shall, within two weeks of its appointment, commence its investigation into the application or complaint and report its findings to the Disciplinary Board as expeditiously as may be reasonably expected of it but, not later than two months after the commencement of such investigation, or within such other period as the chairman of the Disciplinary Board may in writing specify upon an application made by the Investigating Tribunal for an extension of the period of two months.

(2) For the purposes of any investigation the Investigating Tribunal may—

- (a) call upon or employ any person to make or assist in the making of whatever preliminary investigation it thinks necessary;
- (b) require the production for inspection by the Investigating Tribunal or any person employed under paragraph (a) of any book, document or paper which may relate to or be connected with the subject matter of the investigation and may require any person to give information in relation to such book, document or paper; and
- (c) require the person concerned to give all information in relation to any such book, document or paper which may be reasonably required by the Investigating Tribunal or by the person employed under paragraph (a).

(3) Any advocate and solicitor and any other person who without lawful excuse refuses or fails to produce to the Investigating Tribunal or to any person whom the Tribunal may employ for the purposes of investigation any book, document or paper or fails to give any such information relating thereto under paragraph (2)(b) or (c) shall be guilty of an offence and shall, on conviction, be liable to \*a fine not exceeding two thousand ringgit or to a term of imprisonment not exceeding three months or to both.

(4) Before the Investigating Tribunal commences its hearing in respect of any matter—

- (a) the Investigating Tribunal shall post or deliver to the advocate and solicitor concerned—
  - (i) a copy of any written application of complaint and of any statutory declaration or affidavit that has been made in support of the application or complaint; and
  - (ii) a notice inviting the advocate and solicitor concerned, within such period (not being less than fourteen days) as may be specified in the notice, to give to the investigating Tribunal any written explanation he may wish to offer and to advise the Investigating Tribunal if he wishes to be heard by the Investigating Tribunal; and

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\*NOTE—Provision before amendment made by Act A861 is a fine not exceeding five hundred ringgit.



- (b) the Investigating Tribunal shall allow the time specified in the notice to elapse and give the advocate and solicitor concerned reasonable opportunity to be heard if he so desires and shall give due consideration to any explanation he may make.

### **Disciplinary Board's consideration of report by Investigating Tribunal**

**102.** (1) The Investigating Tribunal shall determine and recommend to the Disciplinary Board any one of the following recommendations:

- (a) that a formal investigation is not necessary;
- (b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty; or
- (c) that there should be a formal investigation by a Disciplinary Committee.

(2) If the Investigating Tribunal in its report recommends—

- (a) that there should be a formal investigation, then the Disciplinary Board shall constitute a Disciplinary Committee; or
- (b) that a formal investigation by a Disciplinary Committee is not necessary, the Disciplinary Board may, if it disagrees with the recommendation, appoint a Disciplinary Committee.

(3) The Disciplinary Board shall inform the advocate and solicitor and the person who made the application or complaint of the manner in which it has determined the application or complaint and in the event of the determination being that a formal investigation is unnecessary the Disciplinary Board shall on the request of the person furnish him with its reasons in writing.

### **Disciplinary Board's power to order penalty**

**103.** (1) If the Disciplinary Board determines that no cause of sufficient gravity exists for a formal investigation to be made but that the advocate and solicitor should be ordered to pay a penalty it may order the advocate and solicitor to pay a penalty of not more than five thousand ringgit.

(2) Before the Disciplinary Board makes an order for the payment of a penalty under this section it shall notify the advocate and solicitor concerned of its intention to do so and give him a reasonable opportunity to be heard.

(3) Where the Disciplinary Board has ordered any penalty to be paid under this section by an advocate and solicitor, such penalty shall be paid within one month from date of the order and in default thereof, the Disciplinary Board may order the suspension of the advocate and solicitor from practice until the payment of such penalty is made.

### **Application to appoint a Disciplinary Committee**

**103A.** Where—

- (a) the Disciplinary Board determines that there should be a formal investigation; or
- (b) an advocate and solicitor has been convicted of an offence of criminal breach of trust under section 409 of the Penal Code [*Act 574*] or any other offence involving fraud or dishonesty; or
- (c) the advocate and solicitor has been suspended under subsection 94(4) of this Part,

the Disciplinary Board shall forthwith appoint a Disciplinary Committee which shall hear and investigate the matter.

### **Disciplinary Committee**

**103B.** (1) The Disciplinary Board shall appoint a Disciplinary Committee to consider, in cases where an Investigating Tribunal has been appointed, the report of the Investigating Tribunal, or to investigate and make recommendations to the Disciplinary Board in respect of cases under section 103A.

(2) A Disciplinary Committee shall consist of three members of whom shall be—

- (a) two advocates and solicitors; and
- (b) one lay person,

appointed from the Disciplinary Committee Panel.

(3) The Disciplinary Board shall appoint a member from paragraph 2(a) to be the chairman of the Disciplinary Committee.

### **Findings of Disciplinary Committee**

**103c.** (1) After hearing and investigating any matter referred to it, a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine and make any one of the following recommendations to the Disciplinary Board:

- (a) that no cause of sufficient gravity for disciplinary action exists;
- (b) that while no cause of sufficient gravity for disciplinary action exists the advocate and solicitor should be reprimanded; or
- (c) that there is sufficient merit in the complaint and that the advocate and solicitor should be subject to one of the following disciplinary actions:
  - (i) imposition of a fine upon the advocate and solicitor for such sum as the Disciplinary Committee deems just;
  - (ii) suspension of the advocate and solicitor concerned from practice for such period as the Disciplinary Committee deems appropriate in the circumstances; or
  - (iii) striking off the Roll of the advocate and solicitor concerned.

### **Consideration by the Disciplinary Board of the report of the Disciplinary Committee**

**103d.** (1) After consideration of the report of the Disciplinary Committee, the Disciplinary Board may make an order—

- (a) affirming the recommendations of the Disciplinary Committee; and
- (b) may either accept the recommendations of the Disciplinary Committee of the punishment to be imposed or, in exceptional cases, impose a greater punishment.

(2) Before the Disciplinary Board makes an order and imposes a punishment under this section which results in a greater punishment it shall notify the advocate and solicitor concerned of its intention to do so and give him a reasonable opportunity to be heard.

(3) Where the Disciplinary Board does not agree with the recommendations of the Disciplinary Committee, the Disciplinary Board shall make such other order as it deems just.

### **Appeal from the decision of the Disciplinary Board**

**103E.** (1) Any party aggrieved by any decision or order made by a Disciplinary Board shall have the right to appeal to the High Court within one month of notification of the decision or order complained against.

(2) The appeal shall be fixed for hearing before three Judges of the High Court.

(3) Any party aggrieved by the decision of the High Court shall have the right to appeal to the Federal Court within one month of the decision of the High Court.

(4) The Bar Council may in its discretion intervene at any stage of any appeal under this section.

### **Power to make rules**

**103F.** (1) The Disciplinary Board shall, from time to time, make rules to regulate the procedure pertaining to disciplinary proceedings.

(2) Any rules made under this Part shall not come into operation until they have been published in the *Gazette*.

### **Saving and transitional provision**

**103G.** (1) The substitution of the provisions relating to disciplinary proceedings by \*this Act shall not affect any pending application, complaint or disciplinary proceedings at the date of coming into force of this Act.

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\*NOTE—The words “this Act” refer to Legal Profession (Amendment) Act 1992 [Act A812].

(2) For the purpose of subsection (1) the principal Act relating to disciplinary proceedings shall continue to remain in force.

### **Establishment of Discipline Fund**

**103H.** (1) The Malaysian Bar shall establish, maintain and administer a fund which shall be known as the “Discipline Fund”.

(2) Every advocate and solicitor shall on each occasion he applies for a Sijil Annual pay to the Malaysian Bar a contribution to the Discipline Fund of such sum as the Bar Council may from time to time determine:

Provided that where an advocate and solicitor is applying for a practising certificate which is to be valid for a period which is less than six months in a calendar year, he shall be required to pay a contribution of only one half of the sum determined for that year.

(3) All costs, charges and expenses for the purposes of any disciplinary proceeding under this Act shall be defrayed out of the Discipline Fund.

### **Payment of fees, fine, costs, etc., into Discipline Fund**

**103I.** There shall be paid into the Discipline Fund the fees prescribed pursuant to section 140 and any fine, penalty, or any other payment ordered by the Disciplinary Board to be paid.

### **Power to make rules**

**103J.** The Disciplinary Board may, in consultation with the Bar Council and with approval of the Minister, make such rules as may be expedient or necessary for the better carrying out of this Part of this Act.

**104.** (*Deleted by Act A567*).

### **Advocate and solicitor may apply to remove his name from the Roll**

**105.** (1) Any advocate and solicitor may, subject to this section and to any rules made in that behalf, apply to the Court to have his name removed from the Roll.

(2) Every such application shall be made by way of originating motion and shall be supported by an affidavit in the prescribed form which shall be served on the Bar Council not less than two months before the application is heard.

(3) The Bar Council may for good cause require the applicant to advertise his intention to make the application in such manner as the Bar Council shall direct.

(4) An application under this section shall be heard by a Judge sitting in open court.

(5) No order shall be made on an application under this section if the Judge is satisfied that—

- (a) disciplinary action is pending against the applicant; or
- (b) the conduct of the applicant is the subject of inquiry or investigation under this Part.

(6) On the hearing of any such application the Judge may make an order—

- (a) directing the Registrar to strike off the applicant's name from the Roll; or
- (b) adjourning the same *sine die* or to such date as the Judge seems fair and reasonable,

and such order for the payment of costs as may be just.

### **Bar Council to give Registrar notice of order adverse to advocate and solicitor**

**106.** The Bar Council shall give the Registrar notice of every order made under this Part that is adverse to an advocate and solicitor, and the Registrar shall cause a notice of the effect of that order to be entered on the Roll against the name of the advocate and solicitor concerned:

Provided that an order as to costs only need not be so entered on the Roll.

### **High Court may restore an advocate and solicitor**

**107.** (1) The High Court may, if it thinks fair and reasonable, at any time order the Registrar to restore to the Roll the name of an advocate and solicitor which has been removed from, or struck off, the Roll.

(2) Any application that the name of an advocate and solicitor be restored to the Roll shall be by originating motion supported by affidavit, before the High Court.

(3) Notice of the motion shall be served on the Bar Council which shall be represented at the hearing of the motion and shall place before the Court a report which shall include copies of the record of any proceedings as the result of which the name of the advocate and solicitor was removed from, or struck off, the Roll and a statement of any facts which have occurred since the name of the advocate and solicitor was removed from, or struck off, the Roll and which in the opinion of the Bar Council or any member of it are relevant to be considered or to be investigated in connection with the application.

(4) In the exercise of its jurisdiction under this section, the High Court shall comprise three Judges.

(5) Any party aggrieved by the decision of the High Court shall have a right of appeal to the Federal Court:

Provided that the Judges who made the decision appealed from shall not sit as members of the Federal Court.

### **Costs for proceedings under this Part**

**108.** The costs of and incidental to all proceedings under this Part shall be at the discretion of the Court hearing the proceedings and may include the costs of the Bar Council and the costs of proceedings before the Investigating Tribunal and the Disciplinary Committee.

**If person inquired fails to attend**

**109.** If the person whose conduct is the subject of inquiry fails to attend before the Court, the Investigating Tribunal or the Disciplinary Committee, as the case may be, the inquiry or proceedings may be proceeded with without further notice to such person upon proof of service by affidavit or statutory declaration or in such other manner as the Court may direct.

**Publication and document presumed evidence of facts therein stated**

**110.** (1) In any proceedings under this Part any publication purporting to be printed under the authority of the General Council of the Bar or the Law Society in England and any document purporting to be signed under the authority of those bodies shall, until the contrary is proved, be evidence of the facts therein stated or of any rule, practice or usage prevailing in England as therein stated.

(2) When the person whose conduct is the subject of inquiry does not appear and the Disciplinary Committee determines under section 109 to proceed in his absence and in any other case with the consent in writing of that person, the Investigating Tribunal or the Disciplinary Committee may either as to the whole case or as to any particular fact, proceed and act on evidence by affidavit or statutory declaration.

**No action against Disciplinary Committee, etc. for act done**

**111.** No action or proceeding shall lie against the Investigating Tribunal, the Disciplinary Committee, the Disciplinary Board, the Malaysian Bar or the Bar Council or any member thereof for any act or thing done under this Act unless it is proved to the Court that the act or thing was done in bad faith or with malice.

## PART VII

## REMUNERATION OF ADVOCATES AND SOLICITORS

**No advocate and solicitor to purchase interest of client**

**112.** (1) Except as expressly provided in any written law, or by rules made under this Act, no advocate and solicitor shall—

- (a) purchase or agree to purchase either directly or indirectly an interest or any part of the interest which is the subject



matter of his client or that of the other party in the same suit, action or other contentious proceeding brought or to be brought or maintained; or

- (b) enter into any agreement by which he is retained or employed to prosecute any suit or action or other contentious proceeding which stipulates for or contemplates payment only in the event of success in such suit, action or proceeding.

(2) Nothing in this Act shall be construed to legalise any purchase or agreement prohibited by subsection (1) or to any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is void or invalid against—

- (a) the Director General of Insolvency under the law relating to bankruptcy;
- (b) a liquidator or receiver under the law relating to the winding up of company; or
- (c) a creditor in any composition.

### **The Solicitors Costs Committee**

**113.** (1) The Solicitors Costs Committee shall consist of the following persons:

- (a) the Chief Judge or a Judge of the High Court nominated by the Chief Judge (in this section referred to as “the Chief Judge or his nominee”);
- (b) the Attorney General or a member of the Attorney General’s Chambers nominated by the Attorney General;
- (c) the Chief Registrar or a Senior Assistant Registrar nominated by the Chief Registrar;
- (d) four advocates and solicitors nominated by the Bar Council.

(2) The Solicitors Costs Committee shall be convened by the Chief Judge at the request of any of its members.

(3) The Solicitors Costs Committee or any four of the members of the Committee (the Chief Judge or his nominee being one) may make general orders prescribing and regulating in any manner as they think fair and reasonable the remuneration of advocates and solicitors in respect of non-contentious business and any order made this section may revoke or alter any previous order so made.

(4) An order made under this section may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates or commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, and may regulate the amount or remuneration with reference to all or any of the following, among other, considerations:

- (a) the position of the party for whom the advocate and solicitor is concerned in the business, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, and the like;
- (b) the place where, and the circumstances in which, the business or any part it is transacted;
- (c) the amount of the capital money or rent to which the business relates;
- (d) the skill, labour and responsibility involved on the part of the advocate and solicitor;
- (e) the number and importance of the documents prepared or perused, without regard to length.

(5) An order under this section may authorize and regulate—

- (a) the taking by an advocate and solicitor from his client of security for payment of any remuneration, to be ascertained by taxation or otherwise, which may become due to him under any such order; and
- (b) the allowance of interest.

(6) So long as an order made under this section is in operation, taxation of bills of costs of advocates and solicitors in respect of non-contentious business shall, subject to section 121, be regulated by that order.

(7) Section 136 shall apply to any order made under this section.

### **Advocate and solicitor may make agreement for remuneration from client**

**114.** (1) Whether or not any order is in force under section 113, an advocate and solicitor and his client may, either before or after or in the course of the transaction of any non-contentious business,

make an agreement as to the remuneration of the advocate and solicitor in respect thereof:

Provided that such agreement shall not provide for costs at a scale lower than that provided by any order made under section 113.

(2) The agreement may provide for the remuneration of the advocate and solicitor by a gross sum, or by commission or percentage, or by salary, or otherwise, and it may be made on the terms that the amount of the remuneration stipulated in the agreement shall or shall not include all or any disbursements made by the advocate and solicitor in respect of searches, plans, travelling, stamps, fees or other matters.

(3) The agreement shall be in writing and signed by the person bound by it or as his agent on his behalf.

(4) The agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of an advocate and solicitor:

Provided that if on any taxation of costs the agreement is relied on by the advocate and solicitor and objected to by the client as unfair or unreasonable, the taxing officer may inquire into the facts and certify them to the Court, and if on that certificate it appears just to the Court that the agreement should be cancelled, or the amount payable thereunder reduced, the Court may order the agreement to be cancelled, or the amount payable to be reduced, and may give such consequential directions as the Court thinks fair and reasonable.

**Advocate and solicitor entitled to costs of negotiation of mortgagor**

**115.** (1) If a mortgage is made to an advocate and solicitor, either alone or jointly with any other person, he, or the firm of which he is a member, shall be entitled to recover from the mortgagor in respect of all business transacted and acts done by him or them in negotiating the loan, deducing and investigating the title to the property, and preparing and completing the mortgage, such usual costs as he or they would have been entitled to receive if the mortgage had been made to a person who was not an advocate and solicitor and the mortgagor had retained and employed him or them to transact that business and do these acts.

(2) If a mortgage has been made to, or has become vested by transfer or transmission in, an advocate and solicitor either alone or jointly with any other person, and any business is transacted or acts are done by that advocate and solicitor, or by the firm of which he is a member, in relation to that mortgage or the security thereby created or the property comprised thereunder, then he or they shall be entitled to recover from the mortgagor on whose behalf the business was transacted or the acts were done, and to charge against the security, such usual costs as he or they would have been entitled to receive if the mortgage had been made to, and had remained vested by transfer or transmission in, a person who was not an advocate and solicitor and that mortgagor has retained and employed him to transact that business and do these acts.

(3) In this section the word “mortgage” includes any charge on any property for securing money or money’s worth.

### *Contentious Business*

#### **Advocate and solicitor may enter agreement for costing contentious business**

**116.** (1) Subject to any written law, an advocate and solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of his costs in respect of contentious business done or to be done by such advocate and solicitor, either by a gross sum, or otherwise, and either that the same rate or at a greater or lesser rate than the rate at which he would otherwise be entitled to be remunerated.

(2) Every such agreement shall be signed by the client and shall be subject to this Part.

#### **Costs recoverable from client by other person not attested**

**117.** (1) Any agreement entered into pursuant to section 116 shall not affect the amount of, or any rights or remedies for the recovery of, any costs recoverable from the client by any other person or payable to the client by any other person, and any other person may require any costs payable by him to or recoverable by him

from the client to be taxed according to the rules for the time being in force for the taxation of such costs, unless such other person had otherwise agreed:

Provided that the client who has entered into any agreement shall not be entitled to recover from any other person, under any order for the payment of any costs which are the subject of the agreement, more than the amount payable by the client to his own advocate and solicitor.

(2) Such an agreement shall be deemed to exclude any further claim of the advocate and solicitor beyond the terms of agreement in respect of any services, fees, charges or disbursements in relation to the conduct and completion of the business in reference to which the agreement is made, except such services, fees, charges or disbursements, if any, as are expressly excepted by the agreement.

(3) Subject to this Part, the costs of an advocate and solicitor in any case where there is any agreement as is referred to in section 116, shall not be subject to taxation, nor to section 124.

(4) A provision in any such agreement which states that the advocate and solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as an advocate and solicitor, shall be wholly void.

### **Enforcement of agreements**

**118.** (1) No action or suit shall be brought or instituted upon any agreement as is referred to in section 116, but every question respecting the validity or effect of any such agreement may be examined and determined, and the agreement may be enforced, varied or set aside by suit or action by summons, motion or petition by any person or the representatives of any person being a party to such agreement, or being alleged to be liable to pay, or being or claiming to be entitled to be paid the costs, fees, charges or disbursements in respect of which the agreement is made, by the Court in which the business or any part thereof was done, or a Judge of the Court, or, if the business was not done in any Court, then by the High Court or a Judge of the High Court.

(2) Upon any such summons, motion or petition, if it appears to the Court or a Judge that such agreement is in all respects fair and reasonable between the parties, the agreement may be enforced by the Court or a Judge by rule or order, in the manner and subject to the conditions, if any, as to the costs of the summons, motion or petition as the Court or the Judge thinks fair and reasonable.

(3) If the substantive terms of any agreement are deemed by the Court or the Judge to be unfair or unreasonable, the agreement may be declared void, and the Court or Judge may thereupon order the agreement to be given up for cancellation, and may direct the cost, fees, charges and disbursements incurred or chargeable in respect of the matters included therein to be taxed, in the same manner and according to the same rules as if the agreement has not been made:

Provided that the Court or Judge may amend or ratify the agreement where not all the substance of the agreement is unfair or unreasonable.

(4) The Court or the Judge may also make such order as to the costs relating to the summons, motion or petition and the proceedings, thereon as to the Court or the Judge seems fair and reasonable.

(5) When the amount agreed under such agreement has been paid by or on behalf of the client or by any person chargeable with or entitled to pay the same, any Court or a Judge having jurisdiction to examine and enforce the agreement may, on application by the person who has paid the amount within twelve months after payment and, if it appears to the Court or Judge that the special circumstances of the case require the agreement to be reopened, reopen the agreement and order the costs, fees, charges and disbursements to be taxed, and the whole or any portion of the amount received by the advocate and solicitor to be repaid by him, on such terms and conditions as to the Court or Judge seems fair and reasonable.

(6) Where any agreement is made by the client in the capacity of guardian or of trustee under a deed or will, or of committee of any person whose estate or property will be chargeable with the amount payable under the agreement or with any part of the amount, the agreement shall before such payment be laid before the Registrar for his examination and the Registrar may disallow any part thereof, or may require the direction of the Court or a Judge to be taken thereon by summons, motion or petition.

(7) If in any such case—

- (a) the client pays the whole or any part of the amount payable under the agreement without the previous approval of the Registrar or the Court or the Judge, he shall be liable at any time to account to the person whose estate or property is charged with the amount paid, or with any part thereof for the amount so charged; and
- (b) the advocate and solicitor accepts payment without such approval, any court which would have had jurisdiction to enforce the agreement may, if it thinks fair and reasonable, order him to refund the amount so received by him under the agreement or any part thereof.

**Any party may set aside agreement of deceased advocate and solicitor not performed**

**119.** (1) Where an advocate and solicitor has made an agreement with his client in pursuance of section 116 and anything has been done by the advocate and solicitor under the agreement, and, before the agreement has been completely performed by him, the advocate and solicitor dies or becomes incapable of acting an application may be made to the court by any party to the agreement or by the representatives of the party, and the Court shall thereupon have the same power to enforce or set aside the agreement, if it had not be acted upon. have the same power to enforce or set aside the agreement, if it had not be acted upon.

(2) The Court, even if it considers the agreement to be in all respects fair and reasonable, may order the amount due in respect of the business done thereunder to be ascertained by taxation.

(3) The Registrar in ascertaining any such amount shall have regard, so far as may be, to the terms of the agreement.

(4) Payment of the amount found to be due may be enforced in the same manner as if the agreement had been completely performed by the advocate and solicitor.

**Where client changes counsel before agreement performed**

**120.** (1) Notwithstanding the existence of any agreement under section 116, a client may change his advocate and solicitor before the conclusion of the business to which the agreement relates and in that case the advocate and solicitor who is a party to the agreement shall be deemed to have become incapable of acting under the same within the meaning of this section.

(2) Upon any order being made for taxation of the amount due to an advocate and solicitor in respect of business done under the agreement, the Court shall direct the Registrar to have regard to the circumstances under which the change of advocate and solicitor has taken place.

(3) Upon taxation the advocate and solicitor shall not be considered to be entitled to the full amount of the remuneration agreed to be paid to him unless it appears that there has been no default, negligence, improper delay or other conduct on his part affording reasonable ground to the client for changing his advocate and solicitor.

### **Where remuneration of advocate and solicitor not subject of agreement**

**121.** (1) Where the remuneration of an advocate and solicitor in respect of contentious business done by him is not the subject of an agreement made pursuant to section 116, the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum:

Provided that—

- (a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him in lieu of the cost a bill containing detailed items, and the gross sum bill shall thereupon be of no effect;
- (b) where an action is commenced on a gross sum bill, the Court shall, if so requested by the party chargeable therewith before the expiration of one month from the service on that party of the writ or other originating process, order that the bill shall be taxed;
- (c) if a gross sum bill is referred to taxation, whether under this section or otherwise, nothing in this section shall prejudice and rules of court with respect to taxation and the advocate and solicitor shall furnish the taxing officer with such details of any of the costs covered by the bill as the taxing officer may require.

(2) Subsection (1) shall not apply to fees paid to an advocate and solicitor who is briefed as a senior counsel.



PART IX

RECOVERY AND TAXATION OF COSTS

**Advocate and solicitor defined**

**122.** In this Part the expression “advocate and solicitor” includes the executors, administrators and assignees of the advocate and solicitor in question.

**Advocate and solicitor entitled to charge on property for costs**

**123.** Any court in which an advocate and solicitor has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the advocate and solicitors entitled to a charge on the property recovered or preserved in such suit, matter or proceeding for such advocate and solicitor’s taxed costs in reference to that suit, matter or proceeding, and may make such orders for the taxation of the costs and for raising money to pay, or for paying, the costs out of the property as it thinks fair and reasonable, and all conveyance and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a *bona fide* purchaser for value without notice, be void as against the advocate and solicitor:

Provided that no order shall be made if the right to recover the costs is barred by the Limitation Act, 1953 [*Act 254*].

**No advocate and solicitor to sue for costs until delivery of bill of cost**

**124.** (1) Except as authorized by this Act, no advocate and solicitor shall without the leave of the court commence or maintain any action for the recovery of any costs due for any business done by him until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of abode, a bill of costs, which bill shall be signed either by the advocate and solicitor, or in the case of a partnership, by any of the partners, either with his own name or with the name or style of the partnership, or by another advocate and solicitor employed by the first-named advocate and solicitor or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill.

(2) Where a bill is proved to have been delivered in compliance with subsection (1) it shall not be necessary in the first instance for the advocate and solicitor to prove the contents of the bill and it shall be presumed until the contrary is shown to be a bill *bona fide* complying with this Act.

### **Power of court to authorize solicitor to commence action**

**125.** The Court may authorize an advocate and solicitor to commence an action for recovery of his costs and also refer his bill of costs for taxation by the Registrar, although one month has not expired from the delivery of the bill, upon proof to its satisfaction that any party chargeable therewith is about to quit Malaysia, or to have a receiving order made against him, or to compound with his creditors or to take any other steps or do any other act which in its opinion would tend to defeat or delay the advocate and solicitor in obtaining payment.

### **An order for taxation of costs to be made within 6 months of delivery of bill of costs**

**126.** (1) An order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery.

(2) The order shall contain such directions and conditions as the court thinks proper, and any party aggrieved by any order of Court may apply by summons in chambers that the same may be amended or varied or set aside.

(3) In any case where an advocate and solicitor and his client consent to taxation of a solicitor's bill the Registrar may proceed to tax the bill notwithstanding that there is no order therefore.

### **The cost of obtaining an order for taxation**

**127.** The costs of obtaining an order for taxation of costs, including the petition order and service of order, other than any court fees

payable thereon or disbursements, if the order is obtained by consent by the advocate and solicitor of either party shall be the sum of twenty five ringgit:

Provided that if one of the parties does not consent to taxation the cost of obtaining an order of court shall be the sum of one hundred and fifty ringgit.

**Order for taxation of advocate and solicitor's bill on notice given**

**128.** (1) After the expiration of six months from the delivery of a bill of costs, or after payment of the bill of costs, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the advocates and solicitors and under special circumstances to be proved to the satisfaction of the Court.

(2) No such order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs.

**Petition by party liable for a bill of costs**

**129.** All petitions by a party chargeable with or liable for a bill of costs shall, unless the same has been already paid, contain a submission by the party to pay the amount of the bill of costs to the advocate and solicitor when taxed.

**Order for delivery of solicitor's bill of costs by way of petition**

**130.** (1) An order for the delivery of a solicitor's bill of costs, and for delivery up of any deeds, documents or other papers in the possession of the advocate and solicitor may, subject to any lien which such advocate and solicitor may have, and for the taxation of the bill when delivered, be obtained on a petition of course.

(2) Upon the petition being filed, the Registrar shall mark the order thereon forthwith, and draw up the order if necessary.

(3) Subject to this section, the Court shall have the like jurisdiction as the High Court in England to make an order, under subsection (1).

**Court may order advocate and solicitor to deliver copy of bill to applicant**

**131.** When application is made by a party other than the party chargeable, the Court may order the advocate and solicitor to deliver to the party making the application a copy of the bill, upon payment of the costs of making the copy.

**Bill of costs to follow Rules of court**

**132.** Bills of costs for taxation as between advocate and solicitor and client shall be drawn in the manner provided by the Rules of the High Court, and the taxation shall be governed by the Rules.

**Registrar may allow interest on money disbursed by counsel**

**133.** The Registrar may allow interest at any rate and from any time as he thinks fair and reasonable on moneys disbursed by an advocate and solicitor for his client, and on moneys of the client in the hands of the advocate and solicitor and improperly retained by him.

**Costs of order of taxation payable by solicitors**

**134.** (1) In case any order for taxation is made upon the application of the party chargeable or liable, or of advocate and solicitor, the costs of the order and taxation, except when the order has been made after the expiration of one year, shall be paid according to the event of such taxation—

- (a) if the bill when taxed is less by a sixth part than the bill delivered, then the advocate and solicitor shall pay the costs;
- (b) if the bill when taxed is not less by a sixth part, then the party chargeable or liable, if the application is made by him, or if he attends the taxation, shall pay the costs.

(2) Every order for any reference under section 125 shall direct the Registrar to tax the costs of the reference, and to certify what, upon the reference, is found to be due to or from the advocate and solicitor in respect of the bill, and of the costs of the reference if payable.

(3) The Registrar shall certify any special circumstances relating to the bill or taxation.

(4) The court may thereupon make any order as it considers fair and reasonable respecting the payment of the costs of such taxation.

(5) Where any such reference is made, but it is otherwise not authorized except under special circumstances, the Court may give any special directions relative to the costs of the reference.

### **Certificate of taxing officer final**

**135.** The certificate of the Registrar by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered by such certificate, and the Court may make any order in relation to the certificate it considers fair and reasonable, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

### **Right of Government to costs unaffected**

**136.** Nothing in this Act shall affect the right, which is hereby declared, of the Government when represented by any of the persons mentioned in paragraph 35(2)(a) to recover costs awarded to it in or respecting any cause or matter, and in any such cause or matter the costs of the Government shall be taxed in accordance with any rules in force for the time being for the taxation of the fees and costs of advocates and solicitors as if an advocate and solicitor of the High Court who is not in the service of the Government had appeared on behalf of the Government.

## PART X

### MISCELLANEOUS

#### **Board and Bar to maintain an office**

**137.** (1) The Board and the Malaysian Bar shall each keep and maintain at all times an office and shall respectively publish in the *Gazette* the address of that office and any change of such address.

(2) All writs, complaints, notices, pleadings, orders, summonses, warrants or other written communications required or authorized or ordered to be served on or delivered or sent to the Board or the Malaysian Bar shall be deemed to be duly served, delivered or sent if left at the Board or the Malaysian Bar, as the case may be.

### **Document to be served may be sent by post**

**138.** (1) Any document other than the process of court that is required to be served or delivered under this Act may be sent by post.

(2) A certificate in writing signed by an officer of the Malaysian Bar or the Board, or a member of the Bar Council that any document was properly addressed and posted and setting out the date of posting shall be *prima facie* evidence of service of the document.

(3) Any document addressed to an advocate and solicitor at his only or principal address last appearing in the Register of Practitioners shall be deemed to be properly addressed.

### **Bar Council or Malaysian Bar to recover sum of money**

**139.** In addition to any other method of recovery and to any other right, remedy or power vested in the Malaysian Bar or in the Bar Council any sum of money payable under this Act or any rules or by-laws made thereunder may be recoverable by the Bar Council or the Malaysian Bar as a debt in any court of competent jurisdiction.

### **Fees to be prescribed by Rules Committee**

**140.** The fees payable under sections 18, 28 and 29 shall be prescribed from time to time by the Rules Committee and the payment of such fee shall be noted by an impressed stamp on the relevant document.

### **Bank not bound to take notice of right against the account of advocate and solicitor**

**141.** (1) Subject to this section, no bank shall in connection with any transaction relating to the account of any advocate and solicitor kept with it or with any other bank (other than an account kept by an advocate and solicitor as trustee for a specified beneficiary),

incur any liability or be under any obligation to make any inquiry, or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account, which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the moneys paid or credited to it:

Provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be liable under section 93 or this section.

(2) Notwithstanding subsection (1), a bank at which an advocate and solicitor keeps an account of his client moneys shall not, in respect of any liability of the advocate and solicitor to the bank, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against money standing to the credit of that account.

### **No estate duty payable for bequest to the Bar**

**142.** (1) No estate duty shall be payable in respect of any amount of any bequest to the Malaysian Bar, and the value of the property passing on the death of a deceased donor shall not be deemed to include the amount of the bequest for the purpose of assessing the rate of estate duty.

(2) The Board and the Malaysian Bar shall each be deemed to be—

- (a) an institution specified in the First Schedule to, and under paragraph 13(1)(e) of the Income Tax 1967; and
- (b) an institution of a public character approved by the Minister for the purposes of paragraph 37(2)(c) of the Income Tax Act 1967.

## **PART XI**

### **TRANSITIONAL PROVISIONS**

#### **Definition**

**143.** (1) In this Part unless the context otherwise requires—

“former roll” means the roll of advocates and solicitors kept under section 3 of the Ordinance.

“Local Bar Committee” and “Bar Council” shall have the meanings assigned to these expression in the Ordinance.

(2) This Part shall have effect notwithstanding anything to the contrary in any other provisions of this Act.

### **Nomination of members of Board**

**144.** (1) The respective authorities mentioned in section 7 shall nominate persons to be members of the Board in accordance with that section within one month of the coming into operation of Part II.

(2) The terms of office of members of the Board other than the Attorney General shall commence on the day when the Board first meets for the dispatch of business.

### **Registrar to transfer to the Roll the names of advocates and solicitors**

**145.** (1) The Registrar shall transfer to the Roll the names of all advocates and solicitors on the former roll with the dates in the order of their respective admissions.

(2) The Registrar in making such transfer may omit the names of any person known to the Registrar to be deceased or not ordinarily resident in Malaysia.

(3) Any person whose name has been wrongly or inadvertently omitted may apply to the Registrar to have his name entered and the Registrar shall forthwith enter the applicant’s name, upon the Roll.

(4) Every person whose name has been entered on the Roll under this section shall, until the contrary is proved, be deemed to have been duly admitted under this Act.

(5) Section 107 shall apply to any person whose name was removed from, or struck off, the former roll.



**Definition**

**146.** (1) In this section the expression “pending petition” shall mean—

- (a) a petition filed pursuant to subsection (2); or
- (b) a petition filed before the coming into operation of Part II in which no order for the admission of the petitioner has been made when Part II comes into operation.

(2) Notwithstanding the repeal of the Ordinance, any qualified person who is desirous of filing a petition for admission before the Board is constituted may do so under the Ordinance.

(3) Subject to this section, sections 5 to 9 of the Ordinance shall apply to every pending petition.

(4) Sections 27 and 28 shall apply to every pending petition.

(5) If no order for the admission of a petitioner in a pending petition is made before the expiry of twelve months of the coming into operation of this Act or such extended period as the Court may allow that pending petition shall be deemed to have lapsed.

**Certificate issued under section 26 deemed practising certificate**

**147.** A certificate issued under section 26 of the Ordinance shall, subject to the provision relating to the suspension of practising certificates in this Act and notwithstanding any date endorsed thereon, be deemed to be a practising certificate issued under section 29.

**Bar Council and Committee holding office at the date of coming into force of this Act**

**148.** The Bar Council and the State Bar Committee holding office at the date of the coming into operation of Part V shall remain in office until meetings have been held and elections of new State Bar Committees and a new Bar Council have taken place in the manner and at the times provided in this Act.

**Assets and property of Bar Council and Local Bar**

**149.** All property and assets of the Bar Council and the State Bar Committees shall, upon the coming into operation of Part V, be vested in the Bar Council and the State Bar Committees respectively without further act or formality.

**Saving**

**150.** (1) All applications and complaints made under sections 27, 28 and 30 of the Ordinance and all proceedings before a Disciplinary Committee appointed under the Ordinance or before the court under section 31 of the Ordinance shall proceed as though the applications or complaints were made or the proceedings commenced under this Act, and for the purposes of this section any Disciplinary Committee appointed under the Ordinance shall be deemed to be a Disciplinary Committee appointed under this Act.

(2) This Act shall apply to all applications, complaints and proceedings, and in the event of any doubt or difficulty application shall be made by way of originating summons to a judge for directions, and any order made by a judge under this section shall not be the subject of appeal and shall for all purposes be deemed to be under this Act.

**Provisions of Advocates and Solicitors Ordinance to apply in respect of remuneration of advocates and solicitors until General orders made under the Act**

**151.** Until general orders prescribing and regulating the remuneration of advocates and solicitors in respect of non-contentious business are made under section 113 their remuneration shall be regulated in accordance with the Ordinance.

## PART XII

## REPEAL

**Repeal**

**152.** (1) The Advocates and Solicitors Ordinance, 1947 is hereby repealed.

(2) The Advocates Ordinance of Sabah [*Sabah Cap. 2*] and the Advocates Ordinance of Sarawak [*Sarawak Cap. 110*] shall be repealed on the coming into operation of this Act in Sabah and Sarawak.

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SCHEDULE

[Section 88]

CONTROL OF PROPERTY OF AN ADVOCATE AND  
SOLICITOR IN CERTAIN CASES

1. The Bar Council may require the production or delivery to any person appointed by the Bar Council at a time and place to be fixed by the Bar Council, and may take possession, of all deeds, wills, documents constituting or evidencing the title to any property, papers, books of account, records, vouchers and other documents in the possession or control of the advocate and solicitor or his firm, or relating to any trust of which he is a sole trustee or is co-trustee only with one or more of his partners, clerks or servants.
2. If any person having possession or control of any such document fails to comply forthwith with any such requirement—
  - (a) he shall be guilty of an offence and shall on conviction be liable on summary conviction to a fine not exceeding five hundred ringgit; and
  - (b) the High Court or a Judge may on the application of the Bar Council order that person to comply with the requirement within such time as may be specified in the order, and may at the same time order that on that person's failure to comply with the requirement one or more officers of the Bar Council, or one or more persons appointed by the Bar Council for the purpose, may forthwith enter upon any premises (using such force as is reasonably necessary for the purpose) to search for, and take possession of, the documents referred to in the foregoing paragraph.
3. Upon the taking possession of such documents, the Bar Council shall serve upon the advocate and solicitor and every person from whom those documents were received, or from whose premises they were taken by virtue of an order made under paragraph 2, a notice giving particulars and the date of taking possession thereof.
4. Any requirement or notice under this Schedule shall be made in writing under the hand of such person as may be appointed by the Bar Council for the purpose and may be served on any person either personally or by forwarding it by registered letter addressed to his last known place of business or residence.
5. Within fourteen days after the service of a notice under paragraph 3, the advocate and solicitor or other person upon whom the notice was served may apply to a Judge in chambers for an order directing the Bar Council to return those documents to the person from whom they were received, or from whose premises they were taken, as the case may be, by the Bar Council or to such other person as the applicant may require, and on the hearing of any such application the Judge may make such order with respect to the matter as he may think fair and reasonable.

**6.** If no application is made under paragraph 5 or if the Judge to whom any such application is made directs that the documents shall remain in the custody or control of the Bar Council, the Bar Council may make inquiries to ascertain to person to whom those documents belong and may deal with those documents in accordance with the directions of that person:

Provided that, before dealing with the documents, the Bar Council may take copies of, or of extracts from, any of the documents.

**7.** The High Court or a Judge thereof may on the application of the Bar Council, order that no payment shall be made, without the leave of the High Court or a Judge, by any banker named in the order out of any banking account in the name of the advocate and solicitor or his firm.

**8.** In any case where the Bar Council has taken possession of documents under paragraph 1, and has not been required to return them by virtue of paragraph 5 the following paragraphs shall apply, but without prejudice to the application of paragraph 16 so far as it affects any of the paragraphs preceding it.

**9.** The Bar Council may, on a resolution in that behalf made by the Council take control of all sums of money due from the advocate and solicitor or to his firm, or held by him or his firm on behalf of, his or his firm's clients or subject to any trust of which he is the sole trustee or co-trustee only with one or more of his partners, clerks or servants, and for that purpose the Bar Council shall serve on the solicitor or his firm, and, except where section 98 applies, on any banker and on any other person having possession or control of any such sums of money a notice, together with a certified copy of the resolution, prohibiting the payment out of such sums of money otherwise than pursuant to paragraph 11 or 12.

**10.** Within fourteen days of the service of a notice under paragraph 9 the advocate and solicitor or his firm, or the banker or other person upon whom the notice was served, may apply to a Judge in chambers for an order directing the Bar Council to withdraw the notice, and on the hearing of the application the Judge may make any order with respect to the matter as he may think fair and reasonable.

**11.** Subject to the service of any notice under paragraph 9, and to any application that may be made under paragraph 10, the Bar Council or any person in that behalf appointed by the Bar Council may withdraw the moneys, or from time to time any part of the moneys, in any banking account in the name of the advocate and solicitor or his firm due to be held on behalf of his client, and pay them into a special account in the name of the Bar Council or such person appointed by the Council and may operate, and otherwise deal with, such special account as the advocate and solicitor or his firm might have operated on, or otherwise deal with, the banking account:

Provided that a banker with whom any such special account is or are kept shall be under no obligation to ascertain that account is or are being so operated or otherwise dealt with.

**12.** (1) Subject to paragraphs 10 and 11, the Bar Council may serve a notice on the advocate and solicitor, or his firm, or banker or other person upon whom a notice has been served under paragraph 9, directing that, immediately after the expiration of eight days from the service of the first-mentioned notice, such moneys as are referred to in that notice be transferred in accordance with the directions of the Bar Council:

Provided that—

- (a) no such directions shall be given by the Bar Council except with the approval of the person to whom the moneys belong, being in the case of a trust the trustee, and, where the advocate and solicitor is the sole trustee of a trust or a co-trustee thereof with one or more of his partners, clerks or servants, the person beneficially entitled to the moneys; and
- (b) the person upon whom the first-mentioned notice has been served shall be under no obligation to ascertain whether any approval has been obtained.

(2) In any case where the Bar Council is unable to ascertain the person to whom the moneys belong or where the Bar Council otherwise thinks it expedient so to do, the Bar Council may apply to the High Court or a Judge thereof for directions as to the transfer of moneys.

**13.** If any person fails to comply with the requirements of any notice given under paragraph 9 or 12—

- (a) he shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred ringgit; and
- (b) the High Court or a Judge thereof may, on the application of the Bar Council, order that person to comply with the requirements of the notice within the times as may be specified in the order.

**14.** Subject to any order for the payment of costs that may be made on an application under paragraph 2, 5, 7, 10, subparagraph 12(2) or 13, any costs incurred by the Bar Council for the purpose of this Schedule shall be paid by the advocate and solicitor and shall be recoverable from him as a debt owing to the Bar Council.

**15.** If any claim or charge is made or any proceeding is taken against the Bar Council or its servants or agents for any act or omission by the Bar Council or its servants or agents done or made by it or them in good faith and in the execution or purported execution of the powers conferred or duties imposed on it or them under or by virtue of this Schedule, the Bar Council, or its servants or agents, as the case may be, shall be reimbursed out of the Compensation Fund for all or any costs or damages which it or they may have incurred in relation to the claim, charge or proceeding.

**16.** The Bar Council may make regulations with respect to the procedure to be followed in giving effect to paragraphs 1, 3, 4, 6, 9, 11 and subparagraph 12(1) and with respect to any matters incidental, ancillary or supplementary to those provisions.

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**LAWS OF MALAYSIA****Act 166****LEGAL PROFESSION ACT 1976**

## LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A367	Legal Profession (Amendment) Act 1977	01-06-1977
Act A419	Legal Profession (Amendment) Act 1978	Whole Act; 24-01-1978; except s 2; 01-02-1999 [P.U. (B) 33/1999]
Act A567	Legal Profession (Amendment) Act 1983	16-12-1983
Act A812	Legal Profession (Amendment) Act 1992	01-04-1992
Act A861	Legal Profession (Amendment) Act 1993	17-09-1993
Act A1197	Bankruptcy (Amendment) Act 2003	01-10-2003 [P.U. (B) 295/2003]

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# LAWS OF MALAYSIA

## Act 166

### LEGAL PROFESSION ACT 1976

#### LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
3	Act A567 Act A812	16-12-1983 01-04-1992
5	Act A567	16-12-1983
6	Act A567	16-12-1983
7	Act A567	16-12-1983
8	Act A567	16-12-1983
9	Act A567	16-12-1983
10	Act A567	16-12-1983
11	Act A567	16-12-1983
12	Act A567	16-12-1983
13	Act A367 Act A567	01-06-1977 16-12-1983
14	Act A567	16-12-1983
15	Act A567 Act A812	16-12-1983 01-04-1992
16	Act A367 Act A567	01-06-1977 16-12-1983
18	Act A567	16-12-1983
19	Act A567	16-12-1983
25	Act A567	16-12-1983
26	Act A567	16-12-1983
28	Act A567	16-12-1983
29	Act A567	16-12-1983

Section	Amending authority	In force from
30	Act A367	01-06-1977
32	Act A567	16-12-1983
33	Act A567	16-12-1983
36	Act A567	16-12-1983
37	Act A367	01-06-1977
38	Act A367	01-06-1977
42	Act A567	16-12-1983
44	Act A419	01-02-1999
46	Act A567	16-12-1983
46A	Act A419	01-02-1999
47	Act A567	16-12-1983
50	Act A567	16-12-1983
54	Act A567	16-12-1983
57	Act A567	16-12-1983
62	Act A567	16-12-1983
64	Act A567	16-12-1983
65	Act A567	16-12-1983
67	Act A419 Act A567 Act A812	01-02-1999 16-12-1983 01-04-1992
68	Act A812	01-04-1992
70	Act A419 Act A567 Act A812	01-02-1999 16-12-1983 01-04-1992
70A	Act A567 Act A812	16-12-1983 01-04-1992
71	Act A567 Act A812	16-12-1983 01-04-1992



Section	Amending authority	In force from
73	Act A567	16-12-1983
76	Act A567	16-12-1983
77	Act A567	16-12-1983
78	Act A567	16-12-1983
78A	Act A812	01-04-1992
79	Act A367 Act A567	01-06-1977 16-12-1983
80	Act A567	16-12-1983
83	Act A367	01-06-1977
84	Act A367	01-06-1977
85	Act A567	16-12-1983
88	Act A567	16-12-1983
88A	Act A567 Act A812	16-12-1983 01-04-1992
92	Act A567	16-12-1983
93	Act A367 Act A567 Act A812	01-06-1977 16-12-1983 01-04-1992
94	Act A812	01-04-1992
95	Act A567 Act A812	16-12-1983 01-04-1992
96	Act A367 Act A567 Act A812 Act A861	01-06-1977 16-12-1983 01-04-1992 17-09-1993
97	Act A567 Act A812 Act A861	16-12-1983 01-04-1992 17-09-1993
98	Act A367 Act A567 Act A812	01-06-1977 16-12-1983 01-04-1992

Section	Amending authority	In force from
99	Act A567	16-12-1983
	Act A812	01-04-1992
100	Act A367	01-06-1977
	Act A567	16-12-1983
	Act A812	01-04-1992
	Act A861	17-09-1993
101	Act A567	16-12-1983
	Act A812	01-04-1992
	Act A861	17-09-1993
102	Act A567	16-12-1983
	Act A812	01-04-1992
103	Act A567	16-12-1983
	Act A812	01-04-1992
	Act A861	17-09-1993
103B	Act A861	17-09-1993
103D	Act A861	17-09-1993
103H	Act A861	17-09-1993
103I	Act A861	17-09-1993
103J	Act A861	17-09-1993
104	Act A567	16-12-1983
107	Act A567	16-12-1983
108	Act A567	16-12-1983
	Act A812	01-04-1992
109	Act A812	01-04-1992
110	Act A812	01-04-1992
111	Act A812	01-04-1992
117	Act A567	16-12-1983
118	Act A567	16-12-1983
119	Act A567	16-12-1983
121	Act A367	01-06-1977
123	Act A368	01-06-1977

Section	Amending authority	In force from
136	Act A567	16-12-1983
137	Act A567	16-12-1983
138	Act A567	16-12-1983
139	Act A567	16-12-1983
141	Act A367 Act A567	01-06-1977 16-12-1983
142	Act A567	16-12-1983
145	Act A567	16-12-1983
146	Act A367	01-06-1977
147	Act A567	16-12-1983
149	Act A567	16-12-1983
150	Act A567	16-12-1983
Schedule	Act A567	16-12-1983

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