

ADVOCATES ORDINANCE (SABAH) (AMENDMENT) BILL 2016

AMENDMENT IN COMMITTEE

ENGLISH LANGUAGE TEXT

1. Clause 10

Clause 10 of the Bill is amended by substituting for the proposed subsection 7F(4) the following subsection:

“(4) An advocate shall not submit to the Law Society for registration a firm name that is not—

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

2. Clause 19

Clause 19 of the Bill is amended in the proposed section 12J by inserting after subsection (4) the following subsection:

“(5) The Law Society in consultation with the Chief Judge and the State Attorney-General may make rules relating to the administration and maintenance of the Discipline Fund.”

3. Clause 27

Clause 27 of the Bill is amended by substituting for paragraph (a) the following paragraph:

“(a) by substituting for the words “Chief Judge with the concurrence of the State Attorney-General” the words “Law Society in consultation with the Chief Judge and the State Attorney-General”.”.

EXPLANATORY STATEMENT

1. Paragraph 1 seeks to amend clause 10 of this Bill to provide that an advocate shall not submit to the Sabah Law Society for registration, a firm name that is not the initials of his own name, the names of advocates who are or were his partners and the names of his predecessors whose goodwill he has, or his partners have, acquired.
2. Paragraph 2 seeks to introduce new subsection 12J(5) into the Ordinance to empower the Sabah Law Society, in consultation with the Chief Judge and the State Attorney-General, to make rules relating to the administration and maintenance of the Discipline Fund.
3. Paragraph 3 seeks to amend clause 27 of this Bill to provide that the Sabah Law Society may, in consultation with the Chief Judge and the State Attorney-General, make rules for carrying out the provisions of the Ordinance.

A BILL

i n t i t u l e d

An Act to amend the Advocates Ordinance of Sabah.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Advocates Ordinance (Sabah) (Amendment) Act 2016.

(2) Subject to subsection (3), this Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

(3) Section 23 of this Act shall come into operation on a date to be appointed after the same has been adopted in the State of Sabah by an Enactment of the Legislature of the State.

New Part I

2. The Advocates Ordinance [*Sabah Cap. 2*], which is referred to as the “Ordinance” in this Act, is amended by inserting after the long title the following Part:

“PART I

PRELIMINARY”

Amendment of section 2**3.** The Ordinance is amended in section 2—

(a) in subsection (1)—

- (i) by inserting before the definition of “Chief Judge” the following definitions:

‘ “advocate” means a person admitted and enrolled as an advocate under this Ordinance;

“Annual Certificate” means the Annual Certificate issued by the Law Society pursuant to section 7C;

“certificate to practise” means the certificate to practise issued by the Registrar under section 9;’;

- (ii) by inserting after the definition of “Chief Judge” the following definitions:

‘ “Law Society” means the Sabah Law Society established under section 7A;

“master” means an advocate who has been lawfully practising in Sabah for a period of not less than seven years immediately prior to taking in a pupil;

“pupil” means a person having the qualifications set out in subsection 4(1) serving under a master prior to his admission as an advocate under this Ordinance;’;

- (iii) in the definition of “to practise in Sabah”—

(A) by deleting the word “or” at the end of paragraph (a);

(B) by inserting at the end of paragraph (b) the word “or”; and

(C) by inserting after paragraph (b) the following paragraph:

“(c) any of the functions authorized under this Ordinance;”;

(iv) by inserting before the definition of “Registrar” the following definition:

‘ “Register of Advocates” means the annual register kept by the Registrar under section 9B;’;

(v) in the definition of “roll”, by substituting for the word “3” the word “7”;

(vi) by substituting for the full stop at the end of the definition of “roll” a semicolon; and

(vii) by inserting after the definition of “roll” the following definition:

‘ “Sabah”, except for subsection 2(2), includes the Federal Territory of Labuan.’; and

(b) in subsection (2)—

(i) by inserting after the word “he” the words “is a Malaysian citizen or permanent resident who”; and

(ii) in paragraph (a), by inserting after the word “Sabah” the words “or the Federal Territory of Labuan”.

Deletion of section 3

4. The Ordinance is amended by deleting section 3.

New Part II

5. The Ordinance is amended by inserting before section 4 the following Part:

“PART II

PROVISIONS RELATING TO ADMISSION OF ADVOCATES”.

Amendment of section 4

6. Section 4 of the Ordinance is amended—

(a) in paragraph (1)(ca), by substituting for the word “Schedule” the words “First Schedule”;

(b) in subsection (1A)—

(i) by substituting for the words “has been a Magistrate of the First Class” the words “has served in the Judicial and Legal Service”; and

(ii) by substituting for the word “five” the word “seven”;

(c) in paragraph (1B)(b), by substituting for the word “five” the word “seven”; and

(d) by inserting after subsection (1B) the following subsections:

“(1C) A person may serve different parts of his period of pupillage with different advocates who have been practising in some part of Malaysia for a period of not less than seven years immediately prior to the person becoming his pupil.

(1D) A person must possess either one of the qualifications mentioned in subsection (1) prior to his becoming a pupil or prior to the commencement of his reading in the chambers of the State Attorney-General, or be an advocate who has been lawfully practising in some part of Malaysia for a period of not less than seven years immediately prior to the person becoming his pupil or commencing to read in chambers.

(1E) Notwithstanding subsection (1D), a person may serve his pupillage or commence his reading in chambers if he has passed the final examinations for the degree or possessed other qualification mentioned in subsection (1) which makes him qualified for admission as an advocate but before the degree or other qualification has been conferred on him.”.

New section 4A

7. The Ordinance is amended by inserting after section 4 the following section:

“Pupil may be permitted to appear before admission on the roll. **4A.** (1) The Chief 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;
 - (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.

(2) The Chief Judge shall make the order referred to in subsection (1) if he thinks it is fair and reasonable to do so provided always that both the State

Attorney-General and the Law Society have been served with the application and have had an opportunity to be heard on the application.

(3) The master of the pupil, the State Attorney-General and the Law Society may apply at any time during the pupillage of any pupil to the Chief Judge in Chambers for a variation or rescission of the order referred to in subsection (1) and the Chief Judge shall make such order on the application as in all the circumstances seems to be in the best interest of the profession.”.

Amendment of section 5

8. Section 5 of the Ordinance is amended—

(a) in subsection (1)—

(i) by inserting after the word “may” the words “by petition verified by his own affidavit”; and

(ii) in paragraph (a), by substituting for the words “subsection (2) of section 4” the words “subsection 4(2)”; and

(b) in subsection (2), by substituting for the words “Sabah Law Association” the words “Law Society”.

Substitution of section 7

9. The Ordinance is amended by substituting for section 7 the following section:

“Roll of advocates. 7. (1) The Registrar shall keep a roll of advocates 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) When an order is made under section 6 and on payment of the prescribed fee by the applicant, the Registrar shall cause to be entered upon the roll the name of the applicant and the date of his admission and the applicant shall thereupon become and be styled an advocate and shall continue to be an advocate so long as his name remains on the roll.

(4) The Registrar shall from time to time and at least once in every year publish in the *Sabah Government Gazette* the names of all persons on the roll.

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

New Part III

10. The Ordinance is amended by inserting after section 7 the following Part:

“PART III

SABAH LAW SOCIETY

Establishment
of Sabah
Law Society.

7A. (1) A body corporate which shall be known as the “Sabah Law Society” is established with perpetual succession and a common seal.

(2) The Law Society shall consist of the following:

(a) the President;

(b) the Vice-President;

(c) the immediate past President;

(d) the Secretary;

(e) the Assistant Secretary;

(f) the Treasurer; and

(g) members pursuant to section 13B.

(3) The Law Society may sue or be sued in its corporate name.

(4) Subject to and for the purposes of this Ordinance, the Law Society may, upon such terms as the Law Society deems fit—

(a) enter into contracts; and

(b) in respect of movable and immovable property and interest in movable or immovable property of every description—

(i) acquire, purchase, take, hold and enjoy such property; and

(ii) convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer, or otherwise dispose of, or deal with such property and interest vested in the Law Society.

(5) The Constitution and rules of the Law Society shall be set out in Part VI of this Act.

Common
seal.

7B. (1) The common seal of the Law Society shall bear a device as approved by the Law Society and the seal may from time to time be broken, changed, altered and made anew as the Law Society thinks fit.

(2) Until a seal is provided by the Law Society, a stamp bearing the words “Sabah Law Society” may be used and shall be deemed to be its common seal.

(3) The common seal of the Law Society shall be kept in the custody of the President of the Law Society or any other person authorized by the Law Society, and shall be authenticated by either the President of the Law Society or by such other person authorized by the President of the Law Society in writing.

(4) All deeds, documents and other instruments of the Law Society purporting to be sealed with the common seal of the Law Society and authenticated in accordance with subsection (3) shall, until the contrary is proved, be deemed to have been validly executed.

(5) Any deed, document and other instrument which, if executed by a person not being a body corporate, is not required to be under seal may in like manner be executed by a member of the Law Society or by any member of the Law Society authorized in that behalf.

(6) The common seal of the Law Society shall be officially and judicially noticed.

(7) Every document to which the common seal of the Law Society is affixed shall be signed by two members of the Law Society appointed by the President of the Law Society in that behalf.

Annual
Certificate.

7c. (1) Subject to sections 7D and 7E, the Law Society shall at any time after the month of June in the preceding year issue an Annual Certificate to an advocate within twenty-eight days of the receipt of an application under subsection (2) if—

- (a) the Law Society is satisfied that the application complies with that subsection and any rules made under this section;
- (b) the Law Society is satisfied that the applicant is not disqualified from holding a certificate to practise under section 9A;
- (c) the applicant is not in arrears in respect of any subscription or levy lawfully due to the Law Society under this Ordinance; and
- (d) the applicant intends to practise under an approved name.

(2) An application by an advocate for an Annual Certificate shall be made in such form as may be prescribed by the rules made under this section and shall be accompanied by appropriate certificates showing that paragraph 1(c) has been complied with.

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

(4) Subject to this Ordinance, the Law Society may make rules regulating the issue of Annual Certificates.

(5) Any rules made by the Law Society under this section shall be signed by the President of the Law Society and published in the *Sabah Government Gazette*.

Issue of Annual Certificate in certain conditions.

7D. (1) Subsection (2) shall have effect in relation to an application for an Annual Certificate made by an advocate—

- (a) after more than twelve months have elapsed since his admission and if he has held no valid certificate to practise during that period;
- (b) who has held a certificate to practise 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 certificate to practise;
- (d) after the Disciplinary Board has ordered a penalty or costs to be paid by him;
- (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 a discharge or 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 the Chief Judge or the Law Society otherwise orders, give to the Law Society not less than six weeks before his application for an Annual Certificate notice of his intention to apply for the Certificate and the Law Society may in its discretion—

- (a) issue an Annual Certificate; or
- (b) notify the applicant that he is required to make an application to the Court under section 7E.

Applicant to apply to Court.

7E. An advocate who is—

- (a) required to make an application under this section; or
- (b) dissatisfied with the refusal, neglect or delay in the issue to him of an Annual Certificate,

may apply to the Chief Judge by originating summons for an order directing the Law Society to issue him with an Annual Certificate.

Law Society to maintain register of firm names.

7F. (1) The Law Society shall maintain a register of firm names under which advocates practise.

(2) The Law Society may refuse the registration of any firm name on the ground that the proposed firm name is offensive or is likely to be confused with a registered firm name or is likely to mislead the public.

(3) An advocate who is dissatisfied with a decision of the Law Society under subsection (2) may appeal to the High Court whose decision shall be final.

(4) An advocate shall not submit to the Law Society for registration a firm name that is not—

- (a) his own name;
- (b) the names of advocates 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).

(5) In any case where a name which complies with subsection (4) cannot be registered without contravening subsection (2), then the person may practise under such name as the Law Society may approve.

(6) An advocate who acts in contravention of subsection (5) may be liable to disciplinary proceedings.

(7) The Law Society—

- (a) shall, at the request of the partners practising under a firm name; or
- (b) may, if it is satisfied that no one is practising under that name,

remove a firm name from the register.”.

New Part IV

11. The Ordinance is amended by inserting before section 8 the following Part:

“PART IV

PROVISIONS RELATING TO PRACTICE OF ADVOCATES”.

Amendment of section 8

12. Section 8 of the Ordinance is amended—

- (a) in subsection (1), by inserting after the words “Federal Court” the words “or Court of Appeal when sitting in Sabah or when sitting in any other part of Malaysia hearing a cause or matter originating from the High Court or any subordinate court”; and
- (b) in subsection (2), by inserting after the words “Federal Court” wherever appearing the words “or Court of Appeal”.

Amendment of section 9

13. Section 9 of the Ordinance is amended—

- (a) by renumbering the existing section as subsection (1);
- (b) by substituting for the words “thirty-first” in the proviso to the renumbered subsection (1) the word “31st”; and
- (c) by inserting after the renumbered subsection (1) the following subsections:

“(2) Every advocate shall in each year before he does any act in the capacity of an advocate 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 or the firm of advocates employing him;
 - (iii) the principal and any other address at which he practises in Sabah; and
 - (iv) that he has not contravened the Advocates' Remuneration Rules 1988 [G.N.S. 17 of 1988]; and
- (b) the last Annual Certificate or a true copy of the Certificate, if any, issued to him by the Law Society,

and the Registrar shall on being satisfied that all the necessary documents are in order and that the firm's name under which the advocate is practising is on the register maintained under subsection 7F(1), issue the advocate a certificate to practise.

(3) Subject to subsection (5), every certificate to practise shall be signed by the Registrar and shall be valid from the date of issue to the end of the year in which the same is issued.

(4) Notwithstanding subsection (3), where—

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

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

(6) In this section, "year" means the period from 1 January in any calendar year to 31 December in the same calendar year."

New sections 9A and 9B

14. The Ordinance is amended by inserting after section 9 the following sections:

“Disqualification for certificate to practise. **9A.** (1) An advocate shall not apply for a certificate to practise—

- (a) unless he is practising or intends to practise either on his own account or in partnership in Sabah under a firm registered under section 7F;
- (b) unless he is or is about to be employed full time in his practise in Sabah by an advocate or a firm of advocates in practise in Sabah under a firm registered under section 7F; or
- (c) if he is gainfully employed by any other person, firm or body other than an advocate or a firm of advocates in a capacity other than as an advocate.

(2) For the purpose of this section, an advocate shall not be construed as being gainfully employed if he is serving in the Judicial and Legal Service or the State Legal Service.

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

Register of Advocates.

9B. (1) Upon the issue of every certificate to practise the Registrar shall cause to be entered in an annual register known as the “Register of Advocates”, the particulars contained in the declaration delivered under subsection 9(2), and any person may inspect the Register of Advocates during office hours without payment.

(2) If there is any change with respect to any advocate in the particulars referred to in subsection (1) that advocate shall within one month thereafter notify the Registrar and the Law Society, and the Registrar shall then cause the entry to be made in respect of that advocate in the Register of Advocates.”.

Substitution of section 10

15. The Ordinance is amended by substituting for section 10 the following section:

“Permission to practise in special cases.

10. (1) Notwithstanding anything contained in this Ordinance, the Chief Judge may in his absolute discretion upon application by or on behalf of any person who possesses any of the qualifications mentioned in subsection 4(1) grant permission to such person to practise in any one case or matter subject to any conditions he may think fit and to the payment of the prescribed fee if—

- (a) such person has been instructed by a local advocate; and
- (b) having regard to all the relevant circumstances he is of the opinion that it is in the interest of justice so to do.

(2) An application under subsection (1) by any person shall be made by a petition verified by his own affidavit or the affidavit of the advocate instructing him and showing—

- (a) that he has been instructed by a local advocate;
- (b) all relevant circumstances pertaining to the cause or matter in which the applicant intends to appear;
- (c) the grounds or reasons as to why it would be in the interests of justice for the applicant to be admitted under this section; and
- (d) the special qualifications and experience of the applicant.

(3) The application shall be served on the State Attorney-General and the Secretary of the Law Society, and at the time of service the applicant shall pay three hundred ringgit to the Secretary of the Law Society as costs.

(4) Before granting permission to any person to practise under this section, the Chief Judge shall have regard to the views of each of the persons served with the application.

(5) The Registrar shall, on payment of the prescribed fee, issue to every person permitted to practise under this section a certificate to practise specifying in it the cause or matter in which the person 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 cause or matter be deemed to be a person to whom a certificate to practise has been issued under section 9.

(6) The Registrar shall keep a separate roll for the names of persons permitted to practise under this section.

(7) In this section, “cause or matter” includes any interlocutory or appeal proceedings connected with any cause or matter.”.

New Part V

16. The Ordinance is amended by inserting before section 12 the following Part:

“PART V

DISCIPLINARY PROCEEDINGS AGAINST ADVOCATES”.

Deletion of section 12

17. The Ordinance is amended by deleting section 12.

Substitution of section 12A

18. The Ordinance is amended by substituting for section 12A the following section:

“Disciplinary Board.

12A. (1) A Disciplinary Board is established for the purposes of disciplinary proceedings under this Part.

(2) The Disciplinary Board shall consist of the following members:

(a) the Chairman of the Disciplinary Board appointed by the Chief Judge after consultation with the Law Society and such person shall be a retired Judge of the High Court, Court of Appeal or Federal Court or any other person who is qualified to be a Judge of the High Court or the Court of Appeal or the Federal Court;

(b) the President of the Law Society or the Vice-President of the Law Society as his alternate; and

(c) eight advocates of not less than seven years’ standing appointed by the Chief Judge after consultation with the Law Society.

(3) The members referred to in paragraphs (2)(a) and (c) shall be appointed for a term of two years.

(4) For the purposes of the member referred to in paragraph (2)(a), the Chief Judge may, after consultation with the Law Society, extend such term of appointment for another two years and may reappoint for another period not exceeding two years.

(5) The quorum of the Disciplinary Board shall be three with a member each from paragraphs 2(a), (b) and (c).

(6) The Chairman of the Disciplinary Board shall preside over at meetings of the Disciplinary Board and if the Chairman disqualifies himself pursuant to subsection (8), or if the Chairman is unable, through illness or any other cause, to attend the meeting, the President of the Law Society shall preside at the meeting.

(7) If the President of the Law Society also disqualifies himself from deliberating on any complaint pursuant to subsection (8), or is unable, through illness or any other cause, to attend the meeting, the members present shall elect one of their number to preside at the meeting for the purposes of the complaint.

(8) The Chairman of the Disciplinary Board, the President of the Law Society and any other member of the Disciplinary Board shall, where it is necessary in the interest of justice, disqualify himself from deliberating on any complaint.

(9) The Secretary of the Disciplinary Board shall be a full-time employee of the Law Society appointed by the Law Society and such person shall be an advocate of less than five years' standing.

(10) The Disciplinary Board may make rules to regulate its own procedure.”.

New sections 12B, 12C, 12D, 12E, 12F, 12G, 12H, 12I, 12J, 12K, 12L and 12M

19. The Ordinance is amended by inserting after section 12A the following sections:

“Power of Disciplinary Board to strike off the roll, suspend for misconduct, etc.

12B. (1) All advocates shall be subject for the purposes of all disciplinary actions to the control of the Disciplinary Board.

(2) Any advocate who has been guilty of any misconduct shall be liable to one or more of the following penalties or punishments:

(a) to be struck off the roll;

- (b) to be suspended from practice for a period not exceeding five years;
- (c) to be ordered to pay a fine not exceeding fifty thousand ringgit;
- (d) to be reprimanded or censured; or
- (e) to have costs awarded against him.

(3) For the purposes of this section, “misconduct” means conduct or omission to act in Sabah or elsewhere by an advocate in a professional capacity or otherwise which amounts to grave impropriety in respect of any of the following causes:

- (a) if he takes instructions in any case except from the party on whose behalf he is retained, or from some person who is the recognised agent of such party, or from some servant, relation, or friend authorized by the party to give such instruction;
- (b) if he is guilty of knowingly misleading or allows the Court to be misled;
- (c) if he tenders, gives, or out of any fee paid or payable to him for his services, consents to the retention of any gratification for procuring or having procured the employment in any legal business of himself or any other advocate;
- (d) if he directly or indirectly procures or attempts to procure the employment of himself or any other advocate 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;
- (e) if he is convicted of a criminal offence implying a defect of character which renders him unfit for his profession;

- (f) if he ceases to be a person entitled to be admitted as an advocate as a result of disciplinary proceedings taken against him in the country in which he qualified, or in any country in which he has practised as a legal practitioner by whatever name called;
- (g) if he does any act which if done in England would render him liable to be disbarred or struck off the roll of the Court or suspended from practice as a barrister or solicitor in England;
- (h) if he procures his admission as an advocate by any misstatement, fraud or misrepresentation;
- (i) if he practises in Sabah without being in possession of a valid certificate to practise;
- (j) if he practises in Sabah without being in possession of an Annual Certificate;
- (k) if he is guilty of a breach of any rules made under this Ordinance;
- (l) if he commits a breach of a duty to a Court including any failure by him to comply with an undertaking given to a Court;
- (m) if he accepts employment in any legal business through a tout;
- (n) if he allows any unauthorized person to carry on legal business in his name without his direct and immediate control as principal or without proper supervision;
- (o) if he carries on, full time by himself directly or indirectly, 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;
- (p) if he charges, in the absence of a written agreement in respect of professional services rendered to a client, fees or costs which are grossly excessive in all the circumstances;

- (q) if he knowingly acts in a manner that is prejudicial to or in gross disregard of his client's interests;
 - (r) if he is guilty of any conduct which is unbecoming of an advocate or which brings or is calculated to bring the legal profession into disrepute;
 - (s) if he has been dishonest or is guilty of fraudulent conduct in the discharge of his professional duties as advocate.
- (4) If an advocate—
- (a) makes a false statement in or in relation to an application made under section 7c;
 - (b) is guilty of any offence involving dishonesty, misuse or misappropriation of any money or property of a client or of any other person;
 - (c) is adjudged a bankrupt or a receiving order is made against him within or outside Malaysia;
 - (d) is disbarred, struck off, suspended or censured in his capacity as a legal practitioner in any other country;
 - (e) is the subject of a complaint concerning any dishonest act committed by him in his capacity as an advocate;
 - (f) absconds or has not attended at his office in such circumstances that the Law Society may reasonably presume that he has absconded;
or
 - (g) is otherwise incapable from infirmity of body or mind or any other cause of effectively performing the functions of an advocate,

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

(5) Notwithstanding subsection (2), any registered foreign lawyer who has been guilty of any misconduct shall be liable to be suspended for any period not exceeding five years, or revocation of his registration or reprimanded or censured or ordered to pay a fine, as the case may be.

(6) A pupil shall, with modification as may be necessary, be subject to the same control of the Disciplinary Board as is by virtue of this section exercised over an advocate, but in lieu of an order striking him off the roll or suspending him, an order may be made prohibiting the pupil from proceeding with any petition for admission until after a date to be specified in the order.

(7) For the purpose of this section, “pupil” includes a person who has completed the prescribed period of pupillage but has yet to be admitted as an advocate.

Complaint
against
advocate or
pupil.

12c. (1) Any complaint concerning the conduct of any advocate or of any pupil shall be in writing and shall 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 Ordinance.

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

(3) Nothing in this section shall be taken to preclude the Law Society from making any complaint of its own motion to the Disciplinary Board against an advocate or a pupil.

(4) No complaint concerning the conduct of any advocate or of any pupil shall be inquired into by the Disciplinary Board after the expiration of six years from the date when the right of action to bring the complaint accrued.

(5) Notwithstanding subsection (4) where—

- (a) the complaint is based upon the fraud of the advocate or his agent or of any person through whom he or his agent claims; or
- (b) the right of action to bring the complaint is concealed by the fraud of the advocate or of his agent or any person through whom he or his agent claims,

the period of limitation shall not begin to run until the complainant has discovered the fraud or could with reasonable diligence have discovered it.

(6) Where a complaint is made against a legal firm, it shall be deemed to be a complaint made—

- (a) in the case of a sole proprietorship, against the advocate who was at the material time the sole proprietor of the legal firm; or
- (b) in the case of a partnership, against all the advocates who were at the material time partners of the legal firm,

unless the legal firm satisfies the Disciplinary Board of the identity of the advocate in the legal firm against whom the complaint has arisen.

(7) Where at any stage of the proceedings the Disciplinary Board is satisfied that a complaint made against a legal firm should be directed against a particular advocate, the Disciplinary Board shall forthwith replace the name of the legal firm with the name of the advocate concerned.

(8) For the purpose of this section, “legal firm” includes an international partnership or a qualified foreign law firm licensed under Part VII.

Disciplinary Board to serve application, etc., on advocate.

12D. (1) Before the Disciplinary Board commences its hearing in respect of any matter, the Disciplinary Board shall serve on the advocate concerned—

- (a) a copy of any written application or complaint and of any statutory declaration or affidavit that has been made in support of the written application or complaint; and

(b) a notice to appear before, and be heard by, the Disciplinary Board and inviting the advocate concerned, within such period as may be specified in the notice but not being less than thirty days—

(i) to give to the Disciplinary Board any written explanation he may wish to offer; and

(ii) to advise the Disciplinary Board if he wishes to be heard by the Disciplinary Board.

(2) The Disciplinary Board shall give the advocate concerned a reasonable opportunity to be heard and shall give due consideration to any explanation he may make.

Power of
Disciplinary
Board to
procure
evidence, etc.

12E. (1) For the purpose of any written application or complaint heard by the Disciplinary Board under this Ordinance, the Disciplinary Board—

(a) may procure and receive all evidence and examine any person as witness as the Disciplinary Board deems necessary or desirable;

(b) may require the evidence of any witness to be given on oath or affirmation, such oath or affirmation to be that which could be required of the witness if he was giving evidence in the High Court;

(c) may require the production for inspection of any book, document or paper which may relate to or be connected with the matter and may require any person to give information in relation to such book, document or paper;

(d) may require such person concerned to give all information in relation to any such book, document or paper which may be reasonably required by the Disciplinary Board;

- (e) may require any person whom the Disciplinary Board considers necessary to appear before the Disciplinary Board to give oral evidence relating to or connected with the complaint; and
- (f) may issue a subpoena to any person to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession at the request of—
 - (i) the Law Society or the applicant or the person making the complaint; and
 - (ii) the advocate or pupil to whom the written application or complaint relates.

(2) Any person giving evidence before the Disciplinary Board shall be legally bound to tell the truth, whether or not such evidence is made wholly or partly in answer to any question.

(3) No fees or other charges shall be payable for any subpoena issued by the Disciplinary Board under subsection (1).

(4) The subpoena referred to in subsection (1) shall, unless the Disciplinary Board otherwise directs, be served personally on the person concerned and may be enforced as if it is a subpoena issued in connection with a civil action in the High Court.

(5) Any—

- (a) advocate or any other person who, without reasonable excuse refuses or fails to produce to the Disciplinary Board for inquiry any book, document or paper or fails to give any such information relating thereto under paragraph (1)(a) or (b); and

- (b) person who, without reasonable excuse, refuses or fails to appear to give evidence under paragraph (1)(f),

commits an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Failure to attend proceedings.

12F. (1) If a person having been duly served with a subpoena to attend the proceedings referred to in paragraph 12E(1)(f) fails to do so, the Disciplinary Board may proceed with the proceedings without further notice to such person.

(2) If the person whose conduct is the subject of inquiry fails to attend before the Disciplinary Board, the inquiry or proceeding 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 Disciplinary Board may direct.

Findings of the Disciplinary Board.

12G. (1) Upon conclusion of the hearing of any matter referred to it, the Disciplinary Board shall record its finding in relation to the facts of the case and according to those facts shall determine and make any one of the following orders:

- (a) that as no cause of sufficient gravity for disciplinary action exists and that the application or complaint be dismissed;
- (b) that cause for disciplinary action exists but is not of sufficient gravity to warrant any punishment other than a reprimand or censure or that the circumstances are such that the advocate should only be reprimanded or censured;
- (c) that cause for disciplinary action exists and is of sufficient gravity to warrant the advocate to be subject to one or more of the following penalties or punishments:
 - (i) reprimand or censure;

- (ii) imposition of a fine not exceeding fifty thousand ringgit;
- (iii) suspension of the advocate from practice, or in the case of a foreign lawyer, recommendation to the Law Society for suspension of registration, for such period not exceeding five years as the Disciplinary Board deems appropriate in the circumstances;
- (iv) striking the advocate off the roll or in the case of a foreign lawyer, revocation of the registration of the foreign lawyer.

(2) The Disciplinary Board may in appropriate cases in addition to its order of penalty or punishment, make an order of restitution by the advocate of the complainant's monies if it is established that such monies were or are held by the advocate in his professional capacity and the complainant is entitled to the return of such monies or part thereof.

Appeal from the final order or decision of the Disciplinary Board.

12H. (1) Any person aggrieved by any final order or decision of the Disciplinary Board may appeal to the High Court within one month from the date of the receipt of that final order or decision.

(2) Any person aggrieved by the decision of the High Court may appeal to the Court of Appeal within one month from the date of the receipt of that decision.

(3) Any person aggrieved by the decision of the Court of Appeal may appeal to the Federal Court within one month from the date of the receipt of that decision.

(4) There shall be no judicial review against any final order or decision of the Disciplinary Board.

(5) The appeal shall be by way of originating motion setting out the grounds of appeal supported by affidavit.

(6) The Law Society may in its discretion intervene at any stage of any appeal under this section.

(7) The Disciplinary Board shall not be cited as a party in any appeal under this section.

(8) The Disciplinary Board shall have the right to appear in and address any High Court, the Court of Appeal or the Federal Court hearing any appeal under this section by an advocate whether or not the advocate is a member of the Disciplinary Board or the Law Society.

(9) The costs of and incidental to all proceedings under this section shall be at the discretion of the Court hearing the proceedings.

(10) Pending the hearing of an appeal, any advocate being struck off the roll or suspended shall not be entitled to practise in Sabah except if the period of suspension elapses before the hearing of the appeal, in which case he shall be at liberty to resume his practice after the period of suspension has expired.

(11) Nothing in this section shall be construed so as to deprive an advocate of any right of appeal which he may have to the Yang di-Pertuan Agong.

Power of
Disciplinary
Board to
make rules.

12I. (1) The Disciplinary Board may, from time to time, make rules to regulate the procedure pertaining to disciplinary proceedings.

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

Discipline
Fund.

12J. (1) A fund which shall be known as the "Discipline Fund" is established and shall be administered and maintained by the Law Society.

(2) Every advocate shall on each occasion he applies for his Annual Certificate pay to the Law Society a contribution to the Discipline Fund of such sum as the Law Society may from time to time determine.

(3) If an advocate is applying for a certificate to practice 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 the year.

(4) All costs, charges and expenses for the purposes of any disciplinary proceedings under this Ordinance shall be defrayed out of the Discipline Fund.

Payment of fees, fines, etc., into Discipline Fund.

12K. (1) There shall be paid into the Discipline Fund the contribution mentioned under subsection 12J(2) and any fine, penalty or any other payment ordered by the Disciplinary Board to be paid.

(2) Where the Disciplinary Board has ordered a fine to be paid by an advocate or has ordered a restitution to be made by an advocate, such fine shall be paid or such restitution shall be made within one month from the date of the order or such further date as the Disciplinary Board may allow and in default thereof, the Disciplinary Board may order suspension of the advocate from practice until payment of such fine or sum to be restituted or if the advocate is not currently in possession of a certificate to practise, order that no Annual Certificate shall be issued to him until payment of the fine or sum to be restituted is made or in the case of a foreign lawyer, suspend his registration until the payment of such fine or sum to be restituted is made.

(3) A fine payable under this section shall be deemed to be a debt outstanding to the Law Society and may be recoverable as a civil debt.

Protection against suit and legal proceedings.

12L. No action, suit, prosecution or other proceeding shall be brought, instituted or maintained in any court against any members of the Disciplinary Board for or on account of or in respect of any act done for the purpose of carrying into effect of this Ordinance if the act was done in good faith and in the reasonable belief that it was necessary for the purpose intended to be served by it.

Interpretation of "advocate" in certain provisions.

12M. For the purposes of disciplinary proceedings under this Part, "advocate" includes a foreign lawyer registered under section 14J."

Deletion of section 13

20. The Ordinance is amended by deleting section 13.

New Part VI

21. The Ordinance is amended by inserting before section 14 the following Part:

“PART VI

CONSTITUTION AND RULES OF THE SABAH LAW SOCIETY

Objects and powers of the Law Society. **13A.** The objects and powers of the Law Society 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 facilitate the acquisition and dissemination of legal knowledge by members of the legal profession in Sabah;
- (c) to assist the Government and the courts in all matters affecting legislation and the administration and practice of the law in Sabah;
- (d) to promote good relations and social intercourse amongst members and between members and other persons concerned in the administration of law and justice;
- (e) to protect and assist the public in all matters and if necessary to voice or express an opinion relating, ancillary or incidental to, the law;
- (f) to promote a system of legal advice and aid to deserving persons;
- (g) to encourage, establish and maintain good relations with professional bodies of the legal profession within and outside Sabah and to participate in the activities of any local or international association and become a member of such association;

- (h) to maintain and improve the standards of professional practice, etiquette, conduct, discipline and learning of the legal profession in Sabah;
- (i) to represent, protect and assist members of the legal profession in Sabah and to promote in any proper manner the interests of the legal profession in Sabah;
- (j) to establish libraries and to acquire or rent premises to house the libraries and offices of the Law Society or amenities for the use of members either alone or in conjunction with any other body or society;
- (k) to own, accept, hold, acquire, lease or apply for or transfer, dispose, assign, let or otherwise deal with properties both movable and immovable for the benefit of the Law Society and members;
- (l) to borrow money whether by way of bank overdraft or otherwise for such purposes of the Law Society as the Law Society may from time to time consider desirable;
- (m) to grant pecuniary or other assistance to any association, institute, board or society in Sabah;
- (n) to afford pecuniary and other assistance to members or former members of the Law Society and to their spouses, widowers or widows and children who are in need of any such assistance;
- (o) to make rules governing the manner of convening general meetings of the Law Society and the procedure at the meetings of which rules shall be approved and may be amended by ordinary resolution at the general meeting of the Law Society;
- (p) to establish a Compensation Fund; and
- (q) to do all such things as are incidental or conducive to the achievement or betterment of the purposes of the Law Society.

Members of the Law Society.

13b. Every advocate shall without election, admission or appointment become a member of the Law Society and shall remain a member under this section so long as he has a valid certificate to practise.

Annual subscription, levies, etc.

13c. (1) The amount of the annual subscription shall be paid by every ordinary member of the Law Society and shall, subject to subsections (3) and (4), be fixed by the Law Society from time to time.

(2) The Law Society may from time to time fix levies payable by members for any of the purposes of the Law Society.

(3) The total subscriptions payable under subsection (1) and the levies payable under subsection (2) shall not in any calendar year exceed five 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 Law Society.

(4) All annual subscriptions shall be paid by the 30th day of June of each year. Any payment made after this date shall bear a penalty sum of an amount equivalent to the amount so due.

Executive Committee.

13d. (1) The management of the Law Society and of its funds shall be vested in the Executive Committee of the Law Society.

(2) The Executive Committee shall consist of the following members:

- (a) the President;
- (b) the Vice-President;
- (c) the immediate past President of the Law Society;
- (d) the Secretary;
- (e) the Assistant Secretary;
- (f) the Treasurer; and
- (g) six committee members.

(3) Notwithstanding subsection (2), the first Executive Committee shall be the current office-bearers of the Sabah Law Association.

(4) The first Executive Committee referred to in subsection (3) shall remain in office until the annual general meeting is held and elections of the members of the Executive Committee referred to in subsection (2) have taken place in the manner and at the times provided in this Ordinance.

(5) All powers, acts or things which are not expressly authorized, directed or required to be exercised or done by the Law Society in a general meeting may, subject to this Ordinance and any rules made under this Ordinance or any resolution passed from time to time by the Law Society in a general meeting, be exercised or done by the Executive Committee.

(6) Notwithstanding subsection (5), such resolution of the Law Society shall not invalidate the previous exercise of any power or the previous doing of any act or thing by the Executive Committee which would have been valid if the resolution had not been passed.

(7) The members of the Executive Committee, except for the immediate past President, shall be elected at the annual general meeting of the members and the elected members are eligible for re-election.

(8) A person shall be disqualified from being a member of the Executive Committee—

(a) unless he is and has been an advocate for a period of not less than five years, or for periods which in the aggregate amount to not less than five years;

(b) if he is a member of either House of Parliament or of the State Legislative Assembly or of any local authority; or

- (c) if he holds any office in—
 - (i) any trade union;
 - (ii) any political party; or
 - (iii) any other organization, body or group of persons, whether or not it is established under any law, whether it is within or outside Sabah, and which has objectives or carries on activities which can be construed as being political in nature, character or effect.

Specific powers of the Executive Committee.

13E. (1) Without prejudice to the general powers conferred by section 13A, or the specific powers to make rules conferred by any other provisions of this Ordinance, the Executive Committee shall have power—

- (a) to fill casual vacancies of the Executive Committee and to appoint sub-committees;
- (b) to make rules for giving effect to the objects of the Law Society and to provide for all matters not expressly reserved to the Law Society in a general meeting whether the same be expressed in its powers or not;
- (c) to answer questions affecting the practice and etiquette of the profession and the conduct of members;
- (d) to take cognizance of anything affecting the Law Society or the professional conduct of its members and to bring before any general meeting of the Law Society any matter which it considers material to the Law Society or to the interests of the profession and to make any recommendations and to take any action as it considers fit in relation to the recommendations;
- (e) to examine and, if it considers fit, to report upon current or proposed legislation and any other legal matters;

- (f) to represent members of the Law Society or any section of the Society or any particular member in any matter which may be necessary or expedient;
- (g) with the prior approval of the Law Society in a general meeting, to award prizes and scholarships for students of law and to lay down the conditions for their award;
- (h) 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;
- (i) to purchase, rent or otherwise acquire and furnish suitable premises for the use of the Law Society;
- (j) 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;
- (k) to institute, conduct, defend, compound or abandon any legal proceedings by and against the Law Society or its officers or otherwise concerning the affairs of the Law Society 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 Law Society;
- (l) to invest and deal with any money of the Law Society from time to time in securities authorized for investment of trust funds by any written law;
- (m) 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 Law Society or without any such security and upon such terms as to priority or otherwise as the Executive Committee shall consider fit; and

(n) to exercise all such powers, privileges and discretions as are not by this Ordinance expressly and exclusively required to be exercised by the members of the Law Society in a general meeting.

(2) The rules referred to in paragraph (1)(b) shall only come into operation after the rules have been adopted by the general meeting.

Right to inspect files of proceedings in bankruptcy.

13F. The Executive Committee shall be entitled, without payment of any fee, to inspect the file of proceedings in bankruptcy relating to any advocate against whom proceedings in bankruptcy has been taken, and to be supplied with office or certified copies of the proceedings on payment of the usual charge for such copies.

Power to accept gifts, etc.

13G. (1) The Executive Committee may on behalf of the Law Society accept by way of grant, gift, testamentary disposition or otherwise property or money in aid of the finances or purposes of the Law Society on such conditions as the Executive Committee may determine.

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

(3) All property, monies or funds donated to the Law Society 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.

13H. The Law Society may be represented or appear in any court by any advocate whether he is a member of the Executive Committee or not.

Meeting of the Executive Committee.

13I. (1) The Executive Committee shall meet from time to time whenever necessary but shall meet at least once in every three months, and the President of the Executive Committee 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 Executive Committee to consider any urgent matter.

(2) Seven members personally present at any meeting of the Executive Committee shall constitute a quorum for the transaction of any business.

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

(4) At any meeting of the Executive Committee the President shall have a casting vote.

(5) Subject to any rules of the Law Society, the Executive Committee 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.

13j. No fees shall be paid to any member of the Executive Committee but a member may be reimbursed from the funds of the Law Society for expenses properly incurred by him in relation to the affairs of the Law Society.

Annual general meeting.

13k. (1) The Law Society shall each year convene an annual general meeting of the Law Society to be held in June or soon thereafter—

- (a) to receive the report of the President of the Executive Committee;
- (b) to receive the accounts of the Law Society;
- (c) to elect members of the Executive Committee;
- (d) to appoint an auditor; and
- (e) to consider such other matters as may be referred to the meeting of which adequate notice has been given to the members or otherwise referred by the President of the Executive Committee.

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

General meeting.

13L. (1) The Executive Committee may convene a general meeting of the Law Society other than the annual general meeting at any time the Executive Committee considers it necessary or expedient.

(2) If a request in writing is made to the President, Vice-President or Secretary of the Law Society by not less than thirty percent of the number of ordinary members, the Executive Committee shall convene a general meeting within three weeks of the receipt of such request.

(3) The request referred to in subsection (2) shall specify the object or objects of the proposed meeting.

(4) If any member of the Law Society desires to propose any motion to be considered at an annual general meeting to be convened under this section he shall, in not less than seven days before the date of the proposed meeting, serve upon the Secretary of the Law Society notice of such motion in writing.

Notice of general meeting.

13M. At least two weeks' notice of a general meeting shall be sent to all members with an agenda of the matters to be discussed.

Quorum of general meeting.

13N. (1) The quorum for a general meeting of the Law Society shall be fifty ordinary members of the Law Society or twenty-five percent of the number of ordinary members of the Law Society personally present, whichever figure is the lower.

(2) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting if convened at the requisition of members shall be dissolved, and in any other case the meeting shall stand adjourned to such date (of not less than fourteen days), time and place as the members present shall decide.

(3) If at the adjourned meeting a quorum of members is not present within half an hour from the time appointed for the meeting, the members present shall proceed with the meeting as if a quorum is present provided that the members present shall not be less than forty in number.

Voting. **13o.** (1) At every general meeting, every member present in person shall have one vote and where there is equality of votes, the Chairman of that meeting shall have a casting vote.

(2) Voting at a general meeting may be by show of hands or by secret ballot if the members at the meeting so decide.

(3) For the purposes of this section, “general meeting” includes annual general meeting and extraordinary general meeting.

Financial provisions. **13p.** (1) Subject to the direction of the general meeting of members of the Law Society, the Executive Committee shall have power to expend the funds of the Law Society in accordance with the objects of the Law Society.

(2) All cheques shall be signed by the Treasurer of the Executive Committee and countersigned by the President or Secretary of the Executive Committee.

Names of Executive Committee to be published in the *Sabah Government Gazette*. **13q.** The names of the members of the Executive Committee including that of any person appointed to fill any vacancies shall be published in the *Sabah Government Gazette*.”

Deletion of section 14

22. The Ordinance is amended by deleting section 14.

New Parts VII and VIII

23. The Ordinance is amended by inserting before section 15 the following Parts:

“PART VII

**INTERNATIONAL PARTNERSHIPS, QUALIFIED FOREIGN LAW
FIRMS AND REGISTRATION OF FOREIGN LAWYERS**

Interpretation. **14A.** In this Part unless the context otherwise requires—

“foreign law” means the law of any state or territory other than Malaysia;

“foreign law firm” means a foreign law firm which provides legal services in any foreign law and includes a corporation duly constituted for the purpose of practising law established or licensed to provide legal services by the appropriate licensing authority of a state or territory other than Malaysia;

“foreign lawyer” means a person who is—

(a) duly authorized or registered to practise law in a state or territory other than Malaysia; and

(b) a partner, director (who holds equity in the corporation, in the case of a corporation duly constituted for the purpose of practising law) or an employee of a foreign law firm or a Sabah law firm;

“international partnership” means a partnership or any other arrangement between a foreign law firm and a Sabah law firm in respect of which a licence has been granted under section 14F;

“permitted practice areas” means the areas of legal practice as prescribed;

“prescribed” means prescribed by the Law Society by rules made under this Ordinance;

“qualified foreign law firm” means a foreign law firm licensed under section 14G.

Licence required for foreign law firm. **14b.** (1) Any foreign law firm may practise in Sabah provided it is licensed under this Part.

(2) Any foreign law firm who contravenes the condition stated in subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Selection Committee. **14c.** (1) A Selection Committee is established to make recommendations to the Law Society for the granting of licence for international partnerships, qualified foreign law firms and to Sabah law firms to employ foreign lawyers and the registration of foreign lawyers to practise in the permitted practice areas.

(2) The Selection Committee shall consist of the following members:

- (a) the State Attorney-General;
- (b) the President of the Law Society;
- (c) a person to be appointed by the State Attorney-General from the public sector; and
- (d) two members of the Law Society to be appointed by the Law Society.

(3) The appointment of the members under paragraphs 2(c) and (d) shall be on an *ad hoc* basis.

Alternate members. **14d.** (1) The State Attorney-General may, in respect of the member appointed under paragraph 14c(2)(c), appoint a person to be an alternate member to attend, in place of the member, meetings of the Selection Committee.

(2) The Law Society may, in respect of each member appointed under paragraph 14c(2)(d), appoint a person to be an alternate member to attend, in place of the member, meetings of the Selection Committee.

(3) When attending meetings of the Selection Committee, an alternate member shall, for all purposes be deemed to be a member of the Selection Committee.

(4) An alternate member shall, unless he sooner resigns his membership or his appointment is sooner revoked, cease to be an alternate member when the member in respect of whom he is an alternate member ceases to be a member of the Selection Committee.

Meetings of the Selection Committee.

14E. (1) Meetings of the Selection Committee shall be co-chaired by the State Attorney-General and the President of the Law Society.

(2) The Selection Committee shall meet on such date and at such time and place as the State Attorney-General and the President of the Law Society may determine.

(3) The quorum of the Selection Committee shall be three.

(4) All decisions of the Selection Committee shall be by the affirmative vote of a majority of the members of the Selection Committee who are present and voting.

(5) The Selection Committee shall inform the Law Society of its recommendation as to the granting of a licence under section 14F, 14G or 14H or the registration of a foreign lawyer under section 14J.

(6) The Law Society shall be the Secretariat for the Selection Committee.

International partnership.

14F. (1) A foreign law firm and a Sabah law firm may apply jointly to the Law Society for an international partnership licence if they satisfy such conditions as the Law Society may think fit to impose in any particular case.

(2) A foreign law firm shall not be part of more than one international partnership in Sabah at any one time.

(3) Upon receiving the application, the Law Society shall refer such application to the Selection Committee for consideration and recommendation.

(4) The Law Society shall, upon the recommendation of the Selection Committee, grant an application made under subsection (1) on such conditions as the Law Society may think fit to impose in any particular case or refuse the application.

(5) An international partnership shall pay to the Law Society such licence fee at such times and in such manner as may be prescribed.

(6) The Law Society may, by notice in writing—

(a) impose any new or additional conditions on the licence; or

(b) vary or revoke any of the conditions imposed on the licence.

(7) The Law Society may renew a licence granted under this section for such period and upon such conditions as the Law Society may specify.

(8) An international partnership is entitled to—

(a) practise in the permitted practice areas in accordance with such terms and conditions as may be prescribed;

(b) bill its clients as a single law firm; and

(c) recover costs and retain payments in respect of such practice.

(9) The permissible equity ownership and voting rights of the foreign law firm in the international partnership shall be as determined by the Selection Committee from time to time.

Qualified
foreign law
firm.

14G. (1) A foreign law firm may apply for a qualified foreign law firm licence if it satisfies such conditions as the Law Society may deem fit to impose in any particular case.

(2) Upon receiving the application, the Law Society shall refer such application to the Selection Committee for consideration and recommendation.

(3) The Law Society shall, upon the recommendation of the Selection Committee, grant an application made under subsection (1) on such conditions as the Law Society may think fit to impose in any particular case or refuse the application.

(4) A qualified foreign law firm shall pay to the Law Society such licence fee at such times and in such manner as may be prescribed.

(5) The Law Society may, by notice in writing—

(a) impose any new or additional conditions on the licence; or

(b) vary or revoke any conditions imposed on the licence.

(6) The Law Society may renew a licence granted under this section for such period and upon such conditions as the Law Society may specify.

(7) A qualified foreign law firm is entitled to practise in the permitted practice areas in accordance with such terms and conditions as may be determined by the Law Society.

(8) A Sabah lawyer employed in a qualified foreign law firm shall be disqualified from obtaining a certificate to practise under Part II.

Employment of a foreign lawyer by a Sabah law firm.

14H. (1) A Sabah law firm may apply to the Law Society for a licence to employ a foreign lawyer to practise in the permitted practice areas in the Sabah law firm if it satisfies such conditions as the Law Society may deem fit to impose in any particular case.

(2) Upon receiving the application, the Law Society shall refer such application to the Selection Committee for consideration and recommendation.

(3) The Law Society shall, upon the recommendation of the Selection Committee, grant or refuse an application made under subsection (1).

(4) Any Sabah law firm which employs a foreign lawyer in contravention of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Suspension or revocation of licence.

14i. (1) The Law Society may, by notice in writing, suspend or revoke the licence granted under this Part if the Law Society is satisfied that there is sufficient reason for doing so.

(2) Without prejudice to the generality of subsection (1), a licence under this Part shall be suspended or revoked if—

- (a) the appropriate licensing authority of a state or territory other than Sabah suspends or revokes the licence of the constituent foreign law firm in the international partnership or the qualified foreign law firm as a result of criminal, civil or disciplinary proceedings;
- (b) there is any change in respect of any information regarding the foreign law firm which was submitted for the purposes of obtaining the international partnership licence or the qualified foreign law firm licence including but not limited to—
 - (i) a change of any international partnership name without the prior approval of the Law Society;
 - (ii) a merger of the international partnership with any other firm or body corporate; or
 - (iii) a change of up to one-half in the number of the partners in any international partnership;
- (c) the international partnership or qualified foreign law firm fails to comply with any requirement imposed under this Ordinance;

- (d) the foreign law firm in the international partnership or the qualified foreign law firm is dissolved or is in liquidation or the Sabah law firm in the international partnership is dissolved;
- (e) the international partnership or qualified foreign law firm fails to comply with any of the conditions imposed on its licence;
- (f) the international partnership has been reconstituted without the approval of the Law Society; or
- (g) the international partnership is dissolved for any reason whatsoever.

(3) The international partnership and the qualified foreign law firm shall inform the Law Society of the occurrence of any of the events referred to in subsection (2) as soon as they become aware of the same.

(4) A licence shall not be suspended or revoked without the international partnership or qualified foreign law firm being given a reasonable opportunity to make representations to the Law Society.

Registration of a foreign lawyer to practise in an international partnership, a qualified foreign law firm or a Sabah law firm.

14J. (1) A foreign lawyer may practise in an international partnership, a qualified foreign law firm or a Sabah law firm, or in any other manner, provided he is registered under this section.

(2) A foreign lawyer who satisfies such requirements as may be prescribed and wishes to practise in an international partnership, a qualified foreign law firm or a Sabah law firm may apply to the Law Society to be registered to practise in the permitted practice areas in an international partnership, a qualified foreign law firm or a Sabah law firm.

(3) Upon receiving the application, the Law Society shall refer such application to the Selection Committee for consideration and recommendation.

(4) The Law Society shall, upon the recommendation of the Selection Committee, grant or refuse an application made under subsection (2).

(5) An application that has been granted under subsection (4) shall be subject to—

(a) such conditions as the Law Society may think fit to impose in any particular case; and

(b) the payment of a registration fee to the Law Society at such times and in such manner as may be prescribed.

(6) The registration of a foreign lawyer under this section shall be in respect of a calendar year and may be renewed annually subject to such conditions as the Law Society may specify.

(7) A foreign lawyer who is registered under this section may practise in the permitted practice areas through an international partnership, a qualified foreign law firm or a Sabah law firm.

(8) Any foreign lawyer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Suspension or revocation of registration.

14k. (1) The Law Society may, by notice in writing, suspend or revoke the registration of a foreign lawyer under section 14j if the Law Society is satisfied that there is sufficient reason for doing so.

(2) Without prejudice to the generality of subsection (1), the registration of a foreign lawyer under this Part may be suspended or revoked if—

(a) the international partnership licence or qualified foreign law firm licence issued in respect of the international partnership or qualified foreign law firm, as the case may be, is suspended or revoked under section 14i;

- (b) the foreign lawyer is in breach of any provision relating to his work permit or any relevant immigration laws in Sabah and Malaysia;
- (c) the foreign lawyer employed in a Sabah law firm is no longer duly authorized or registered to practise law in a state or territory other than Sabah or as a result of criminal, civil or disciplinary proceedings; or
- (d) the foreign lawyer has been found guilty by the Disciplinary Board of any disciplinary misconduct and the Disciplinary Board has recommended the suspension or revocation of the foreign lawyer's registration.

Professional conduct, ethics and accounts.

14L. (1) International partnerships, qualified foreign law firms and registered foreign lawyers shall comply with such laws, rulings and directives applicable to advocates under this Ordinance relating to professional conduct or ethics.

(2) Any rules made under this Ordinance shall apply to a foreign lawyer registered under section 14J with such modifications as may be prescribed by the Law Society.

(3) For the avoidance of doubt, nothing in this Part shall affect any solicitor-client privilege that may exist independently of this Part.

Disciplinary authority.

14M. International partnerships, qualified foreign law firms and registered foreign lawyers shall adhere to all the rules and rulings of the Law Society and shall be subject to, for the purposes of all disciplinary actions, the control of the Disciplinary Board.

Power to require documents, etc.

14N. The Law Society may require any international partnership, qualified foreign law firm, Sabah law firm or foreign lawyer to provide the Law Society with such documents, particulars or information as the Law Society considers necessary for the purpose of ascertaining compliance of this Part.

Power to make rules relating to foreign law firm, international partnership and foreign lawyer.

14o. The Law Society may, with the approval of the State Attorney-General, make rules to provide for—

- (a) the conditions and criteria for the granting of an international partnership licence, a qualified foreign law firm licence or a licence under section 14H and for the registration of a foreign lawyer under section 14J;
- (b) the manner and means of application and the information and documents to be furnished for the application of international partnership and qualified foreign law firm licences and licences under section 14H, including but not limited to the forms, proceedings, fees, information and documents in connection therewith;
- (c) the conditions relating to qualifying legal skills, experience and expertise required under this Part;
- (d) the manner and means of application for registration of foreign lawyers including but not limited to the forms, proceedings, fees, information and documents in connection therewith;
- (e) the submission of information and particulars relating to foreign law firms, lawyers and other persons practising in or employed by the foreign law firms;
- (f) the maintenance of a register of international partnerships, qualified foreign law firms and Sabah law firms which employ foreign lawyers under section 14H and a register of foreign lawyers practising in Sabah under this Part and the form and manner in which the registers are to be kept;
- (g) the permitted practice areas;

- (h) the manner and means by which an international partnership, a qualified foreign law firm or a Sabah law firm licensed under section 14H may conduct its business or publicize itself;
- (i) the exemption of any person or class of persons from any provision of this Part; and
- (j) any other matters for purposes of implementing the provisions of this Part.

PART VIII

MISCELLANEOUS”.

Substitution of section 15

24. The Ordinance is amended by substituting for section 15 the following section:

“Unauthorized person. **15.** (1) Subject to the provisions of this Ordinance, no person shall practise as an advocate or do any act as an advocate unless his name is on the roll and he has a valid certificate to practise authorizing him to do the act.

(2) For the purposes of this Ordinance, a person who does not fulfil the requirements in subsection (1) is referred to in this Ordinance as an “unauthorized person”.”.

Amendment of section 16

25. Section 16 of the Ordinance is amended—

(a) in subsection (1)—

- (i) by substituting for the words “person, not being entitled to practise in Sabah under the provisions of this Ordinance,” the words “unauthorized person”;
- (ii) by deleting the word “or” at the end of paragraphs (a) and (b);

- (iii) by inserting after paragraph (c) the following paragraphs:
- “(d) appears before the Industrial Court, Arbitration Tribunal, Court Martial or the Disciplinary Board set up pursuant to this Ordinance in a case or matter arising from Sabah;
 - (e) either directly or indirectly for or in expectation of any fee, gain or reward, draws or prepares any instrument relating to immovable property and any memorandum or other documents for the purposes of registration under the Land Ordinance [*Sabah Cap. 68*] or any other written law relating to registration of documents or makes any application or lodges any document for registration under the said Land Ordinance or any other written law relating to registration of documents at the Central Land Office or at any District Land Office;
 - (f) 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 for legal proceedings;
 - (g) takes instructions or draws or prepares any document for the purposes of applying for or opposing a grant of probate or letter of administration; or
 - (h) solicits the right to negotiate, or negotiates 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,”; and
- (iv) by substituting for the words “shall be liable to a fine of five hundred ringgit” the words “commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both”; and

(b) in subsection (3)—

- (i) by deleting the word “or” at the end of paragraphs (b), (c) and (d);
- (ii) in paragraph (d), by inserting after the word “prepares” the words “for a fee or reward”;
- (iii) in paragraph (e), by substituting for the full stop at the end of subparagraph (ii) a semicolon; and
- (iv) by inserting after paragraph (e) the following paragraphs:

“(f) the Public Trustee, Official Assignee, Official Receiver, Assistant Public Trustees, Assistant Official Assignees and Assistant Official Receivers acting in the course of their duties under any law relating to their offices;

(g) any person acting personally for himself only in any matter or proceedings 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 proceedings 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 is required to be attested by an advocate;

(h) 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;

(i) an 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;

- (j) any full-time member of the academic staff of the Faculty of Law of the University of Malaya or other universities in Malaysia acting solely in an advisory capacity upon instructions from a practising advocate;
- (k) any accountant drawing or preparing documents in the exercise of his profession;
- (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; and
- (m) any full-time employee of an advocate drawing or preparing any document under the authority of a practising advocate and for the purposes of his employer.”.

New sections 16A, 16B, 16C, 16D and 16E

26. The Ordinance is amended by inserting after section 16 the following sections:

“Law Society to operate bank account of deceased advocate’s clients.

16A. On the death of an advocate who immediately before his death was practising as an advocate in his own name or as a sole advocate in a firm name the right to operate, or otherwise deal with, any banking account in the name of the advocate or his firm, being an account into which has been paid any clients’ money, shall, notwithstanding anything to the contrary contained in this Ordinance, vest in the Law Society to the exclusion of any personal representatives of the advocate and shall be exercisable as from the death of the advocate.

Taking of possession of property in advocate’s possession when he is an undischarged bankrupt, etc.

16B. (1) Where an advocate practises in his own name or as a sole advocate under a firm name and he—

- (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 voluntary or involuntary patient as defined by the Mental Health Act 2001 [Act 615],

and the Law Society has reasonable cause to believe that in consequence of the act, default or disability of the advocate or of any clerk or servant of his—

- (i) there has been undue delay in connection with any matter in which the advocate 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 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 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 or his firm,

the Second Schedule, other than paragraph 7, shall apply in relation to that advocate.

(2) For the purposes of dealing with documents referred to in paragraph 6 of the Second Schedule, the Law Society may take copies of, or extract from, documents which relate to any matter referred to in subparagraph (1)(i) or to any sum of money referred to in subparagraph (1)(ii) or to that matter or sum of money, as the case may be, and to other matters in the advocate's practice.

(3) In this section, “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 incidental to the office of a personal representative, and “trustee”, where the context admits, includes a personal representative.

Personal
representatives
liable for acts of
advocate.

16c. (1) Where—

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

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

(2) In this section, “trust” and “trustee” have the meanings assigned to them in subsection 16B(3).

Power to make rules on professional indemnity.

16D. (1) The Law Society may, with the approval of the State Attorney-General, make rules concerning the taking out of professional indemnity for advocates 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 Law Society to take out and maintain insurance in the name of the Law Society with any person permitted by law to carry on professional liability insurance business and covering every practising advocate;
- (b) authorize the Law Society to maintain a fund or funds for the said purpose;
- (c) require advocates 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 to make payments to any such fund;
- (c) require advocates to make payments by way of premiums on any policy taken out under subsection (1) and provide for proceedings by the Law Society or its insurers against any advocate 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 Law Society to determine the amount of any payment required by the rules;

- (f) specify the circumstances in which an advocate has failed to comply with any rules, proceedings in respect of any sum paid by way of indemnity may be taken against him by the Law Society or its insurers;
- (g) prescribe that an advocate shall not be entitled to an Annual Certificate unless he is insured as required by the rules for the period to which the Annual Certificate relates;
- (h) empower the Law Society 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, 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 *Sabah Government Gazette*.

Compensation
Fund.

16E. (1) A “Compensation Fund” shall be maintained and administered by the Law Society in accordance with this section.

(2) Every advocate shall on each occasion he applies for an Annual Certificate pay to the Law Society a contribution of such sum as the Law Society may from time to time determine and the Law Society shall pay that contribution into the Fund.

(3) Notwithstanding subsection (2), an advocate who applies for an Annual Certificate shall be required to pay half of the contribution so determined if the certificate to practise for which he proposes to apply is valid for less than six months.

(4) The Law Society may invest any monies out of the Fund which are not immediately required for any other purposes and, for the purposes of this section, the Law Society shall have full powers of trustees under any written law.

(5) The Law Society may insure the Fund with any registered insurance business in Malaysia for any purpose and on any term as the Law Society may consider expedient.

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

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

(7) All monies 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 premiums on insurance effected by the Law Society under subsection (5);
- (c) for the payment of any grants which the Law Society may make under subsection (8); and
- (d) 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 Law Society that any person has sustained loss in consequence of dishonesty on the part of any advocate or clerk or servant of an advocate in connection with that advocate's practice in Sabah as an advocate, or in connection with any trust of which that advocate is a trustee, subject to this section, the Law Society may, if it thinks fair and reasonable, make a grant to that person out of the Fund for the purpose of relieving or mitigating that loss.

(9) 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 Law Society 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 Law Society established for the purposes of purchasing or maintaining a library for the use of the members of the Law Society and to a fund established for the purpose of providing legal aid.

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

(11) On any grant made by the Law Society under this section to any person in respect of any loss—

- (a) the Law Society 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, clerk or servant in respect of the loss; and
- (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, clerk or servant in respect of the loss until the Fund has been reimbursed with the full amount of the grant.

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

(13) The Law Society 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.

(14) The income derived from the Compensation Fund shall be exempted from income tax 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.”.

Amendment of section 17

27. Section 17 of the Ordinance is amended—

- (a) by substituting for the words “Chief Judge” the words “Law Society”; and
- (b) by deleting paragraphs (cc) and (ccc).

Amendment of section 18

28. Section 18 of the Ordinance is amended by substituting for the words “the Schedule” the words “any Schedule”.

Amendment of Schedule

29. The Schedule to the Ordinance is amended by substituting for the word “SCHEDULE” the words “FIRST SCHEDULE”.

New Schedule

30. The Ordinance is amended by inserting after the First Schedule the following Schedule:

“SECOND SCHEDULE

(Sections 16B and 16C)

CONTROL OF PROPERTY OF AN ADVOCATE IN CERTAIN CASES

1. The Law Society—

- (a) may require the production or delivery to any person appointed by the Law Society at a time and place to be fixed by the Law Society; and
- (b) may take possession,

of all deeds, wills and 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 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 commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit; and

(b) the High Court or a Judge of the High Court, on an application by the Law Society—

(i) may order that person to comply with the requirement within such time as may be specified in the order; and

(ii) may at the same time order that on that person's failure to comply with the requirement one or more officers of the Law Society, or one or more persons appointed by the Law Society for the purpose, may forthwith enter upon any premises by using such force as is reasonably necessary to search for, and take possession of, the documents referred to in paragraph 1.

3. Upon taking possession of such documents, the Law Society shall serve on the advocate and every person—

(a) from whom the documents were received; or

(b) from whose premises the documents were taken by virtue of an order made under paragraph 2,

a notice giving particulars and the date of taking possession of the documents.

4. Any requirement of notice under this Schedule shall be made in writing by such person as may be appointed by the Law Society 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 or other person upon whom the notice was served may apply to a Judge in Chambers for an order directing the Law Society to return the documents to the person

from whom they were received, or from whose premises they were taken, as the case may be, by the Law Society 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—

- (a) no application is made under paragraph 5; or
- (b) the Judge to whom any such application is made directs that the documents shall remain in the custody or control of the Law Society,

the Law Society may make inquiries to ascertain the person to whom the documents belong and may deal with the documents in accordance with the directions of that person, but before dealing with the documents, the Law Society may take copies of, or extracts from, any of the documents.

7. The High Court or a Judge of the High Court may, on the application of the Law Society, 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 or his firm.

8. In any case where the Law Society—

- (a) has taken possession of documents under paragraph 1; and
- (b) has not been required to return them by virtue of paragraph 5,

paragraphs 9, 10, 11, 12, 13, 14, 15, 16 and 17 shall apply, but without prejudice to the application of paragraph 16 so far as it affects any of the paragraphs preceding it.

9. The Law Society may, on a resolution in that behalf made by the Law Society, take control of all sums of money due from the advocate 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 Law Society shall serve on the advocate or his firm, and 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 13.

10. Within fourteen days of the service of a notice under paragraph 9 the advocate 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 Law Society 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 Law Society or any person in that behalf appointed by the Law Society—

- (a) may withdraw the money, or from time to time any part of the money, in any banking account in the name of the advocate or his firm due to be held on behalf of his client;
- (b) pay the money into a special account or special accounts in the name of the Law Society or such person appointed by the Law Society; and
- (c) may operate, and otherwise deal with, such special account or accounts as the advocate or his firm might have operated on, or otherwise deal with, the banking account.

12. A banker with whom any such special account or accounts is or are kept shall be under no obligation to ascertain that account or those accounts is or are being so operated or otherwise dealt with.

13. (1) Subject to paragraphs 10 and 11, the Law Society may serve a notice on the advocate 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 money referred to in that notice be transferred in accordance with the directions of the Law Society:

Provided that—

- (a) no such directions shall be given by the Law Society except with the approval of the person to whom the money belongs, being in the case of a trust the trustee, and, if the advocate is the sole trustee of a trust or a co-trustee of the trust only with one or more of his partners, clerks or servants, the person beneficially entitled to the money; 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 if the Law Society is unable to ascertain the person to whom the money belongs or if the Law Society otherwise thinks it expedient to do so, the Law Society may apply to the High Court or a Judge of the High Court for directions as to the transfer of the money.

14. If any person fails to comply with the requirements of any notice given under paragraph 9 or 13—

- (a) he commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit; and
- (b) the High Court or a Judge of the High Court may, on the application of the Law Society, order that person to comply with the requirements of the notice within the times as may be specified in the order.

15. Subject to any order for the payment of costs that may be made on an application under paragraph 2, 5, 7, 10, subparagraph 13(2) or paragraph 14, any costs incurred by the Law Society for the purpose of this Schedule shall be paid by the advocate and shall be recoverable from him as a debt due to the Law Society.

16. If any claim or charge is made or any proceeding is taken against the Law Society or its servants or agents for any act or omission by the Law Society 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 Law

Society or its servants or agents, as the case may be, shall be reimbursed out of the compensation fund of the Law Society for all or any costs or damages which it or they may have incurred in relation to the claim, charge or proceeding.

17. The Law Society may make regulations with respect to the procedure to be followed in giving effect to paragraphs 1, 3, 4, 6, 9, 11 and subparagraph 13(1) and with respect to any matters incidental, ancillary or supplemental to those provisions.”.

Savings and transitional provisions

31. (1) Any application, complaint or disciplinary proceedings which are pending immediately before the date of coming into operation of this Act, shall be continued as if the Ordinance had not been amended by this Act.

(2) Any reference to any specific provision of the deleted sections shall be construed as a reference to a provision of the Ordinance as amended by this Act which corresponds as nearly as may be to such specific provision.

(3) Any right, privilege, obligation or liability, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been enacted.

EXPLANATORY STATEMENT

This Bill seeks to amend the Advocates Ordinance of Sabah (“Ordinance”).

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.

3. *Clauses 2, 5, 11 and 16* seek to introduce new Parts into the Ordinance for ease of reference.

4. *Clause 3* seeks to amend section 2 of the Ordinance to introduce new definitions and to amend existing definitions used in the Ordinance. This *clause* also seeks to amend subsection 2(2) of the Ordinance to provide that only a Malaysian citizen or permanent resident may be qualified to seek admission as an advocate in Sabah and a person who was born in the Federal Territory of Labuan shall also be deemed to have Sabah connections.
5. *Clause 4* seeks to delete section 3 of the Ordinance which provides for the responsibilities of the Registrar which is now proposed that the responsibilities of the Registrar be provided for in sections 7, 9 and 9B of the Ordinance.
6. *Clause 6* seeks to amend subsection 4(1A) of the Ordinance to provide that apart from a Magistrate of the First Class, any other person who has served in the Judicial and Legal Service in the State of Sabah for a period of not less than twelve months shall be treated as having served the required period of pupillage to qualify for admission as an advocate. This *clause* also seeks to increase the period of an advocate or legal practitioner, as the case may be, with whom a pupil can serve his pupillage from the present period of five years to seven years, to introduce new subsections 4(1C), (1D) and (1E) into the Ordinance which provide for the current practise of serving different parts of the pupillage with different masters and to provide for pupillage to commence the reading in chambers upon a person passing the examination required for admission as an advocate under the Ordinance.
7. *Clause 7* seeks to introduce new section 4A into the Ordinance to enable pupils to appear on behalf of his master or his master's firm before the Courts to conduct an action, suit or matter.
8. *Clause 8* seeks to amend section 5 of the Ordinance to clarify the mode of application for admission as an advocate.
9. *Clause 9* seeks to substitute section 7 of the Ordinance in relation to the roll of advocates kept by the Registrar and the obligations of the Registrar in respect of the roll.
10. *Clause 10* seeks to introduce new Part III which contains new sections 7A, 7B, 7C, 7D, 7E and 7F into the Ordinance. The new section 7A provides for the establishment of the Sabah Law Society to be both the representative and regulatory body for the profession. The constitution of the Sabah Law Society is set out in Part VI.

The new section 7B deals with the common seal of the Sabah Law Society.

The new section 7C seeks to empower the Sabah Law Society to issue Annual Certificate to practitioners and to make rules regulating the issuance of the Annual Certificate.

The new section 7D deals with the issuance of the Annual Certificate in certain conditions.

The new section 7E provides for application to the Chief Judge for an order directing the Sabah Law Society to issue an Annual Certificate to an advocate who is required to make an application under this section or advocate who is dissatisfied with the refusal, neglect or delay in the issuance of the Annual Certificate to him.

The new section 7F deals with the requirement of the Sabah Law Society to maintain a register of firm names.

11. *Clause 12* seeks to amend section 8 of the Ordinance which is in line with the establishment of the Court of Appeal and to enable advocates from Sabah to appear before the Federal Court and the Court of Appeal when sitting outside Sabah for the hearing of any appeal originating from a decision of the High Court or any subordinate court in Sabah.

12. *Clause 13* seeks to amend section 9 of the Ordinance to provide for the requirements for the application for a certificate to practise and to determine the criteria for issuance of the certificate to practise by the Registrar.

13. *Clause 14* seeks to introduce new sections 9A and 9B into the Ordinance. The new section 9A prescribes the condition that would warrant an advocate to apply for a certificate to practise.

The new section 9B provides for matters relating to the Register of Advocates kept by the Registrar.

14. *Clause 15* seeks to substitute section 10 of the Ordinance to explain how an *ad hoc* admission is to be made and the circumstances in which it may be made. This *clause* also seeks to provide for the fee payable to cover the cost of the applications and for the keeping of a separate roll for such admission.

15. *Clause 17* seeks to delete section 12 of the Ordinance consequential to the introduction of new disciplinary procedures under the new section 12A.

16. *Clause 18* seeks to substitute section 12A of the Ordinance to establish a Disciplinary Board to deal with all disciplinary proceedings in relation to advocates.

17. *Clause 19* seeks to introduce new sections 12B, 12C, 12D, 12E, 12F, 12G, 12H, 12I, 12J, 12K, 12L and 12M into the Ordinance. The new section 12B deals with disciplinary offences and punishments.

The new section 12C specifies the procedures on the complaint against advocates or pupils.

The new section 12D requires the Disciplinary Board to give the advocate concerned a reasonable opportunity to be heard. The Board shall also serve on the advocate the complaint against him and a notice to appear before the Disciplinary Board.

The new section 12E specifies the powers of the Disciplinary Board in relation to the proceedings which includes the issuance of a subpoena and the effect if any person served with a subpoena fails to attend the proceedings.

The new section 12F seeks to enable the Disciplinary Board to proceed with the proceedings in the absence of the person.

The new section 12G deals with the findings of the Disciplinary Board.

The new section 12H deals with appeals to the High Court by any person aggrieved by the decision of the Disciplinary Board.

The new section 12I provides for the power of the Disciplinary Board to make rules in relation to disciplinary proceedings.

The new section 12J provides for the establishment of the Disciplinary Fund.

The new section 12K deals with the payment of fees, fines, etc. into the Disciplinary Fund.

The new section 12L seeks to protect the actions of members of the Disciplinary Board done in good faith from legal action, suit, etc.

The new section 12M provides that for the purpose of disciplinary proceedings under Part V of the Ordinance, the term "advocate" includes a foreign lawyer registered under section 14J of the Ordinance.

18. *Clause 20* seeks to delete section 13 of the Ordinance consequential to the setting up of the Disciplinary Board under the new section 12A.

19. *Clause 21* seeks to introduce new Part VI which contains new sections 13A, 13B, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K, 13L, 13M, 13N, 13O, 13P and 13Q into the Ordinance. The new section 13A sets out the objects and powers of the Sabah Law Society.

The new section 13B contains provision on the members of the Law Society.

The new section 13C deals with the annual subscriptions, levies, etc. to be paid by the members of the Sabah Law Society.

The new section 13D contains provisions on the Executive Committee.

The new section 13E provides for the specific powers of the Executive Committee.

The new section 13F provides for the rights of the Executive Committee to inspect files of proceedings in bankruptcy.

The new section 13G deals with the power of the Executive Committee to accept gifts, etc. on behalf of the Sabah Law Society.

The new section 13H provides for the right of the Sabah Law Society to be represented in court by any advocate.

The new section 13I contains provision on the meeting of the Executive Committee.

The new section 13J contains provision on the expenses of members of the Executive Committee.

The new section 13K contains provision on the annual general meeting of the Sabah Law Society.

The new section 13L contains provision on the general meeting of the Sabah Law Society.

The new section 13M deals with the notice of general meeting of the Sabah Law Society.

The new section 13N contains provision on quorum of general meeting of the Sabah Law Society.

The new section 13O contains provision on voting at the general meeting of the Sabah Law Society.

The new section 13P contains provision on the financial provisions of the Sabah Law Society to be dealt with by the Executive Committee.

The new section 13Q requires that the names of Executive Committee to be published in the *Sabah Government Gazette*.

20. *Clause 22* seeks to delete section 14 of the Ordinance consequential to the introduction of the new section 12H into the Ordinance.

21. *Clause 23* seeks to introduce a new Part VII and Part VIII into the Ordinance on the liberalisation of the legal profession in Sabah. Generally, the aim of this liberalisation is to expand the expertise and specialisation of the legal professionals in Malaysia. In line with this, the Legal Profession Act 1976 [*Act 166*] which is only applicable to Peninsular Malaysia has been amended. Since the law governing the legal profession in Sabah is the Advocates Ordinance [*Sabah Cap. 2*], similar amendments are inserted into the Ordinance to give effect to such liberalisation. The amendment to the Ordinance by inserting the new Part VII will allow foreign firms to practise in Sabah in the permitted practice areas through an international partnership or qualified foreign law firm licence. Local Sabah law firms will also be able to employ foreign lawyers subject to certain conditions.

22. *Clause 24* seeks to substitute the existing section 15 of the Ordinance with a new section that defines “unauthorized person”.

23. *Clause 25* seeks to amend section 16 of the Ordinance to widen the category of offences that may be committed by an unauthorized person, to increase the penalty for any offence committed by such person and to widen the scope of exempted persons to include the Public Trustee, Official Assignee, Official Receiver, etc.

24. *Clause 26* seeks to introduce new sections 16A, 16B, 16C, 16D and 16E into the Ordinance. The new section 16A enables the Sabah Law Society to operate the bank account of a deceased advocate's clients.

The new section 16B allows the Sabah Law Society to take possession of property of an advocate who has been declared a bankrupt, etc.

The new section 16C provides that the personal representatives of a deceased advocate are liable for the said advocate's acts.

The new section 16D empowers the Sabah Law Society to make rules in relation to professional indemnity.

The new section 16E allows the Sabah Law Society to establish, maintain and administer a fund known as the "Compensation Fund".

25. *Clause 27* seeks to amend section 17 of the Ordinance to empower the Sabah Law Society instead of the Chief Judge to make rules.

26. *Clause 30* seeks to introduce the Second Schedule into the Ordinance. The Second Schedule is in relation to the control of property of an advocate who has been declared a bankrupt or is mentally disordered, etc., as provided under the new section 16B or in relation to a deceased advocate whose personal representatives are liable for the advocate's acts as provided under the new section 16C.

27. *Clause 31* deals with savings and transitional provisions.

28. Other amendments not specifically dealt with in this Statement are amendments which are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

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