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SERI PADUKA BAGINDA

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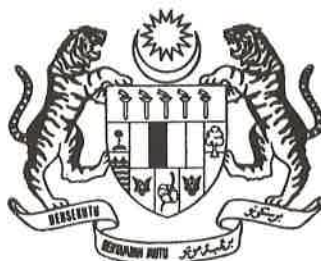
15hb Disember 1983

TAMBAHAN No. 36
AKTA

Akta-akta Parlimen yang berikut, yang telah diluluskan oleh kedua-dua Dewan Parlimen dan dipersetujui oleh Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong, adalah diterbitkan menurut Fasal (4) Perkara 66 dalam Perlembagaan :

The following Acts of Parliament passed by both Houses of Parliament and assented to by His Majesty the Yang di-Pertuan Agong, are published pursuant to Clause (4) of Article 66 of the Constitution :

No.	Tajuk ringkas
Akta A567 ...	Akta Profesion Undang-undang (Pindaan) 1983. Legal Profession (Amendment) Act 1983.
Akta A568 ...	Akta Penyelarasan Pencen (Pindaan) 1983. Pensions Adjustment (Amendment) Act 1983.
Akta A569 ...	Akta Probet dan Pentadbiran (Pindaan) 1983. Probate and Administration (Amendment) Act 1983.
Akta A570 ...	Akta Suruhanjaya Tanah Persekutuan (Pindaan) 1983. Federal Lands Commissioner (Amendment) Act 1983.
Akta A571 ...	Akta Taman Negara (Pindaan) 1983. National Parks (Amendment) Act 1983.



LAWS OF MALAYSIA

Act A567

**LEGAL PROFESSION (AMENDMENT)
ACT 1983**



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LAWS OF MALAYSIA

Act A567

LEGAL PROFESSION (AMENDMENT)
ACT 1983

An Act to amend the Legal Profession Act 1976.

[16.12.83]

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

1. This Act may be cited as the Legal Profession (Amendment) Act 1983. Short title.

2. Section 3 of the Legal Profession Act 1976, which in this Act is referred to as "the principal Act", is amended— Amendment of section 3. Act 166.

(a) by inserting immediately after the definition of "articled clerk" the following new definition:

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

(b) by substituting for paragraph (a) of the definition of "qualified person" the following new paragraph (a):

"(a) has passed the final examination leading to the degree of Bachelor of Laws of the University of Malaya, the University of Malaya in Singapore, the University of Singapore or the National University of Singapore;" and

(c) by deleting the words "Bar Council on the advice of the" appearing in paragraph (c) of the definition of "qualified person".

Amendment
of section 5.

3. Section 5 of the principal Act is amended by substituting the following therefor:

"Functions
of Board.

5. The Board shall have the following functions:

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

Amendment
of section 6.

4. Section 6 of the principal Act is amended—

- (a) by deleting the words "under subsections (2) and (3)", and by substituting for the word "purposes" the word "functions", in subsection (1);
- (b) by deleting subsections (2) and (3); and

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(c) by adding immediately after subsection (1) the following new subsection (2):

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

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

5. Section 7 of the principal Act is amended by substituting the following therefor: Amendment of section 7.

“Member-
ship of
Board.

7. The Board shall consist of—

- (a) the Attorney General who shall be the Chairman;
- (b) two Judges nominated by the Lord President;
- (c) the Chairman of the Bar Council; and

(d) a Dean of a Faculty of Law nominated by the Minister of Education.”.

Amendment
of section 8.

6. Section 8 of the principal Act is amended by substituting the following therefor:

“Election
of acting
Chairman.

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

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

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

Amendment
of section 9.

7. Section 9 of the principal Act is amended—

(a) by deleting the words “or the Deputy Chairman” in subsection (1); and

(b) by deleting the words “and until so fixed the quorum shall be five” in subsection (2).

Amendment
of section
10.

8. Section 10 of the principal Act is amended by substituting for the proviso the following new proviso:

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

Amendment
of section
11.

9. Section 11 of the principal Act is amended—

(a) by renumbering it as subsection (1);

(b) by substituting for the words “or removed from the Roll” in subparagraph (iii) of subsection (1) the word “, disqualified”;

(c) by substituting for the words “removed from the Roll” in subparagraph (iv) of subsection (1) the word “disqualified”; and

LEGAL PROFESSION (AMENDMENT)

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(d) by adding immediately after subsection (1) the following new subsection (2):

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

10. Subsection (2) of section 12 of the principal Act is amended— Amendment
of section
12.

(a) by substituting for the words “twelve months :” the words “nine months.”; and

(b) by deleting the proviso thereto.

11. Subsection (3) of section 14 of the principal Act is amended by substituting the following therefor: Amendment
of section
14.

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

12. (1) Subsection (1) of section 15 of the principal Act is amended by substituting for the word “the” the word “be”. Amendment
of section
15.

(2) Subsection (3) of section 15 of the principal Act is amended—

(a) by substituting for the word “twenty-one” the word “fourteen”;

(b) by inserting the words “or such shorter period as the Court may allow” after the word “heard”; and

(c) by inserting the words “where applicable,” before the words “a certificate” in paragraph (d).

13. Section 16 of the principal Act is amended—

(a) by substituting for the words “document being filed” in subsection (1) the words “filing thereof”;

Amendment
of section
16.

- (b) by substituting for the words "three Judges" in subsection (3) the words "a Judge";
- (c) by substituting for the word "has" in subsection (4), the words ", affidavit and true copies of each document have"; and
- (d) by deleting the words "the Board," wherever they appear.

Amendment
of section
18.

14. Section 18 of the principal Act is amended—

- (a) by substituting for subsection (1) the following new subsection (1):

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

- (a) for the purpose of that particular case he has, in the opinion of the Court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia; and
- (b) he has been instructed by an advocate and solicitor in Malaysia"; and
- (b) by substituting for the words "causes or matters" in subsection (2) the words "cause or matter".

Amendment
of section
19.

15. Section 19 of the principal Act is amended by substituting for the words "The petitioner for admission pursuant to section 15 and the applicant applying for originating motion pursuant to" the words "The petitioner under section 15 and the applicant under".

Amendment
of section
25.

16. Section 25 of the principal Act is amended—

- (a) by renumbering it as subsection (1);

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- (b) by inserting immediately after the word "specially" in paragraph (b) of subsection (1) the word "be"; and
- (c) by adding immediately after subsection (1) the following new subsection (2):

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

17. Subsection (5) of section 26 of the principal Act is amended by substituting for the word "whereof" the word "thereof". Amendment of section 26.

18. Section 28 of the principal Act is amended by adding immediately after subsection (4) the following new subsection (5): Amendment of section 28.

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

19. Section 29 of the principal Act is amended— Amendment of section 29.

- (a) by substituting for the words "by him under section 85 (2)" in subsection (1) the words "under section 85 (1)";
- (b) by substituting for the word "Every" in subsection (2) the words "Subject to subsection (3), every";
- (c) by substituting for subsection (3) the following new subsection (3):

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

Amendment
of section
32.

20. Subsection (1) of section 32 of the principal Act is amended—

- (a) by substituting for the words “referred to in subsection (2) complied” in paragraph (a) the word “complies”;
- (b) by substituting for the words “Fund, or” in paragraph (d) the words “Fund, or of any”; and
- (c) by adding immediately after paragraph (d) the word “and”.

Amendment
of section
33.

21. Section 33 of the principal Act is amended—

- (a) by substituting for the words “where an advocate and solicitor applies for a Sijil Annual” in subsection (1) the words “with respect to an application for a Sijil Annual made by an advocate and solicitor”; and
- (b) by substituting for the words “Subject to” in subsection (2) the words “In any of the circumstances mentioned in”.

Amendment
of section
36.

22. Section 36 of the principal Act is amended—

- (a) by substituting for subsection (2) the following new subsection (2):

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

- (a) during the period of three months from the date of the order—

- (i) before a Judge or a Registrar of the High Court, in Chambers;
- (ii) before a President of the Sessions Court 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.”;
- (b) by substituting for subsection (3) the following new subsections (3), (4), (5) and (6):

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

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

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

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

23. Subsection (1) of section 42 of the principal Act is amended by substituting for paragraph (d) the following new paragraph (d):

Amendment
of section
42.

“(d) where requested so to do, to express its view on matters affecting legislation and the administration and practice of the law in Malaysia;”.

Amendment
of section
46.

24. Section 46 of the principal Act is amended by substituting for subsections (5) and (6) the following new subsections (5) and (6):

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

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

Amendment
of section
47.

25. Subsection (2) of section 47 of the principal Act is amended by substituting for paragraph (b) the following new paragraph (b):

“(b) the chairman of each State Bar Committee and the members elected to represent each State Bar Committee pursuant to section 70 (7).”.

Amendment
of section
50.

26. Subsection (2) of section 50 of the principal Act is amended by substituting for the words “name” and “candidate” in paragraph (a) the words “names” and “candidates” respectively.

Amendment
of section
54.

27. Subsection (3) of section 54 of the principal Act is amended by substituting for the words “or the Malaysian Bar, as the case may be, shall elect a Chairman from amongst the respective members” the words “shall elect a Chairman from amongst its members”.

Amendment
of section
57.

28. Paragraph (g) of section 57 of the principal Act is amended by deleting the words “a Secretary of the Malaysian Bar and at its discretion any other”.

Amendment
of section
62.

29. Subsection (4) of section 62 of the principal Act is amended by substituting the following therefor:

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

30. Section 64 of the principal Act is amended—Amendment
of section
64.

- (a) by substituting for the words “within six weeks after the first day of January” in subsection (1) the words “before the first day of April”; and
- (b) by inserting after the word “Bar” in paragraph (a) of subsection (2) the words “during its term of office”.

31. Section 65 of the principal Act is amended—Amendment
of section
65.

- (a) by inserting immediately after the word “considers” in subsection (1) the word “it”;
- (b) by substituting for the word “twenty-five” in subsection (2) the word “fifty”;
- (c) by substituting for subsection (4) the following new subsection (4):

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

- (d) by adding immediately after subsection (4) the following new subsection (5):

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

32. Section 67 of the principal Act is amended by adding immediately after the word “meeting” at the end of subsection (2) the words “and shall stand adjourned to the same day in the week next following at the same time and place”.Amendment
of section
67.**33. Section 70 of the principal Act is amended—**Amendment
of section
70.

- (a) by substituting for the words “in or before the month of September” in subsection (1) the words “before the first day of March”;

- (b) by substituting for the words "a meeting" in subsection (1) the words "an annual general meeting";
- (c) by substituting for the words "senior member present" in subsection (2) the words "the Chairman of the State Bar Committee";
- (d) by substituting for the word "four" in subsection (4) the words "not less than four and not more than six";
- (e) by substituting for the words "next annual" in subsection (5) the words "conclusion of the next annual general";
- (f) by substituting for subsection (7) the following new subsection (7):

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

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

- (g) by inserting immediately after subsection (7) the following new subsection (7A):

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

- (h) by substituting for the word "Meeting" in the marginal note the words "Annual general meeting".

34. The principal Act is amended by inserting immediately after section 70 the following new section 70A: New section 70A.

"General meeting of State Bar.

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

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

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

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

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

(6) Any general meeting convened under subsection (3) shall be dissolved if a quorum is not present within half an hour from the time appointed for holding the meeting. In any other case, it shall stand adjourned to the same day in the week next following at the same time and place.

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

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

Amendment
of section
71.

35. Subsection (4) of section 71 of the principal Act is amended—

- (a) by inserting the word “and” at the end of paragraph (a);
- (b) by substituting a full stop for the semicolon and by deleting the word “and” at the end of paragraph (b); and
- (c) by deleting paragraph (c).

Amendment
of section
73.

36. Section 73 of the principal Act is amended—

- (a) by inserting after the word “members” in paragraph (i) the word “of”;
- (b) by substituting for the words “before making his application for a Sijil Annual” in paragraph (i) the words “by the 30th day of June”;
- (c) by substituting a semicolon for the full stop at the end of paragraph (vi); and
- (d) by adding immediately after paragraph (vi) the following new paragraph (vii):
 “(vii) to co-opt as members of the Committee not more than two members of the State Bar who shall have no right to vote at any meeting of the Committee.”.

Amendment
of section
76.

37. Subsection (2) of section 76 of the principal Act is amended by substituting the following therefor:

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

Amendment
of section
77.

38. Section 77 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by inserting immediately after the word “may” the words “, with the approval of the Attorney General,”; and
 - (ii) by substituting for the words “advocate and solicitor” the words “advocates and solicitors”; and

- (b) by adding immediately after subsection (3) the following new subsection (4):

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

39. Section 78 of the principal Act is amended—

Amendment
of section
78.

- (a) by substituting for the words “advocate and solicitor” and “money” in paragraph (a) of subsection (1) the words “advocates and solicitors” and “moneys” respectively;
- (b) by substituting for the words “advocate and solicitor” in paragraph (b) of subsection (1) the words “advocates and solicitors”;
- (c) by substituting for the word “provisions” and the word “money” wherever it appears in paragraph (a) of subsection (3) the words “provision” and “moneys” respectively; and
- (d) by substituting for the word “money” wherever it appears in paragraph (c) of subsection (3) the word “moneys”.

40. Section 79 of the principal Act is amended—

Amendment
of section
79.

- (a) by substituting for the words “Secretary of the Bar Council” in subsection (1) the words “Secretary of the Malaysian Bar”;
- (b) by deleting the words “, and a copy of the accountant’s report to the Bar Council” in subsection (1);
- (c) by substituting for the words “state if the accountant is not satisfied with” in paragraph (c) of subsection (2) the words “state, if the accountant is not satisfied,”;
- (d) by substituting for the words “Bar Council” and “lesser” in paragraph (e) of subsection (2) the words “Secretary of the Malaysian Bar” and “other” respectively; and

- (e) by adding immediately after the word "delivered" in paragraph (a) of subsection (3) the words "or from the date the advocate and solicitor commenced practice, as the case may be".

Amendment
of section
80.

41. Section 80 of the principal Act is amended—

- (a) by inserting immediately after subsection (4) the following new subsection (4A):

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

- (b) by substituting for the word "repayment" in paragraph (e) of subsection (7) the word "payment"; and

- (c) by inserting immediately after subsection (8) the following new subsection (8A):

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

Amendment
of section
85.

42. Section 85 of the principal Act is amended—

- (a) by substituting for the word "Registrar" in subsection (1) the words "Bar Council";

- (b) by substituting for the words "Subject to subsection (1) and (3) no" in subsection (2) the word "No";

- (c) by inserting immediately after the word "are" in paragraph (b) of subsection (2) the words "or were";

- (d) by substituting for the words "subsection (1)" in subsection (4) the words "subsection (3)"; and
- (e) by adding immediately after paragraph (4) the following new paragraph (5):

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

43. Subsection (1) of section 88 is amended by substituting the following therefor:

Amendment
of section
88.

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

44. The principal Act is amended by inserting immediately after section 88 the following new section 88A:

New section
88A.

"Suspension
of advocate
and soli-
citor.

- 88A. (1) Where an advocate and solicitor—
- (a) has been found guilty by a court of law of any offence involving dishonesty, misuse of his client's moneys or dishonesty towards a client or in respect of any property belonging to a client;
 - (b) has been disbarred, struck off, suspended or censured in his capacity as a legal practitioner in any other country;
 - (c) in respect of whom a complaint has been made to the Bar Council concerning any dishonest act or acts committed by him in his capacity as an advocate and solicitor;

(d) has left the country or has not attended at his office in such circumstances that the Bar Council may reasonably presume that he has absconded; or

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

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

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

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

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

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

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

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

45. Section 92 of the principal Act is amended by substituting for the words "in the title of which the word 'client' appears" the words "into which has been paid any clients' money". Amendment
of section
92.

46. Section 93 of the principal Act is amended—

Amendment
of section
93.

(a) by substituting for the word "being" in paragraph (i) of subsection (2) the words "done by"; and

(b) by deleting the word "shall" at the beginning of paragraphs (b) and (c) of subsection (6).

47. Section 95 of the principal Act is amended—

Amendment
of section
95.

(a) by deleting all the words appearing after the words "Bar Council" in subsection (1);

(b) by deleting all the words appearing after the words "professional capacity" in subsection (2);

(c) by substituting for subsection (3) the following new subsections (3), (4) and (5):

"(3) The Bar Council shall refer every complaint made and every information referred to it to the State Bar Committee of the advocate and solicitor, pupil or articled clerk concerned and the Committee shall investigate and inquire into the complaint or information.

(4) Nothing in this section shall be taken to preclude the Bar Council of its own motion from making any complaint touching upon the conduct of an advocate and solicitor or of any pupil or articled clerk to his State Bar Committee for investigation or inquiry or to preclude such State Bar Committee of its own motion from investigating and inquiring into the conduct of any such advocate and solicitor, pupil or articled clerk.

(5) A State Bar Committee may, if it has good reason to believe that any complaint referred to it is likely to prove frivolous or vexatious, require the person making the complaint to deposit with the Bar Council a reasonable sum not exceeding one hundred

ringgit which, in the event that the complaint is found to be frivolous or vexatious, shall be applied towards the costs and expenses of the investigation or inquiry.”.

Amendment
of section
96.

48. Section 96 of the principal Act is amended—

- (a) by substituting for all the words appearing before the words “in such manner” in subsection (1) the words “Every investigation or inquiry by a State Bar Committee shall be carried out”;
- (b) by substituting for the words “a State Bar Committee determine” in subsection (1) the words “it determines”;
- (c) by substituting for subsections (2), (3) and (4) the following new subsections (2), (3) and (4):
 - “(2) Upon completion of its investigation or inquiry, the State Bar Committee shall furnish to the Bar Council a report of its findings which shall contain its recommendation as to whether or not the complaint or information it had investigated or inquired into should be referred to a Disciplinary Committee for a formal inquiry.
 - (3) In the event that the State Bar Committee fails to submit its report of its investigation or inquiry within three months of the date when the complaint or information was referred to it, the Bar Council shall refer the information or complaint to the Inquiry Committee.
 - (4) Subject to this Act, a State Bar Committee shall, in relation to the carrying out of its investigation or inquiry into any complaint or information, have power to regulate its own procedure.”.

49. The principal Act is amended by substituting for sections 97, 98, 99, 100, 101, 102 and 103 the following new sections 97, 98, 99, 100, 101, 102 and 103:

Amendment
of sections
97, 98, 99,
100, 101, 102
and 103.

"Inquiry
Committee
to investi-
gate and
inquire.

97. (1) The Inquiry Committee shall forthwith investigate or inquire into any complaint or information referred to it by the Bar Council and shall, within three months of the date of such reference, furnish to the Bar Council its report which shall contain its recommendation as to whether or not the complaint or information be referred to a Disciplinary Committee for a formal inquiry.

(2) The provisions of section 96 (1) shall apply to an investigation or inquiry of the Inquiry Committee as they apply to an investigation or inquiry of a State Bar Committee.

Decision of
Bar Council
on reports.

98. The Bar Council shall, within six weeks of being furnished with the report mentioned in section 96 or section 97—

(a) determine whether a formal inquiry into the complaint by a Disciplinary Committee is necessary;

(b) if it determines a formal inquiry to be necessary, forthwith apply to the Chief Justice to appoint a Disciplinary Committee to conduct the formal inquiry; and

(c) notify in writing the advocate and solicitor and the person by whom the complaint was made or the information referred, of the findings of the Inquiry Committee or of the Bar Committee, as the case may be, and of the determination of the Bar Council made under paragraph (a).

Chief
Justice to
appoint
Disciplinary
Committee.

99. (1) The Chief Justice shall within fourteen days of an application made by the Bar Council in that behalf appoint a committee to be known for the purpose of this Act as a "Disciplinary Committee", from among

advocates and solicitors of not less than seven years' standing and having valid practising certificates :

Provided that no advocate and solicitor who is a member of the Inquiry Committee or has been involved in the inquiry or investigation of the complaint which has led to the making of the aforesaid application shall be appointed.

(2) A Disciplinary Committee shall consist of three members :

Provided that its proceedings shall not be invalidated by any vacancy in its membership so long as its members are not less than two.

(3) The Chief Justice may at any time revoke the appointment of or remove any member of a Disciplinary Committee or fill any vacancy in a Disciplinary Committee.

(4) Every Disciplinary Committee shall appoint an advocate and solicitor to be the secretary of that Disciplinary Committee.

(5) The production of any written instrument purporting to be signed by the Chief Justice and making the appointment, revocation or removal referred to in this section shall be evidence that the appointment, revocation or removal has been duly made.

Functions
and procedure of
Disciplinary
Committee.

100. (1) It shall be the function of the Disciplinary Committee to conduct a formal inquiry into the complaint or information touching upon the conduct of an advocate and solicitor in his professional capacity with respect to which the Committee has been appointed.

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(2) The following provisions shall apply to an inquiry conducted by every Disciplinary Committee:

(a) the Disciplinary Committee shall permit advocates and solicitors acting for the Bar Council, and for the person by whom the complaint was made, to appear before it;

(b) the Disciplinary Committee may administer oaths and affirmations and shall have all the powers of a Court for the summoning and examination of witnesses and for compelling the production of documents, but so that no person shall be compelled to produce any document which he could not be compelled to produce at the trial of an action;

(c) any summons issued by the Disciplinary Committee under paragraph (b) shall be served and be enforceable in like manner as a summons issued by the High Court;

(d) any person giving evidence before a Disciplinary Committee shall be bound to tell the truth.

(3) Subject as hereinbefore provided, the Rules Committee may from time to time make rules to regulate the procedure of a Disciplinary Committee.

(4) No fees or other charges shall be payable for any summons issued by the Secretary of the Disciplinary Committee under subsection (2).

(5) Every member and the Secretary of the Disciplinary Committee shall be deemed to be a public servant for the purpose of sections 161 to 165, 172 to 175, 177, 179, 183 and 228 of the Penal Code, and the inquiry conducted by the Disciplinary Committee under this Part shall be deemed to be judicial proceedings for the purpose of sections 193 and 228 of that Code.

Power of
Disciplinary
Committee.

101. (1) A Disciplinary Committee may make such order as it thinks fair and reasonable, including—

- (a) striking off the Roll the name of the advocate and solicitor against whom the complaint was made or information referred;
- (b) suspending from practice the advocate and solicitor;
- (c) imposing on the advocate and solicitor a penalty not exceeding five thousand ringgit payable to the Compensation Fund;
- (d) censuring the advocate and solicitor;
- (e) awarding costs to or against any party.

(2) Every order of the Disciplinary Committee shall be prefaced by a statement of its findings of the facts disclosed in its inquiry and shall be signed by all its members.

(3) Every order of the Disciplinary Committee shall be filed with the Bar Council and with the Registrar within three months of the date the Disciplinary Committee is appointed or within such longer period as the Chief Justice on the application of the Disciplinary Committee may in writing specify and every such order shall be acted upon by the Malaysian Bar and the Registrar and be enforceable in like manner as a judgment or order of the High Court.

(4) A copy of the order of the Disciplinary Committee shall forthwith be served by the Bar Council upon the advocate and solicitor in question and upon the person by whom the complaint was made or information referred and where the address of the advocate and solicitor or of the person to be served is unknown, publication in the national English and Malay language newspapers of the effect of the order shall be deemed to be good and sufficient service of the copy of the order.

(5) Where the order of the Disciplinary Committee includes any of the matters mentioned in paragraphs (a) to (d) of subsection (1), the Registrar shall cause a note of the effect of that order to be entered on the Roll against the name of the advocate and solicitor in question and, where the order includes any of the matters mentioned in paragraphs (a) to (c) of subsection (1), shall forthwith cause a notice, stating the effect of the order, to be published in the *Gazette*.

Appeal
from
Disciplinary
Committee
to the High
Court.

102. (1) An appeal against any decision made by the Disciplinary Committee on the application or complaint under this Act shall lie to the High Court at the instance either of the applicant or the advocate and solicitor against whom the complaint is made.

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

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

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

Appeal to
High Court.

103. (1) A person who has made a complaint under section 95 (1) and who is dissatisfied with the findings of the State Bar Committee or of the Inquiry Committee or with the determination of the Bar Council on the complaint may, within fourteen days of receiving the notification under section 98 (c), appeal to a Judge of the High Court against such finding or determination or both.

(2) The appeal shall be by way of originating summons and shall be accompanied by an affidavit of the facts constituting the basis of the complaint and by a copy of the complaint originally made to the Bar Council, together with a copy of the notification mentioned in section 98 (c).

(3) A copy of each of the documents referred to in subsection (2) shall be served on the Bar Council.”.

Deletion of section 104. **50.** Section 104 of the principal Act is deleted.

Amendment of section 107. **51.** Section 107 of the principal Act is amended—
 (a) by substituting for the word “Federal” wherever it appears the word “High”; and
 (b) by adding immediately after subsection (3) the following new subsections (4) and (5):

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

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

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

Amendment of section 108. **52.** Section 108 of the principal Act is amended by substituting the following therefor:

“Costs for proceedings under this Part. 108. The costs of and incidental to all proceedings under this Part shall be at the discretion of the Court hearing the proceedings and may include the costs of the Bar Council, the Inquiry Committee and the Disciplinary Committee.”.

Amendment of section 117. **53.** Section 117 of the principal Act is amended by substituting for the words “pursuant to section 114” in subsection (1) the words “into pursuant to section 116”.

Amendment of section 118. **54.** Section 118 of the principal Act is amended—
 (a) by substituting for the words “enforced or set aside without” in subsection (1) the words “enforced, varied or set aside by”;
 (b) by substituting for the word “respect” in subsection (2) the word “respects”;

- (c) by substituting for the word "agreement" in subsection (3) and the word "are" in the proviso thereto the words "agreement" and "is" respectively;
- (d) by substituting for the words "Registrar, who shall examine the agreement and" in subsection (6) the words "Registrar for his examination and the Registrar may"; and
- (e) by adding immediately after the word "agreement" at the end of paragraph (b) of subsection (7) the words "or any part thereof".

55. Section 119 of the principal Act is amended by substituting for the figures "114" in subsection (1) the figures "116". Amendment of section 119.

56. Section 136 of the principal Act is amended by substituting for the word "person" the word "persons". Amendment of section 136.

57. Section 137 of the principal Act is amended— Amendment of section 137.

- (a) by substituting for subsection (1) the following new subsection (1):

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

- (b) by substituting for the word "Board," in subsection (2) the words "Board or".

58. Section 138 of the principal Act is amended by substituting for the word "certificate" at the end of subsection (2) the word "document". Amendment of section 138.

59. Section 139 of the principal Act is amended— Amendment of section 139.

- (a) by substituting for the words "in the Council" and "Council, the Malaysian Bar or the Board" the words "in the Bar Council" and "Bar Council or the Malaysian Bar" respectively;
- (b) by substituting for the words "Council, Bar or Board to recover sum of money" in the marginal note the words "Bar Council or Malaysian Bar to recover sum of money".

Amendment
of section
141.

60. Subsection (1) of section 141 of the principal Act is amended by substituting for the words "on account" the words "relating to the account".

Amendment
of section
142.

61. Section 142 of the principal Act is amended—

- (a) by deleting the words "to the Board or" in subsection (1); and
- (b) by substituting for the words "No estate duty payable for request to the Board or Bar" in the marginal note the words "No estate duty payable for bequest to the Bar".

Amendment
of section
145.

62. Section 145 of the principal Act is amended—

- (a) by substituting for the word "names" in subsection (3) the word "name"; and
- (b) by inserting immediately after the word "shall" in subsection (4) the words ", until the contrary is proved,".

Amendment
of section
147.

63. Section 147 of the principal Act is amended by substituting for the figures "30" the figures "29".

Amendment
of section
149.

64. Section 149 of the principal Act is amended—

- (a) by substituting for the word "remain" the word "be"; and
- (b) by inserting immediately before the word "without" the word "respectively".

Amendment
of section
150.

65. Subsection (1) of section 150 of the principal Act is amended by substituting for the words and figures "Any applications", "29, 30 and 32", "any proceedings" and "33" the words and figures "All applications", "27, 28 and 30", "all proceedings" and "31" respectively.

Amendment
of Schedule.

66. The Schedule to the principal Act is amended—

- (a) by substituting for the figures and word "99 apply" in paragraph 9 the figures and word "98 applies";
- (b) by deleting the figure "11," in paragraph 14; and

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- (c) by deleting the words “, and paragraph 1 shall have effect as if the purposes provided for in section 35 and that Scheduled included the purpose of this paragraph” in paragraph 15.