

The definition of "Permanent resident" refers to that in the Courts of Judicature Act, 1964, (added by the Courts of Judicature (Amendment) Act 1976) which reads -

"Permanent resident" means a person who has permission granted without limit of time under any Federal Law to reside in Malaysia, and includes a person treated as such under any written law relating to immigration.

Amendments have been made to the Supreme Court of Judicature Act and to the Subordinate Courts (by Act A 328) Act to give the courts jurisdiction to try such extra-territorial offences.

Ahmad Ibrahim

THE LEGAL PROFESSION ACT, 1976 Act 166

This Act consolidates the law relating to the legal profession in Malaysia and when it comes into operation will repeal the Advocates and Solicitors Ordinance, 1947, the Advocates Ordinance of Sabah and the Advocates Ordinance of Sarawak. The Act will apply to Sabah and Sarawak with such modifications as the Yang di-Pertuan Agung may by order make.

Section 3 is the interpretation section. A qualified person is now defined as a person who -

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

Part II of the Act provides for the establishment of a Qualifying Board whose functions will include the regulation of all matters generally pertaining to qualified persons and articled clerks who seek admission as advocates and solicitors, the provision of training, education and examination of such persons and the supervision of such persons in their period of pupillage and conditions governing their admission as advocates and solicitors and practice at the Bar.

The Qualifying Board shall consist of -

- (a) the Attorney-General as Chairman;
- (b) the Dean of the Faculty of Law in the University of Malaya;
- (c) the Chairman of the Bar Council;
- (d) two judges of the High Court nominated by the Chief Justice;

- (e) one person from the Faculty of Law of the University of Malaya nominated by the Dean of the Faculty;
- (f) three advocates and solicitors nominated by the Bar Council (section 7).

The period of pupillage prescribed for qualified persons is twelve months but if the person has attended and satisfactorily completed a course of instruction organized by the Qualifying Board concurrently with the period of his pupillage or otherwise, the prescribed period is reduced from twelve months to nine months. (section 12)

The period of pupillage shall be served with an advocate and solicitor who is and has been in active practice in Malaysia for a total period of not less than seven years immediately proceeding the date of commencement of the pupillage but the Bar Council may on special grounds allow a person to serve his pupillage with an advocate and solicitor of less than seven years' standing. The Bar Council may allow a qualified person to serve different parts of his period of pupillage with different masters. Power is given to the Bar Council, in its sole discretion, to exempt a qualified person from any period up to six months' pupillage upon application made to it supported by satisfactory evidence that —

- (a) there are special circumstances justifying a shortening of the period of pupillage;
- (b) the applicant has for a period of not less than six months been a pupil or read in the chambers of a legal practitioner in active private practice in Malaysia of more than seven years standing; or
- (c) the applicant is an articled clerk in Malaysia.

A qualified person who has served in the Judicial and Legal Service for seven years may be exempted from serving the period of pupillage provided that his application is supported by the Attorney-General. The Bar Council may in its sole discretion upon an application supported by the Attorney-General exempt a qualified person who has served in the Judicial and Legal Service for at least three years from any period up to a maximum of six month's pupillage.

Ad hoc admissions for one or more specific cases may be granted not only to Queen's Counsel or persons who have special qualifications or experience for such case or matter but also for persons who have been in active practice as advocates and solicitors in Singapore for not less than seven years immediately preceding the filing of the application.

Sections 20 to 25 deals with the qualifications and admission of articled clerks.

Section 26 provides for an appeal from the decision of the Qualifying Board to a Judge.

Part III (sections 29 to 34) deals with practising certificates. Practising certificates are issued by the Registrar if he is satisfied that the necessary documents (including the Sijil Annual) are in order and on payment of the prescribed fee (section 29).

No advocate and solicitor may apply for a practising certificate —

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

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

A person who is gainfully employed is required to surrender his practising certificate to the Registrar. (section 30).

A Sijil Annual is issued to an advocate and solicitor by the Bar Council where —

- (a) the Bar Council is satisfied that his application complies with the requirements of the section and the rules made under the section;
- (b) the Bar Council is satisfied that the applicant is not prohibited from holding a practising certificate;
- (c) the advocate and solicitor has delivered or is exempted from delivering an accountant's report;
- (d) the advocate and solicitor is not in arrears, in respect of any contribution to the compensation fund or subscription or levy lawfully due to the Bar Council or his State Bar Committee under the act;
- (e) the advocate and solicitor intends to practise under an approved name. (section 32).

Where an advocate and solicitor applies for a Sijil Annual —

- (a) after more than twelve months have elapsed since his admission and where he has held no valid practising certificate during that period;
- (b) who had held a practising certificate subject to terms and conditions at any time in the three years immediately preceding his application;
- (c) after more than twelve months have elapsed since he held a valid practising certificate;
- (d) after the Disciplinary Committee has ordered a penalty or costs to be paid by him;
- (e) when having been suspended from practice or removed from the Roll or struck off the Roll the period of suspension has expired or his name has been restored to the Roll, as the case may be;
- (f) whilst he is an undischarged bankrupt or a receiving order in bankruptcy is in force against him;
- (g) after having been adjudicated a bankrupt and obtained his discharge or after having entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors;
- (h) after having had an order of committal or an order for a writ of attachment made against him,

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he shall give not less than four weeks notice to the Bar Council and the Bar Council may in its discretion issue the Sijil Annual or notify the applicant that he is required to apply to the court. (section 33).

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Where an advocate and solicitor is required to make an application to court or is dissatisfied with the refusal, neglect or delay in the issue to him of a Sijil Annual, he may apply to a Judge for an order for the issue of the Sijil Annual (section 34).

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Part IV deals with the privileges of advocates and solicitors.

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Advocates and solicitors shall, subject to the Act and any other written law have the exclusive right to appear and plead in all courts of justice in Malaysia (section 35).

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No person shall practise as an advocate and solicitor unless his name is on the Roll of advocates and solicitors and he has a valid practising certificate. A Judge may however allow a pupil who has completed not less than three months of pupillage to appear on behalf of his master or the firm in which the master is a partner before —

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- (a) a Judge or Registrar in Chambers;
- (b) a Sessions Court President or the Registrar of a Sessions Court in Chambers; and
- (c) a Sessions Court President or a Magistrate to mention a case or to apply for trial or to take a consent judgment or order (section 36).

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The prohibition against acting as an advocate and solicitor or wilfully pretending to be duly qualified or authorized to act as advocate and solicitor does not apply inter alia to any full-time member of the Faculty of Law of the University of Malaya acting in an advisory capacity upon instructions from a practising advocate and solicitor (section 38).

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Part V provides for the establishment of the Malaysian Bar as a body corporate. The purpose of the Malaysian Bar as set out in section 42(1) is as follows:—

- (a) to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour;
- (b) to maintain and improve the standards of conduct and learning of the legal profession in Malaysia;
- (c) to facilitate the acquisition of legal knowledge by members of the legal profession and others;
- (d) to advise the government and the courts where necessary in matters affecting legislation and the administration and practice of the law in Malaysia;
- (e) to represent, protect and assist members of the legal profession in Malaysia and to promote in any proper manner the interests of the legal profession in Malaysia;
- (f) to establish libraries and to require or rent premises to house the libraries and offices of the Malaysian Bar or associations for the use

of members either alone or in conjunction with any other body or society;

- (g) to protect and assist the public in all matters touching, ancillary or incidental to the law;
- (h) to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors;
- (i) to award prizes and scholarships and to establish and subsidise lectureships in educational institutions in subjects of study relating to law;
- (j) to grant pecuniary or other assistance to any association, institute, board or society in Malaysia in the interest of the legal profession or of law students;
- (k) to afford pecuniary and other assistance to members or former members of the Malaysian Bar and to the wives, widows, children and other dependants, whether of members, former members or deceased members who are in need of such assistance;
- (l) to promote good relations and social intercourse amongst members and between members and other persons concerned in the administration of law and justice in Malaysia;
- (m) to encourage, establish and maintain good relations with professional bodies of the legal profession in other countries and to participate in the activities of any local or international association and become a member thereof; and
- (n) to establish a Compensation Fund.

Membership of the Malaysian Bar is open to all advocates and solicitors who hold valid practising certificates (section 43). The annual subscription shall be fixed from time to time by the Bar Council (section 44).

The Malaysian Bar may make rules to give effect to Part V only and in particular to provide for meetings and the procedure of such meetings.

Section 47 provides for the establishment of a Bar Council for the proper management of the affairs of the Malaysian Bar and for the proper performance of its functions under the Act. The Bar Council shall consist of —

- (a) the immediate past President and Vice-President of the Malaysian Bar;
- (b) two members elected to represent each State Bar Committee;
- (c) members elected by postal ballot.

Section 54 provides that there shall be a President, Vice-President and Secretary of the Malaysian Bar to be elected by the Bar Council from amongst its members. No President, Vice-President or Secretary shall hold office for more than two consecutive years.

The powers of the Bar Council are set out in sections 56 and 57.

Section 62 to 67 deal with the proceedings of the Bar Council.

Section 68 to 75 deal with the State Bar Committees.

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Part VI of the Act deals with professional practice, etiquette and the conduct and discipline of advocates and solicitors and their clerks. Power is given to the Bar Council to make rules for regulating the professional practice, etiquette, conduct and discipline of advocates and solicitors and for the keeping of accounts by advocates and solicitors. Provision for the making of the rules as to keeping of accounts for client's money was first made by the Advocates and Solicitors (Amendment) Act, 1963 (No. 7 of 1963). Section 78(2) provides that the Bar Council shall also make rules *inter alia* —

- (a) providing for the opening and keeping by every advocate and solicitor who is a sole trustee or who is co-trustee with one or more of his partners, clerks or servants, of an account at a bank for moneys of any trust of which his sole trustee or co-trustee;
- (b) providing for the keeping by every such advocate and solicitor of accounts containing particulars and information as to moneys received, held or paid by him for or on account of any such trust.

Rules made under the section shall make provision for requiring an advocate and solicitor, in the prescribed cases, either —

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

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

These provisions shall not affect any arrangement in writing between an advocate and solicitor and his client as to the application of the client's money or interest thereon. (section 78)

An advocate and solicitor applying for Sijil Annual shall unless exempted by the Bar Council deliver an Accountants Report relating to his accounts. (section 79).

Section 80 provides for the maintenance and administration of a compensation fund, with the aim among others of providing grants in relief or mitigation to persons who have sustained loss in consequence of dishonesty on the part of any advocate and solicitor or his employee.

Section 81 provides that an advocate and solicitor shall not act as a commissioner for oaths or a notary public, unless he has a valid practising certificate.

Section 82 provides that no advocate and solicitor shall wilfully and knowingly act as agent for another advocate and solicitor who does not have a valid practising certificate.

Section 83 provides that no advocate and solicitor shall without the consent of the court employ or remunerate a person who to his knowledge is an undischarged bankrupt or has been —

- (a) struck off the Roll otherwise than at his own request in any part of Malaysia or Singapore or elsewhere and remains struck off;
- (b) suspended from practice as an advocate and solicitor in any part of Malaysia or Singapore or elsewhere and remains suspended;
- (c) convicted of an offence involving dishonesty or fraud or has been guilty of an offence under the Prevention of Corruption Act, 1961 or has been removed from the Roll;
- (d) convicted of an offence under section 15A of the Minor Offence Act, 1955 (that is touting) or under the Act;
- (e) a person against whom an order has been made by the court under subsection (2).
- (f) employed as a public officer (other than a person who is an advocate and solicitor or a qualified person).

Section 84 provides that an advocate and solicitor acting for a developer in a sale of immoveable property shall not act for the purchaser of the property.

Section 85 provides that the Registrar shall maintain a register of firm names under which advocates and solicitors practise. No person shall practise as an advocate and solicitor under a name that is not

- (a) his own name;
- (b) the names of advocates and solicitors who are his partners;
- (c) the names of his predecessors whose good-will he or his partners have acquired; or
- (d) any combination of the above names.

Section 86 enables a client or his representative to apply for the delivery of securities held by an advocate and solicitor on behalf of the client.

Section 87 gives power to the Registrar if it appears during the taxation of any bill of costs or the taking of accounts between an advocate and solicitor and his client that there are moneys due from the advocate and solicitor to the client, to make an interim certificate as to the amount so payable by the advocate and solicitor; and such moneys shall be paid to the client or brought into court.

Sections 88—91 deal with the control of property. Where the Bar Council has reasonable cause to believe that an advocate and solicitor or his clerk or servant has been guilty of dishonesty in connection with the practice of the advocate and solicitor or in connection with any trust of which he is trustee, the Bar Council may take steps to take control of the property and the provisions of the Schedule to the Act shall apply. Similarly where a complaint has been made to the Bar Council and the advocate and solicitor has failed to give a sufficient and satisfactory ex-

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planation, the Bar Council can take control of the property. The Bar Council can also take possession of the property in the possession of the advocate and solicitor where he is an undischarged bankrupt or where he is a mentally disordered person. In certain circumstances the Bar Council can also act to take control of property in the possession of the personal representatives of a deceased advocate and solicitor. On the death of an advocate and solicitor the right to operate or otherwise deal with the client's account of the advocate and solicitor shall vest in the Bar Council to the exclusion of any personal representative of the advocate and solicitor and shall be exercisable as from the death of the advocate and solicitor.

Part VII deals with disciplinary proceedings.

Advocates and solicitors are subject to the control of the Bar Council and are liable on due cause shown to be removed from the Roll or suspended from practice or censured. Due cause may be shown by proof that the advocate and solicitor in Malaysia or elsewhere —

- (a) has been convicted of a criminal offence as makes him unfit to be a member of his profession;
- (b) has been guilty of dishonest conduct in the discharge of his professional duty or of fraudulent conduct or conduct otherwise unbefitting of an advocate and solicitor;
- (c) has been guilty of a breach of any rule regulating the practice and etiquette of the profession made by the Bar Council as in the opinion of the Bar Council amounts to improper conduct or practice as an advocate and solicitor;
- (d) has been adjudicated bankrupt and has been found guilty of any of the acts or omissions mentioned in paragraph (a), (b), (c), (e), (f), (h), (k) or (l) of section 33(6) of the Bankruptcy Act, 1967;
- (e) has tendered or given or consented to the retention of any gratification to any person for having procured the employment in any legal business of himself or any other advocate and solicitor.
- (f) has directly or indirectly procured or attempted to procure the employment of himself or any other advocate and solicitor through or by the instruction of any person to whom remuneration for obtaining such employment has been given by him or agreed or promised to be so given;
- (g) has accepted employment in any legal business through a tout;
- (h) allows any clerk or unauthorised person to undertake or carry on legal business in his name, the clerk or that other unauthorised person not being under such direct and immediate control of his principal as to ensure that he does not act without proper supervision.
- (i) has done some other act which, if being a barrister or solicitor in England, would render him liable to be disbarred or removed from the Roll or suspended from practice or censured;

- (j) carries on by himself or through any person in his employment, any trade, business or calling which in the opinion of the Bar Council is incompatible with the profession of law or is employed in any such trade, business or calling;
- (k) has contravened or failed to comply with any of the provisions of the Act or of any rules made thereunder if in the opinion of the Bar such contravention or failure warrants disciplinary action;
- (l) has been or is liable to be disbarred, struck off, suspended or censured in his capacity as a legal practitioner in any other country;
- (m) has obtained or attempted to obtain from a person entitled to compensation paid pursuant to section 81 of the Road Traffic Ordinance, 1958, remuneration for his service to that person of an amount greater than the fees properly paid to him by the appropriate State Bar Committee or its nominee (section 93).

A pupil or an articled clerk shall be subject to the same control as is exercised over advocates and solicitors but in lieu of an order striking him off the Roll or suspending him, an order may be made prohibiting the pupil or articled clerk from petitioning the Court for admission until after a date to be specified in the order. (section 104).

Section 94 provides for the appointment of an Inquiry Committee to consist of twelve members of the Malaysian Bar of more than seven years standing.

A complaint concerning the conduct of an advocate and solicitor or any pupil or articled clerk shall be made to the Bar Council or the State Bar Committee and shall be referred to and inquired initially by the State Bar Committee. The State Bar Committee shall inquire into and investigate the matter and may then —

- (a) determine that a formal investigation by a Disciplinary Committee is not necessary or that there should be a formal investigation by a Disciplinary Committee;
- (b) make a brief report to the Inquiry Committee;
- (c) inform the Inquiry Committee and the parties of the manner in which it has determined the matter or complaint; and
- (d) forthwith apply to the Chief Justice who shall appoint a Disciplinary Committee which shall hear and investigate the matter or complaint.

The Inquiry Committee shall consider the report of the State Bar Committee and if the State Bar Committee has not applied for the appointment of a Disciplinary Committee may determine —

- (a) that a formal investigation is not necessary;
- (b) that there should be a formal investigation by a Disciplinary Committee; or
- (c) that the matter be referred back to the State Bar Committee for further investigation and a further report.

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If the Inquiry Committee determine that there should be a formal investigation the Inquiry Committee shall apply to the Chief Justice who shall appoint a Disciplinary Committee which shall hear and investigate the matter or complaint.

When a person has made a written application or complaint to the Bar Council or any State Bar Committee and the Inquiry Committee has determined that a formal investigation is not necessary that person if he is dissatisfied with the decision may appeal to a Judge of the High Court. On the hearing of the appeal, the Judge may affirm the determination of the Inquiry Committee or direct the Inquiry Committee to apply to the Chief Justice for the appointment of a Disciplinary Committee.

Provision is made for the appointment by the Chief Justice of a Disciplinary Committee from among advocates and solicitors of more than seven years standing and having valid practising certificates (section 99).

The Disciplinary Committee may after inquiry and investigating into the matter or complaint make such order as it thinks fair and reasonable and in particular such order may provide for -

- (a) striking off the Roll the name of the advocate and solicitor concerned;
- (b) suspending the advocate and solicitor from practice.
- (c) payment by the advocate and solicitor of a penalty not exceeding \$5,000/- which shall be paid to the Compensation Fund;
- (d) censuring of the advocate and solicitor; and
- (e) payment by any party of costs or of such sum as the Disciplinary Committee may consider a reasonable contribution towards costs. (section 101).

An appeal lies from the decision of the Disciplinary Committee at the instance either of the applicant or the advocate and solicitor concerned, to the Federal Court. (section 102).

Provision is made for an advocate and solicitor to apply to the Court to have his name removed from the Roll and for the procedure to be followed when such an application is made. (section 105).

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

Part VIII deals with the remuneration of advocate and solicitors.

No advocate and solicitor shall purchase the interest of his client in any suit or action. (section 112)

A Solicitors Costs Committee is constituted to regulate the remuneration of advocates and solicitors in respect of non-contentious business. The committee shall consist of -

- (a) the Chief Justice or a Judge of the High Court nominated by the Chief Justice;
- (b) the Attorney-General or a member of the Attorney-General's Chambers nominated by the Attorney-General;

- (c) the Chief Registrar or a Senior Assistant Registrar nominated by the Chief Registrar;
- (d) four advocates and solicitors nominated by the Bar Council (section 113).

An advocate and solicitor may make an agreement for remuneration for his client in respect of non-contentious business but such agreement shall not provide for costs lower than that provided by any order made by the Solicitors Costs Committee (section 114).

It is provided that an advocate and solicitor shall be entitled to costs of negotiating a mortgage or charge, to himself either alone or jointly with another person (section 115).

An advocate and solicitor may enter into an agreement for the costs of contentious business but such agreement may only be enforced in the manner set out in section 118 of the Act. The court or a Judge may order the agreement to be cancelled if the substantive terms of the agreement are deemed by the Court or Judge to be unfair or unreasonable (sections 116 and 118).

Where the costs are not agreed, the advocate and solicitor may submit a bill of costs, which may be required to be taxed (section 121).

Part IX deals with the recovery and taxation of costs and in the main re-enacts existing legislation. Part X deals with miscellaneous matters and Part XI with transitional provisions.

Ahmad Ibrahim

CRIMINAL PROCEDURE CODE (Amendment and Extension) Act, 1976 Act A 324

In the past Malaysia had four different Criminal Procedure Codes, the Criminal Procedure Code of the Federated Malay States, the Criminal Procedure Code of the Straits Settlements, the Criminal Procedure Code of Sarawak and the Criminal Procedure Code of Sabah. This Act (which came into force on the 10th January 1976) amends the Criminal Procedure Code of the Federated Malay States and extends the Code as amended to the whole of Malaysia. The Criminal Procedure Codes of the former Straits Settlements, of Sabah and of Sarawak are repealed; and so also are sections 25(2), 26(2), 27(2), 28(2), 29(2) and 30(2) of the Evidence Act, 1950 which refers to Sarawak. It is provided that the Act shall apply to all investigations, inquiries, trials, cases and other proceedings pending on the date of its coming into force in the same manner as it applies to investiga-