

*SYARIE* LEGAL PROFESSION (FEDERAL TERRITORIES)  
BILL 2019

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*i n t i t u l e d*

An Act to provide for the establishment of the *Syarie* Legal Profession Qualifying Board, *Badan Peguam Syarie* and *Majlis Peguam Syarie*, to provide for the admission of a *Peguam Syarie*, to regulate the practice of *Syarie* legal profession in the Federal Territories and for related matters.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

**Short title and commencement**

1. (1) This Act may be cited as the *Syarie* Legal Profession (Federal Territories) Act 2019.

(2) This Act comes into operation on a date to be appointed by the Yang di-Pertuan Agong by notification in the *Gazette* and the Yang di-Pertuan Agong may appoint different dates for the coming into operation of different provisions of this Act.

**Interpretation**

2. In this Act, unless the context otherwise requires—

“client” includes—

(a) in relation to a contentious business—

- (i) any person who as a principal or on behalf of another person retains or employs a *Pegulam Syarie*; and
- (ii) any person who is or may be liable to pay a *Pegulam Syarie*'s costs; or

(b) in relation to a non-contentious business—

- (i) any person who, as a principal or on behalf of another, or as a trustee, executor or administrator, or in any other capacity, has express or implied power, to retain or employ a *Pegulam Syarie*; and
- (ii) any person for the time being liable or may be liable to pay a *Pegulam Syarie*'s costs for his services;

“*Badan Pegulam Syarie*” means the *Badan Pegulam Syarie* of the Federal Territories established under section 42;

“Register” means the Register of *Pegulam Syarie* kept and maintained under section 24;

“Register of Practitioners” means the Register of Annual Practising Certificate kept and maintained under section 31;

“Chief Syarie Judge” means the Chief Syarie Judge of the Federal Territories;

“Chief Registrar” means the Chief Registrar of the Syariah Appeal Court of the Federal Territories;

“Chief Syariah Prosecutor” means the Chief Syariah Prosecutor of the Federal Territories;



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

“pupillage” means pupillage in chambers;

“Board” means the *Syarie* Legal Profession Qualifying Board established under section 3;

“syariah court” means the Syariah Lower Court, Syariah High Court or Syariah Appeal Court, as the case may be, established under section 40 of the Administration of Islamic Law (Federal Territories) Act 1993 [*Act 505*];

“Syariah High Court” means the Syariah High Court of the Federal Territories;

“Minister” means the Minister charged with the responsibility for the administration of the religion of Islam in the Federal Territories;

“unauthorized person” means a person whose name is not listed in the Register and did not possess a valid Annual Practising Certificate;

“legal officer” means a legal officer of the Judicial and Legal Services;

“syariah officer” means a syariah officer in the general public service of the Federation or in the general public service of any State;

“advocate and solicitor” means an advocate and solicitor registered under the Legal Profession Act 1976 [*Act 166*];

“*Pegum Syarie*” means a *Pegum Syarie* who has been admitted as *Pegum Syarie* in the Syariah High Court and who has been registered under section 24;

“State *Pegum Syarie*” means any qualified person who has been admitted as a *Pegum Syarie* by any State in Malaysia;

“pupil” means a qualified person who is undergoing a period of pupillage under section 13;

“master” means a *Pegum Syarie* with whom a pupil is undergoing his period of pupillage under section 13;

“Supporting Acknowledgement” means an acknowledgement issued under section 28;

“Secretary to the Board” means the Secretary to the *Syarie* Legal Profession Qualifying Board mentioned in subsection 7(1).

## PART II

### *SYARIE* LEGAL PROFESSION QUALIFYING BOARD

#### **Establishment of the Board**

3. A body to be named as the *Syarie* Legal Profession Qualifying Board is established.

#### **Functions of the Board**

4. The Board shall have the following functions:

(a) to determine the qualifications of the persons intending to apply for the admission as a *Pegum Syarie*; and

(b) to provide for—

(i) the course of instruction, training, education, interview and examination by the Board for the persons intending to apply for the admission as a *Pegum Syarie*; and

(ii) the course of instruction, training and continuous professional development of the *Pegum Syarie*.

#### **Powers of the Board**

5. (1) The Board may do all things necessary or expedient for, or in connection with, the performance of its functions under this Part.

(2) Without prejudice to the generality of subsection (1), the Board may—

- (a) appoint any committee as the Board considers necessary and expedient to assist the Board in the performance of its functions and in the exercise of its powers;
- (b) pay allowances and other expenses of the members of the Board or its committees;
- (c) appoint any lecturers and examiners for the purpose of providing courses of instruction, training, education, interview and examination under paragraph 4(b);
- (d) pay allowances and other benefits to lecturers and examiners appointed under paragraph (c); and
- (e) impose any fees or other charges as prescribed by the Board in the performance of its functions and the exercise of its powers.

### **Membership of the Board**

6. (1) The Board shall consist of the following members:

- (a) the Chief Syarie Judge who shall be the Chairman;
- (b) the Chairman of *Majlis Peguam Syarie* who shall be the Deputy Chairman;
- (c) a representative of the Attorney General's Chambers who shall be a Muslim;
- (d) the Chief Syariah Prosecutor;
- (e) a *Peguam Syarie* who has been practicing for not less than twenty years nominated by the *Majlis Peguam Syarie*;

- (f) an academician in the syariah field from a higher educational institution to be nominated by the Minister charged with the responsibility for education; and
- (g) an academician in the legal field from a higher educational institution to be nominated by the Minister charged with the responsibility for education.

(2) Members of the Board appointed under paragraphs (1) (e), (f) and (g) shall hold the office for a period of three years and is qualified to be reappointed for another three years.

(3) Members of the Board appointed under paragraphs (1) (e), (f) and (g) shall be deemed to have vacated his seat as a member of the Board if—

- (a) he is no longer a citizen of Malaysia;
- (b) he no longer resides in Malaysia;
- (c) he is an undischarged bankrupt;
- (d) he has been found guilty by any court for any offence involving fraud, dishonesty or moral turpitude, or for any other offence punishable with imprisonment, whether in itself only or in addition to or in lieu of a fine;
- (e) in the case of a member appointed under paragraph (1)(e)—
  - (i) he no longer holds a valid Annual Practising Certificate issued under this Act; or
  - (ii) he has been convicted by the Disciplinary Board for any misconduct under Part IX of this Act; or
- (f) in the case of a member appointed under paragraph (1)(f) or (g)—
  - (i) he has been punished by the competent disciplinary board for any disciplinary offence; or
  - (ii) he has resigned from the higher educational institution.

(4) A member appointed under paragraph (1)(e), (f) or (g) may at any time resign his office by a notice in writing to the Chairman of the Board.

(5) The provision of the First Schedule to the Act shall apply to the members of the Board.

### **Secretary to the Board**

7. (1) The Chief Registrar of the Syariah Appeal Court shall be the Secretary to the Board.

(2) The Secretary shall attend all meetings of the Board and may participate in the deliberations of the Board, but shall not be entitled to vote.

### **Allowance**

8. The members of the Board, committee and any other person invited to attend any meeting of the Board may be paid any allowance as determined by the Minister.

### **Power to make rules in relation to admission as *Pegulam Syarie*, etc.**

9. (1) The Board may, with the approval of the Minister, make rules as may be necessary or expedient for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), rules may be made for the following purpose:

- (a) the qualification of persons for admission as a *Pegulam Syarie*;
- (b) the course of instruction, training, education, interview and examination of persons for admission as a *Pegulam Syarie*;

- (c) the practical experience required for admission as a *Pegulam Syarie*;
- (d) the fees or charges that may be imposed by the Board in the performance of its functions and the exercise of its powers; and
- (e) such other matters required to be prescribed by the Board under this Act.

### **Power to exempt**

**10.** The Board may exempt any person or a group of persons who intends to apply for admission as a *Pegulam Syarie* from undergoing courses of instruction, training, education, interview and examination subject to such conditions as the Board thinks fit.

## PART III

### ADMISSION OF *PEGULAM SYARIE*

### **Qualified person**

**11.** For the purposes of this Part, “qualified person” means any person who—

- (a) possesses any qualification prescribed by the Board; or
- (b) is an advocate and solicitor and has any additional qualification in the syariah field or judicial syarie as prescribed under section 12.

### **Conditions for admission**

**12.** (1) Any qualified person may apply for an admission as a *Pegulam Syarie* under section 15 if he fulfils the following conditions:

- (a) has attained the age of twenty-one years;
- (b) is a Muslim;

- (c) is either a citizen or permanent resident of Malaysia;
- (d) is of good character;
- (e) has not been convicted in Malaysia or elsewhere of any criminal offence;
- (f) has not been adjudicated as undischarged bankrupt;
- (g) has attended and passed the courses of instruction, training, education, interview or examination prescribed by the Board, where applicable; and
- (h) has served the period of pupillage as required under section 13;

(2) A State *Pegum Syarie* may apply for an admission as a *Pegum Syarie* under section 15 if—

- (a) he fulfils the conditions referred to in paragraph (1)(a) to (g); and
- (b) he has been engaged in active practice as a State *Pegum Syarie* in any State before he applies for the admission.

### **Period of pupillage**

**13.** (1) Subject to subsection 14(3), a qualified person shall, before he is admitted as a *Pegum Syarie*, serve a period of pupillage for six months.

(2) For the purpose of subsection (1), a pupil shall serve his period of pupillage with a master who is and has been in an active practice in the Federal Territories for a total period of not less than seven years immediately preceding the date of commencement of his pupillage.

(3) A pupil shall not, without special leave in writing of the *Majlis Peguam Syarie*, hold any office or engage in any employment of any kind, whether full time or otherwise, during his period of pupillage, but nothing in this subsection shall preclude a pupil from receiving remuneration from his master.

**Exemption from pupillage**

**14.** (1) The *Majlis Peguam Syarie* may, on special grounds, allow a pupil to serve his period of pupillage with a *Peguam Syarie* who is practising in other States or has been practising less than seven years.

(2) The *Majlis Peguam Syarie* may allow any qualified person to serve different parts of his period of pupillage with different masters.

(3) The *Majlis Peguam Syarie* may exempt any qualified person who has served as a syariah officer for a period of at least one year from serving any period of pupillage under section 13.

(4) For the purposes of subsection (3), the syariah officer shall submit to the *Majlis Peguam Syarie* a certificate from the Director General of Department of Syariah Judiciary Malaysia or respective head of service, as the case may be, stating his period of service as a syariah officer.

**Application for admission**

**15.** (1) An application for admission as a *Peguam Syarie* by a qualified person or a State *Peguam Syarie* shall be made to the Syariah High Court.

(2) The application under subsection (1) shall be supported by an affidavit exhibiting—

(a) in the matter of the application by a qualified person—

- (i) certified copies of any documentary evidence showing that he is a qualified person;
- (ii) two recent certificates as to his good character;
- (iii) a certificate of diligence from his master with whom he served his pupillage in cases where he is required to serve a period of pupillage, or in the absence of such certificate any other evidence as the Syariah High Court may require showing that he has served such pupillage with diligence;



- (iv) where applicable, a certificate signed by the Secretary to the Board that the applicant has attended the courses of instruction, training, education, interview or examination prescribed by the Board; and
- (v) certified copies of any documentary evidence showing that the applicant has attained the age of twenty one years, is a Muslim and is either a citizen or permanent resident of Malaysia; or

(b) in the matter of the application by a State *Pegum Syarie* —

- (i) a certified copy of an order of a syariah court or a copy of the practising certificate of the States which has admitted him as a *Pegum Syarie*;
- (ii) a certified copy of an acknowledgement given by a *Pegum Syarie* who has been practicing in such State for at least five years, that in his knowledge, the applicant has been engaged in active practice as a *Pegum Syarie* in any State before he applies for the admission; and
- (iii) a certified copy of an acknowledgement given by the secretary or other officer of the responsible Department on the conduct and discipline of a *Pegum Syarie* of the State, that the applicant has not been convicted of any disciplinary offence.

(3) The application, affidavit, acknowledgement, document and evidence stated in this section shall be in the manner as determined by the Syariah High Court.

### **Filing of copy of application**

**16.** (1) An applicant shall file a copy of his application for admission as a *Pegum Syarie* under section 15 at the Chief's Registrar Office accompanied with a notice stating the particulars of his application within a period of not less than thirty days before the dated fixed for the hearing of the application for admission or such shorter period as ordered by the Syariah High Court.

(2) The Chief Registrar shall cause to be posted the notice referred to in subsection (1) at the Syariah High Court in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya for thirty days before the hearing of the application for admission of the applicant.

### **Service of copy of application**

**17.** The applicant shall serve a copy of his application for admission as a *Pegulam Syarie* under section 15 on the Board, the Chief Syariah Prosecutor and the *Majlis Pegulam Syarie* within a period not less than thirty days before the date fixed for the hearing of the application for admission or such shorter period as ordered by the Syariah High Court.

### **Inquiries into character of applicant**

**18.** (1) The *Majlis Pegulam Syarie* shall, upon receiving a copy of the application from the applicant, make or cause to be made full inquiries into the character of the applicant and, upon such application being set down for hearing, submit to the Chief Registrar a confidential report of the result of such inquiries.

(2) If any of the reports is unfavourable to the applicant, the Chief Registrar shall submit such confidential report to the Chief Syarie Judge and the Chief Syarie Judge may, if he thinks fit and reasonable, direct such report to be filed in the Syariah High Court and a copy of the report to be served on the applicant and, subject to such directions as the Syariah High Court may give, such report shall be taken into consideration on the hearing of the application.

(3) All reports and communications under this section shall be treated as confidential.

### **Objection of application by the Chief Syariah Prosecutor or *Majlis Pegulam Syarie***

**19.** (1) The Chief Syariah Prosecutor or the *Majlis Pegulam Syarie* may, upon receiving a copy of the application for admission as *Pegulam Syarie* from the applicant, object to the application by filing a notice of objection which shall specify in brief terms the grounds of the objection.

(2) The notice of objection shall be filed in the Chief Registrar's Office and served on the applicant within the period of not less than three days or any shorter period as the Syariah High Court may order before the date fixed for the hearing of the application for admission.

(3) The hearing of the notice of objection shall be heard—

(a) in the same proceeding with, and before the same Syariah High Court Judge for, the hearing of the application for admission as a *Peguan Syarie*; and

(b) in the presence of the representatives of the Chief Syariah Prosecutor and the *Majlis Peguan Syarie*.

(4) Notwithstanding paragraph (3)(b), the hearing of the notice of objection may be proceeded without the presence of the representatives of the Chief Syariah Prosecutor and the *Majlis Peguan Syarie* if the Syariah High Court is satisfied that the applicant had served upon them a copy of his application for admission as a *Peguan Syarie*.

### **Objection of application by other person**

**20.** (1) Any person other than the Chief Syariah Prosecutor or the *Majlis Peguan Syarie* may enter an objection to object the application for admission as a *Peguan Syarie* filed under section 15.

(2) The objection under subsection (1) shall be filed in the Chief Registrar's Office and shall contain the full name, occupation and address of the person objecting the application for admission, a brief statement of the grounds of his objection and an address for service.

(3) Upon such objection being filed, the application for admission shall not be heard unless a notice of hearing of not less than three days has been served on the person objecting the application for admission.

(4) The person objecting the application for admission may appear in the hearing of the application for admission as a *Peguam Syarie*.

(5) The hearing of the application for admission as a *Peguam Syarie* may be heard without the attendance of the person objecting the application for admission as a *Peguam Syarie*.

(6) The hearing of the objection shall be heard in the same proceeding with, and before the same Syariah High Court Judge for, the hearing of the application for admission as a *Peguam Syarie*.

### **Admission as *Peguam Syarie***

**21.** The Syariah High Court may, after considering the application under section 15, the inquiry report under section 18 and objection under section 19 or 20, admit the applicant as a *Peguam Syarie* or otherwise.

### **Right of appeal**

**22.** Any person aggrieved by the decision of the Syariah High Court under section 21 may, within thirty days of the date of the decision, appeal to the Syariah Appeal Court.

### **Issuance of Certificate of *Peguam Syarie***

**23.** The Chief Registrar shall, upon payment of a prescribed fee, issue to the applicant who has been admitted as a *Peguam Syarie* under this Act, a certificate of *Peguam Syarie* in the manner as determined by the Chief Registrar.

### *Register*

### **Register of *Peguam Syarie***

**24.** (1) The Chief Registrar shall keep and maintain a Register of *Peguam Syarie*.

(2) The name and the date of admission of a *Peguam Syarie* shall be entered in the Register in the order of the date of admission.

(3) The Register shall be open for inspection by any person without payment.

(4) Notwithstanding subsection (3), any application for an extract or a copy of the Register shall be subject to a prescribed fee.

### **Removal of name of *Peguam Syarie* from the Register**

**25.** (1) If at any time after the admission of a *Peguam Syarie*, it is shown to the satisfaction of the Syariah High Court that the affidavit, acknowledgement or other document filed by the *Peguam Syarie* contains false or misleading statement in its substance or a suppression of any material fact, the name of the *Peguam Syarie* may be removed from the Register.

(2) If the name of a *Peguam Syarie* has been removed from the Register under subsection (1), the Chief Registrar shall, upon any application for readmission as a *Peguam Syarie* is made, bring the fact to the notice of the Syariah High Court and the Syariah High Court shall, if there is no such special circumstances, refuse the application.

### ***Peguam Syarie* may apply to remove his name from the Register**

**26.** (1) Any *Peguam Syarie* may apply to the Syariah High Court to have his name removed from the Register.

(2) The application under subsection (1) shall be supported by an affidavit stating the reasons for the removal of his name from the Register.

(3) The *Peguam Syarie* shall serve his application to remove his name filed under subsection (1) on the *Majlis Peguam Syarie* within a period of not less than fourteen days before the application is heard.

(4) The application under subsection (1) shall be heard by a Syariah High Court Judge sitting in chambers.

(5) After considering the application under subsection (1), the Syariah High Court Judge may make an order—

- (a) directing the Chief Registrar to strike off the name of the *Peguam Syarie* from the Register;
- (b) adjourning the application *sine die* or to such date as the Syariah High Court Judge deems fair and reasonable; or
- (c) dismissing the application if—
  - (i) a disciplinary action is pending against the *Peguam Syarie* under Part IX of this Act; or
  - (ii) the conduct of the *Peguam Syarie* is the subject of inquiry under Part IX of this Act; and
- (d) for the payment of any costs.

### **Restoration of name of *Peguam Syarie* in the Register**

**27.** (1) Any *Peguam Syarie* whose name has been removed or struck off from the Register may apply to the Syariah High Court for the restoration of his name in the Register.

(2) The application under subsection (1) shall be supported by an affidavit.

(3) The applicant shall serve a copy of the application under subsection (1) on the *Majlis Peguam Syarie* within fourteen days before the hearing of the application.

(4) The *Majlis Peguam Syarie* shall, upon receiving a copy of the application, prepare a report which shall include copies of the record of any proceedings as a result of which the applicant's name was removed or struck off from the Register.

(5) The *Majlis Peguam Syarie* shall be represented during the hearing of the application for the restoration and shall submit the report prepared under subsection (4) to the Syariah High Court before the hearing of the application.

(6) The Syariah High Court may, if it thinks fair and reasonable, order the Chief Registrar to restore the name of the applicant in the Register.

(7) Any person who is aggrieved by the decision of the Syariah High Court may appeal to the Syariah Appeal Court.

#### PART IV

##### ANNUAL PRACTISING CERTIFICATE

#### **Supporting Acknowledgement**

**28.** (1) Any *Peguam Syarie* who intends to apply for an Annual Practising Certificate shall apply for a Supporting Acknowledgement from the *Majlis Peguam Syarie* in the manner as determined by the *Majlis Peguam Syarie*.

(2) The *Majlis Peguam Syarie* shall, within twenty-one days after the application is received under subsection (1), issue the Supporting Acknowledgement to the *Peguam Syarie* if—

- (a) the *Majlis Peguam Syarie* is satisfied that the *Peguam Syarie* is not prohibited from holding an Annual Practising Certificate under section 30;
- (b) the *Peguam Syarie* has submitted or has been exempted from submitting the accountant report under this Act;
- (c) the *Peguam Syarie* is not indebted in respect of any fees or levies payable to the *Majlis Peguam Syarie* under this Act; and
- (d) the *Peguam Syarie* intends to practise under the name of the firm that has been approved under section 39.

(3) A disciplinary proceeding may be taken against any *Peguam Syarie* if in, or in relation to, an application under this section, he makes false statement which is material to the application.

### Issuance of Annual Practising Certificate

29. (1) Every *Pegulam Syarie* shall, in each year before acting as a *Pegulam Syarie*, submit or cause to be submitted to the Chief Registrar an application for an Annual Practising Certificate in the manner as determined by the Chief Registrar.

(2) The application under subsection (1) shall be accompanied by—

(a) a declaration in writing stating—

(i) his full name;

(ii) the name of the firm under which the *Pegulam Syarie* practices;

(iii) the principal and any other address at which he practises; and

(iv) that he is not disqualified from applying for an Annual Practising Certificate under section 30;

(b) a Supporting Acknowledgement issued by the *Majlis Pegulam Syarie*; and

(c) a prescribed fee.

(3) The Chief Registrar shall, upon being satisfied that all the necessary documents referred to in subsection (2) are in order, issue to the *Pegulam Syarie* an Annual Practising Certificate.

(4) Subject to subsection (5), every Annual Practising Certificate shall be signed by the Chief Registrar and shall be valid from the date of issuance to the end of the year except if—

(a) the name of the *Pegulam Syarie* is removed or struck off from the Register, the Annual Practising Certificate of the *Pegulam Syarie* shall expire forthwith and the date of expiration shall be entered by the Chief Registrar in the Register; or



- (b) a *Pegulam Syarie* is adjudicated bankrupt or a bankruptcy order is made against him, the Annual Practising Certificate of the *Pegulam Syarie* shall be suspended forthwith until the consent of the *Majlis Pegulam Syarie* to reinstate the Annual Practising Certificate of the *Pegulam Syarie* is obtained.

(5) If a *Pegulam Syarie* has duly complied with the requirement under subsection (1) in the month of January of any year, the Annual Practising Certificate issued to him in respect of that year shall be deemed to have come into operation from 1 January of that particular year.

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

### **Disqualification from getting Annual Practising Certificate**

**30.** (1) A *Pegulam Syarie* shall be disqualified from applying for an Annual Practising Certificate—

- (a) unless he is practising or intends to practice either as a sole proprietor or by a partnership in the Federal Territories;
- (b) unless he is employed full time in his practice in the Federal Territories by a firm under which the *Pegulam Syarie* practises; or
- (c) if he is gainfully employed by any other person, firm or body in a capacity other than as a *Pegulam Syarie*.

(2) Notwithstanding paragraph (1)(c), a *Pegulam Syarie* who is gainfully employed by any other person, firm or body in a capacity other than as a *Pegulam Syarie* may, upon obtaining the approval of the *Majlis Pegulam Syarie*, apply for an Annual Practising Certificate.

(3) For the purpose of this section, a qualified person shall not be construed as being gainfully employed if he is serving with the Syariah Officer Services, Legal Aid Department or Judicial and Legal Services.

### **Register of Practitioners**

**31.** (1) The Chief Registrar shall keep and maintain an annual register to be known as the Register of Practitioners.

(2) Upon the issuance of an Annual Practising Certificate, the Chief Registrar shall ensure that the particulars contained in the declaration submitted under paragraph 29(2)(a) and other particulars prescribed by the Chief Registrar to be entered in the Register of Practitioners.

(3) If there is any changes of the particulars of the *Pegulam Syarie* in the Register of Practitioners, the *Pegulam Syarie* shall, within thirty days of the changes, notify the Chief Registrar and *Majlis Pegulam Syarie* about the changes of the particulars, and the Chief Registrar shall cause the entry about the changes of the particulars in respect of that *Pegulam Syarie* to be made in the Register of Practitioners.

(4) Any person may inspect the Register of Practitioners with the payment of a prescribed fee.

### **Submission of Annual Practising Certificate**

**32.** A *Pegulam Syarie* shall submit his Annual Practising Certificate if he is required by any syariah court to do so.

## PART V

### RIGHTS AND PRIVILEGES OF *PEGULAM SYARIE*

#### **Rights and privileges of *Pegulam Syarie***

**33.** (1) Subject to this Act and any other written law, a *Pegulam Syarie* shall have exclusive right to appear and plead on behalf of his client in all syariah courts in the Federal Territories according to the law in force in the syariah court and all *Pegulam Syarie* shall have the same rights and privileges without differentiation.

- (2) Nothing contained in this Part shall affect the right of—
- (a) a syariah officer, Syariah Prosecutor and other qualified person appointed temporarily to perform the duties of legal officers or syariah officers on behalf of the Government in any syariah court, provided that he is a Muslim; and
  - (b) the Director General of Legal Aid or any person appointed to assist the Director General of Legal Aid under section 3 of the Legal Aid Act 1971 [Act 26] acting in the performance of his duties.

### **Name of *Peguam Syarie* in the Register before practice**

**34.** Any qualified person who has been admitted as a *Peguam Syarie* shall not practise as a *Peguam Syarie* or do any act as a *Peguam Syarie* unless his name has been registered in the Register of *Peguam Syarie* under section 24 and he has a valid Annual Practising Certificate issued under section 29.

### **Unauthorized person**

- 35.** (1) Any unauthorized person who—
- (a) acts as a *Peguam Syarie* or an agent for any party to a proceedings or in any capacity, other than as a party to an action in which he himself is a party, commences, carries on, solicits or defends any action, suit or other proceedings in the name of any other person in any of the syariah court or draws or prepares any instrument relating to any proceedings in any syariah court; or
  - (b) wilfully or falsely pretends to be, or takes or uses any name, title, addition or description implying that he is duly qualified or authorized to act as a *Peguam Syarie*, or that he is recognized by law as so qualified or authorized,

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

(2) Without prejudice to the generality of subsections (1) and (3), any unauthorized person who either directly or indirectly—

- (a) draws or prepares any document or instrument relating to any immovable property or to any legal proceedings or to any trust for the purpose and in relation to any act and suit in any syariah court;
- (b) takes instructions for or draws or prepares any document on which to found or oppose a grant of probate or letters of administration in any Syariah High Court; or
- (c) 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 a *Peguan Syariah* for legal proceedings,

commits an offence under this subsection unless he proves that the act was not done for or in expectation to get any fee, gain or reward.

(3) Any unauthorized person who does or solicits the right to do any act which is customarily within the function or responsibility of a *Peguan Syariah*, including but not limited to advising on Syariah law, unless he proves that the act was not done for or in expectation to get any fee, gain or reward, commits an offence under this subsection.

(4) Any unauthorized person who offers services as a *Peguan Syariah* commits an offence under this subsection.

(5) Any person referred to in subsections (2), (3) and (4) shall, upon conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding ninety days or to both for the first offence, and for the second or subsequent offence, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term of not exceeding six months or to both.

**Certain persons can act as *Peguam Syarie***

**36.** (1) Notwithstanding section 35, the following persons may act as a *Peguam Syarie*:

- (a) the Attorney General or the Solicitor General or any other person acting under the authority of either of them;
- (b) the Director General of Legal Aid or any person appointed to assist the Director General of Legal Aid under section 3 of the Legal Aid Act 1971 acting in the course of his duties;
- (c) the syariah officer, Syariah Prosecutor and Legal Officer of the *Majlis Agama Islam Wilayah Persekutuan* acting in the course of their duties under any law relating to their offices;
- (d) any person acting personally for himself only in any matter or proceeding to which he is a party; and
- (e) any person acting on behalf of a minor or incapable person who is under his liability in any matter or proceeding to which the minor or incapable person is a party.

(2) The person referred to in subsection (1) shall be a Muslim.

**Instrument and document to be endorsed**

**37.** (1) Any *Peguam Syarie* who draws or prepares any instrument or document shall endorse or cause to be endorsed on the instrument or document the name and address of the firm under which the *Peguam Syarie* practises.

(2) Any *Peguam Syarie* who fails to endorse or falsely endorses or causes to be endorsed any of the instruments or documents commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to an imprisonment for a term of not exceeding three years or to both.

**Cost and payment to unauthorized person**

**38.** (1) Any costs in respect of anything done by an unauthorized person as a *Peguam Syarie* or in respect of any act which is an offence under section 35 or 37 shall not be recoverable by any person in any action, suit or matter.

(2) Any payment to an unauthorized person for anything done which is an offence under section 35 or 37 may be recovered in a court of competent jurisdiction by the person who has paid the money.

## PART VI

## NAME OF FIRM

**Application for registration name of firm**

**39.** (1) Any *Peguam Syarie* who intends to establish a firm shall apply to the *Majlis Peguam Syarie* for the registration and approval of the name of the firm.

(2) The application under subsection (1) includes—

- (a) the proposed name of the firm;
- (b) the name of the *Peguam Syarie* and his partner, where applicable;
- (c) the principal address or any other address of the proposed name of the firm; and
- (d) other particulars as the *Majlis Peguam Syarie* deems necessary.

(3) The *Majlis Peguam Syarie* may, upon receiving an application under subsection (1)—

- (a) issue the certificate of registration; and
- (b) approve the proposed name of the firm.

(4) The *Majlis Peguam Syarie* may refuse a certificate for registration on the grounds that the proposed firm name is misleading or is likely to be confused with another name of a firm which has been registered.

(5) Any *Peguam Syarie* who is dissatisfied with the decision of the *Majlis Peguam Syarie* may appeal to the Syariah High Court.

(6) Any *Peguam Syarie* who fails to comply with subsection (1) shall be subject to disciplinary proceedings.

### **Register of name of firm**

**40.** (1) The *Majlis Peguam Syarie* shall keep and maintain a register of name of firm under which the *Peguam Syarie* practises.

(2) The *Majlis Peguam Syarie* may, at the request of a *Peguam Syarie* or his partners, remove any name of firm from the register of name of firm, if the *Majlis Peguam Syarie* is satisfied that no one is practising under that name.

(3) The name of the firm shall not be struck off from the register of name of firm without a certificate from the *Majlis Peguam Syarie*.

### **Restoration of name of firm in the register of name of firm**

**41.** (1) Any application for the restoration of the name of a firm in the register of name of firm shall be made in a manner as determined by the *Majlis Peguam Syarie*.

(2) The *Majlis Peguam Syarie* may, if it thinks fair and reasonable, restore the name of the firm which has been struck off in the register of name of firm.

## PART VII

BADAN PEGUAM SYARIE AND MAJLIS PEGUAM SYARIE OF THE  
FEDERAL TERRITORIES*Badan Peguam Syarie of the Federal Territories***Establishment of *Badan Peguam Syarie* of the Federal Territories**

**42.** (1) A body corporate by the name of the *Badan Peguam Syarie* of the Federal Territories is established.

(2) The *Badan Peguam Syarie* shall have perpetual succession and a common seal.

(3) The *Badan Peguam Syarie* may sue and be sued in its corporate name.

(4) Subject to and for the purposes of this Act, the *Badan Peguam Syarie* may, upon such terms as it deems fit—

- (a) enter into contracts;
- (b) acquire, purchase, take, hold or enjoy, as the case may be, any property, right, interest, obligations and liability of every description;
- (c) convey, assign, surrender, yield up, charge, mortgage, demise, lease, reassign, transfer or otherwise disposed of, or deal with, any movable or immovable property or any interest of the property vested in the *Badan Peguam Syarie*;
- (d) invest any money of the *Badan Peguam Syarie* in a syariah compliant investment permitted for the investment of trust fund by any written law; and
- (e) borrow money for the purpose that the *Badan Peguam Syarie* may think proper and for that purpose may pledge any immovable property vested in the *Badan Peguam Syarie*.



**Object of *Badan Peguam Syarie***

- 43.** (1) The object of *Badan Peguam Syarie* shall be—
- (a) to promote and maintain the interest of the *syarie* legal profession in relation to the practice of syariah law in the Federal Territories;
  - (b) to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour;
  - (c) to maintain and improve the standards of conduct and learning of the *syarie* legal profession in the Federal Territories;
  - (d) to maintain the integrity and status of the *Peguam Syarie* as well as to avoid unlawful, dishonest and unethical practices among syariah law practitioners;
  - (e) to promote opportunities for the acquisition and dissemination of knowledge and skills in the practice and application of syariah law;
  - (f) where requested to do so, to express its view on matters affecting practices and syariah law reform in the Federal Territories;
  - (g) to protect and assist the public in all matters incidental to the syariah law;
  - (h) to promote good relations and social relations amongst members and between members and other persons concerned in the administration of law, civil or syariah, in the Federal Territories or in other States; and
  - (i) to promote, 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 of the association.

**Power to make rules in relation to procedure of meeting, etc.**

- 44.** (1) The *Badan Peguam Syarie* may make rules for—
- (a) prescribing the procedure of any meeting including annual general meeting and extraordinary general meeting of the *Badan Peguam Syarie*;
  - (b) regulating the conduct of the election of the members of the *Majlis Peguam Syarie*; and
  - (c) prescribing such other matters that are incidental to the betterment of the *Badan Peguam Syarie*.

**Members of *Badan Peguam Syarie***

**45.** (1) A person who has been admitted and registered as a *Peguam Syarie* under this Act shall be a member of the *Badan Peguam Syarie* so long as he has a valid Annual Practising Certificate.

(2) The provision of the Second Schedule to the Act shall apply to the members of the *Badan Peguam Syarie*.

**Eligibility as member**

**46.** A member of the *Badan Peguam Syarie* who is not in arrears with the subscriptions under section 47 shall be eligible—

- (a) to attend and vote at any general meeting;
- (b) to be elected as a member of the *Majlis Peguam Syarie*;
- (c) to vote on the election of members to the *Majlis Peguam Syarie*; and
- (d) to serve in any Committee of the *Majlis Peguam Syarie*.

**Annual subscription and levy**

- 47.** (1) The *Majlis Peguam Syarie* may determine—
- (a) the amount of the annual subscription to be paid by members of the *Badan Peguam Syarie*; and
  - (b) the levies payable by members of the *Badan Peguam Syarie* for any of the purposes of the *Badan Peguam Syarie*.
- (2) The total of the subscriptions and the levies payable under subsection (1) shall not in any calendar year exceed three hundred ringgit for each member of the *Badan Peguam Syarie* without the approval of two thirds of the members present who shall vote in person at a annual general meeting of the *Badan Peguam Syarie*.
- (3) Liability to pay any amount of the annual subscription by the members of the *Badan Peguam Syarie* to the *Badan Peguam Syarie* shall arise when the subscription has been fixed by the *Majlis Peguam Syarie* and all subscriptions shall be paid by or before 31 March each year.

*Majlis Peguam Syarie of the Federal Territories*

**Establishment of *Majlis Peguam Syarie* of the Federal Territories**

- 48.** (1) A council to be known as the *Majlis Peguam Syarie* of the Federal Territories is established for the proper management of the *Badan Peguam Syarie* and for the proper performance of its functions under this Act.
- (2) The *Majlis Peguam Syarie* shall comprise the following:
- (a) the immediate past President and Vice-President of the *Badan Peguam Syarie* except for the first *Majlis Peguam Syarie*; and
  - (b) thirteen *Peguam Syarie* elected pursuant to section 49.
- (3) The provision of the Second Schedule to the Act shall apply to the *Majlis Peguam Syarie*.

**Election of first *Majlis Peguam Syarie* members, etc.**

**49.** (1) Notwithstanding section 48, the Chief Registrar shall, after the expiration of thirty days and not later than sixty days from the commencement of this Act, call upon all members of the *Badan Peguam Syarie* for a meeting at such time and place as he may appoint to elect the members of the *Majlis Peguam Syarie* as referred to in paragraph 48(2)(b) from amongst its members.

(2) The Chief Registrar shall, in the meeting, appoint a *Peguam Syarie* who has been in practice for not less than fifteen years, and if none, any *Peguam Syarie* who has been in practice for not less than five years to preside over the meeting.

(3) The quorum of the meeting referred to in subsection (1) shall be not less than fifty members of the *Badan Peguam Syarie*.

(4) All matters arising in the meeting shall be decided by the majority of the members present and where there is an equality of votes, the *Peguam Syarie* appointed under subsection (2) shall have a casting vote.

(5) The elected member shall hold office until new members elected under section 50 begins office.

**Election of next *Majlis Peguam Syarie* members**

**50.** (1) The *Majlis Peguam Syarie* shall, in the month of September of every two years, fix and publish before the end of the month—

- (a) the date of nomination to elect a member of the *Majlis Peguam Syarie* referred to in paragraph 48(2)(b) which shall be in the first week of October of that year;
- (b) the date of the election which shall be in the last week of October of that year; and
- (c) the name of three auditors.

(2) The election of members of the *Majlis Peguam Syarie* shall be held within fourteen days before the annual general meeting and shall, subject to section 52, be conducted in such manner as may be prescribed by the rules made under this Act on the date prescribed by the *Majlis Peguam Syarie* pursuant to subsection (1).

(3) Notwithstanding subsections (1) and (2), any unintentional failure on the part of the *Majlis Peguam Syarie* to comply with this section or any rules made in respect of the election of a member of the *Majlis Peguam Syarie* shall not invalidate the election.

### **Eligibility to be nominated and appointed as members of *Majlis Peguam Syarie***

**51.** Every member of the *Badan Peguam Syarie* shall be eligible to be nominated or appointed as a member of the *Majlis Peguam Syarie* provided that he is not disqualified under section 58.

### **Nominations**

**52.** (1) Any nomination of any candidate for the election—

- (a) shall be in writing and signed by not less than two supporting members; and
- (b) shall name only one candidate and the consent of the candidate shall be endorsed by the candidate.

(2) The names of candidates for the election nominated under subsection (1) shall be sent to or deposited at the office of the *Badan Peguam Syarie* not later than twenty-one days from the date determined by the *Majlis Peguam Syarie* for the election of the members of the *Majlis Peguam Syarie*.

### **Insufficient nominations**

**53.** (1) If the number of the candidates nominated for an election for the *Majlis Peguam Syarie* are the number of the members required to be elected, those candidates shall be deemed to be elected and, if fewer, the candidates nominated shall be deemed

to have been elected as the next members of the *Majlis Peguam Syarie* and the deemed elected members with the other current members of the *Majlis Peguam Syarie* shall appoint such further members of the *Badan Peguam Syarie* as may be necessary to satisfy the requirements of paragraph 48(2)(b).

(2) If no nominations are made for the election of the members of the next *Majlis Peguam Syarie*, the current members of the *Majlis Peguam Syarie* shall appoint thirteen members of the *Badan Peguam Syarie* to be the next members of the *Majlis Peguam Syarie* to satisfy the requirements of paragraph 48(2)(b).

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

### **Period of holding office of *Majlis Peguam Syarie***

**54.** (1) Every member of the *Majlis Peguam Syarie* elected under section 50 or deemed to be elected under section 53 shall commence his office from 1 January after the election until 31 December of the consequent years.

(2) Every member elected under section 50 shall be eligible for re-election.

### **Casual vacancy**

**55.** (1) Any casual vacancy arising amongst the elected members of the *Majlis Peguam Syarie* shall be filled by the *Majlis Peguam Syarie* by the appointment of a person qualified under this Act, and the new member shall hold office for the remainder of the term of office of the member he replaces.

(2) Notwithstanding any vacancy in the *Majlis Peguam Syarie*, the continuing members of the *Majlis Peguam Syarie* may act if there is a full quorum.

(3) No act done by or under the authority of the *Majlis Peguam Syarie* shall be invalid in consequence of any defect subsequently discovered in the election or qualification of the members or any of them.

*Holders of the Office*

**President, Vice President, Secretary and Treasurer of *Badan Peguam Syarie***

**56.** (1) A President, a Vice President, a Secretary and a Treasurer of the *Badan Peguam Syarie* shall be elected by the *Majlis Peguam Syarie* amongst its members.

(2) The President of the *Badan Peguam Syarie* shall not hold office for more than two consecutive years.

(3) The President of the *Badan Peguam Syarie* shall also serve as the Chairman of the *Majlis Peguam Syarie*.

(4) In the event of any casual vacancy arising in respect of the office of the President, the Vice President, the Secretary or the Treasurer, the *Majlis Peguam Syarie* shall, at its next meeting or as soon as may be, elect one of its members to fill the vacancy.

(5) The President of the *Badan Peguam Syarie* shall preside at all meetings of the *Majlis Peguam Syarie* and the *Badan Peguam Syarie*.

(6) In the case where the President is incapable of exercising his functions as a President, the Vice President shall preside in the meetings of the *Majlis Peguam Syarie* or the *Badan Peguam Syarie*, as the case may be.

(7) In the case where the President and the Vice President incapable of exercising their functions as a President or Vice President, as the case may be, the meeting of the *Majlis Peguam Syarie* or the *Badan Peguam Syarie* shall be presided by any of its members as elected by the *Majlis Peguam Syarie*.

(8) The provisions of the Second Schedule shall apply to the members of the *Majlis Peguam Syarie*.

**Vacancy of *Majlis Peguam Syarie* members**

**57.** A member of the *Majlis Peguam Syarie* shall vacate his office if—

- (a) his name is struck off from the Register or he is suspended from practising as a *Peguam Syarie*;
- (b) he becomes of unsound mind;
- (c) he becomes an undischarged bankrupt;
- (d) he resigns his seat on the *Majlis Peguam Syarie*; or
- (e) he is absent from three consecutive meetings of the *Majlis Peguam Syarie* without reasonable cause.

*Disqualification of members of Majlis Peguam Syarie or any of its Committees*

**Disqualification of members of *Majlis Peguam Syarie* or any of its Committees**

**58.** (1) Any person shall be disqualified from being a member of the *Majlis Peguam Syarie* or any of its Committees if—

- (a) he is a member of either House of Parliament, or of a State Legislative Assembly, or of any local authority; or
- (b) he holds any office in—
  - (i) any trade union;
  - (ii) any political party; or
  - (iii) any other organization, body or group of persons whatsoever, whether or not it is established under any law, whether it is in Malaysia or outside Malaysia, which has objectives or carries on activities which can be construed as being political in nature, character or effect.



(2) If a member of the *Majlis Peguam Syarie* or any of its committees, becomes disqualified under subsection (1), he shall immediately be deemed to have vacated his membership and any office that he may hold.

### *Powers of Majlis Peguam Syarie*

#### **Powers of *Majlis Peguam Syarie***

**59.** (1) The management of the *Badan Peguam Syarie* and of its funds shall be vested in the *Majlis Peguam Syarie*.

(2) Any power, act or thing which are not by this Act expressly authorized, directed or required to be exercised or done by the *Badan Peguam Syarie* in a general meeting may, subject to this Act or any resolution passed by the *Badan Peguam Syarie* in the general meeting, be exercised or done by the *Majlis Peguam Syarie*.

(3) Any resolution passed under subsection (2) shall not invalidate the previous exercise of any powers or the previous doing of any act or thing by *Majlis Peguam Syarie* which would have been valid if the resolution had not been passed.

(4) Without prejudice to the powers under subsections (1), (2) and (3), the *Majlis Peguam Syarie* shall have the powers—

- (a) to answer questions affecting the practice and etiquette of the *syarie* legal profession and the conduct of the members;
- (b) to take cognizance of any matter affecting the *Badan Peguam Syarie* or the professional conduct of its members and to bring before any general meeting of the *Badan Peguam Syarie* any matter which it considers material to the *Badan Peguam Syarie* or to the interests of the profession and to make any recommendations and take any action as it considers fit;
- (c) to appoint officers, clerks, agents and employees as it may consider fair and reasonable and to determine their duties and terms of service;

- (d) to examine and, if it considers fit, report on current law on syariah or proposed legislation and any other legal matters;
- (e) to represent members of the *Majlis Peguam Syarie* or any particular member in any matter which may be necessary or expedient;
- (f) to take part as a watching brief, intervener or *amicus curae* in any proceeding affecting the interest of the profession and legal issues relating to Muslim;
- (g) to purchase, lease or otherwise acquire any movable and immovable property for the use of the *Badan Peguam Syarie*, and to sell, rent, or otherwise dispose of any property;
- (h) to invest and deal with any moneys of the *Badan Peguam Syarie* in syariah compliant investment authorized for the investment of trust funds by any written law;
- (i) to establish, maintain and manage funds of the *Badan Peguam Syarie*; and
- (j) to exercise all such powers, privileges and discretions as are not by this Act expressly and exclusively required to be exercised by the members of the *Badan Peguam Syarie* in a general meeting.

### **Establishment of committees**

**60.** (1) The *Majlis Peguam Syarie* may establish any committee as the *Majlis Peguam Syarie* considers necessary or expedient to assist the *Majlis Peguam Syarie* in exercising its powers.

(2) The *Majlis Peguam Syarie* may delegate to any committee established under subsection (1), with or without restrictions or conditions, any powers of the *Majlis Peguam Syarie*.

(3) Any delegation under this section may at any time be revoked or amended by the *Majlis Peguam Syarie* and such delegation shall not obstruct the *Majlis Peguam Syarie* from exercising any of its powers.

(4) The number and term of office of the members of a committee established under subsection (1), and the number of these members necessary to form a quorum, shall be fixed by the *Majlis Peguam Syarie*.

(5) Any committee established under subsection (1) may include persons who are not members of the *Majlis Peguam Syarie*.

(6) Where the *Majlis Peguam Syarie* delegates to a committee established under subsection (1) any of its powers under this Act, at least half of the members of the committee including the chairman are members of the *Majlis Peguam Syarie*.

### **Returns, reports, accounts and information**

**61.** The *Majlis Peguam Syarie* shall cause to be prepared and presented to the members of the *Badan Peguam Syarie* such returns, reports, accounts and information in respect of its management, activity and finances in the annual general meeting.

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

**62.** The *Majlis Peguam Syarie* may inspect the file of bankruptcy proceedings relating to any *Peguam Syarie* against whom bankruptcy proceedings have been taken, and to be supplied with the original or certified copies of the proceedings.

### **Names of members of *Majlis Peguam Syarie*, etc., to be published and confidentiality of deliberations**

**63.** (1) The names of the members and Secretary of the *Majlis Peguam Syarie* shall be published in the *Gazette*.

(2) Except in so far as may be necessary for the purpose of publishing a report or giving effect to any resolution passed or decision taken, confidentiality of deliberations at all meetings, proceedings or inquiries of the Board, *Majlis Peguam Syarie* and Disciplinary Board and in respect of all documents in relation to the deliberative process shall be kept and maintained by the members of the Board, *Majlis Peguam Syarie*, Disciplinary Board and by their staff.

(3) Any member of the Board, *Majlis Peguam Syarie*, Disciplinary Board, and their staff who are involved in any deliberations referred to in subsection (2) shall not be compelled to disclose to any court any information relating to such deliberations unless the court considers such disclosure essential in the interest of justice.

## PART VIII

### PROFESSIONAL PRACTICE, ETIQUETTE, CONDUCT AND DISCIPLINE OF *PEGUAM SYARIE*

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

**64.** (1) Without prejudice to any other power to make rules provided under this Act, the *Majlis Peguam Syarie* may, with the approval of the Minister, make rules for regulating the professional practice, etiquette, conduct and discipline of the *Peguam Syarie*, control of property belong to the client of the *Peguam Syarie* and any matters incidental or supplementary to this Part and the Third Schedule.

(2) Any *Peguam Syarie* who fails to comply with any rules made under this section shall be subjected to disciplinary proceedings.

#### **Power to make rules in relation to opening and keeping of accounts, etc.**

**65.** (1) The *Majlis Peguam Syarie* may, with the approval of the Minister, make rules—

- (a) to provide for the opening and keeping by a *Peguam Syarie* of accounts at any Islamic financial institution for clients' moneys;
- (b) to provide for the keeping by a *Peguam Syarie* of accounts containing particulars and information as to moneys received, held or paid by a *Peguam Syarie* for or on behalf of his clients;

- (c) to provide for the opening and keeping by a *Pegulam Syarie* who is a sole trustee or co-trustee with one or more of his partner or employee, of an account at any Islamic financial institution for any moneys trusted to him;
- (d) to provide for the keeping by a *Pegulam Syarie* of accounts containing particulars and information as to moneys received, held or paid by him for or on account of any such trust;
- (e) to provide for the keeping of money received for or on behalf of the client in a separate account for the benefit of the client; and
- (f) to empower the *Majlis Pegulam Syarie* to take such action as may be necessary to enable it to ascertain whether the rules are being complied with or otherwise.

(2) Nothing in this subsection, or in any rules made under this section, shall—

- (a) affect any arrangement in writing, whenever made, between a *Pegulam Syarie* and his client as to the application of the client's moneys or interest; and
- (b) apply to moneys received by a *Pegulam Syarie* being moneys subject to a trust of which he is a sole trustee or co-trustee with one or more of his partner or employee.

(3) Disciplinary proceedings may be taken against any *Pegulam Syarie* who fails to comply with any rules made under this section.

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

**Power to make rules in relation to professional indemnity**

**66.** (1) The *Majlis Peguam Syarie* may, with the approval of the Minister, make rules concerning the taking out of professional indemnity for every *Peguam Syarie* 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 *Majlis Peguam Syarie* to take out and maintain *takaful* in the name of the *Badan Peguam Syarie* with any person permitted by law to carry on professional liability *takaful* business or pecuniary loss *takaful* business and covering all practicing *Peguam Syarie*;
- (b) authorize the *Majlis Peguam Syarie* to establish and maintain a fund for the purpose of the professional indemnity; or
- (c) require all *Peguam Syarie* to take out and maintain *takaful*.

(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 all *Peguam Syarie* to make payments to such fund;
- (c) require all *Peguam Syarie* to make payments by way of premiums on any *takaful* taken out under subsection (1) and provide for proceedings by the *Majlis Peguam Syarie* or its *takaful* insurers against any *Peguam Syarie* who fails to do so for the recovery of the payment of the relevant premiums;
- (d) prescribe the conditions which a *takaful* has to satisfy for the purpose of paragraph (1)(c);
- (e) authorize the *Majlis Peguam Syarie* to determine the amount of any payment required by the rules;

- (f) specify the circumstances in which where a *Peguam Syarie* has failed to comply with the rules, proceedings in respect of any sum paid by way of indemnity may be taken against him by the *Badan Peguam Syarie* or the *takaful* insurers;
- (g) prescribe that a *Peguam Syarie* shall not be entitled to obtain a Supporting Acknowledgement unless he is insured as required by the rules for the period to which the Supporting Acknowledgement relates;
- (h) empower the *Majlis Peguam Syarie* 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 *Peguam Syarie*, 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.

### ***Peguam Syarie shall submit accountant's report***

**67.** (1) All *Peguam Syarie* shall submit to the Chief Registrar in any application for an Annual Practising Certificate, a report signed by an accountant, referred to as “accountant’s report” in this section.

- (2) The accountant’s report referred to in subsection (1) shall—
  - (a) state that the accountant in compliance with this section and any rules made under this section has examined the books, accounts and documents of the firm of the *Peguam Syarie* for such accounting period as specified in the report;
  - (b) state whether the accountant is satisfied, from his examination of the books, accounts and documents produced to him and from the information and explanations given to him, that during the said accounting period of the *Peguam Syarie* or his firm has complied with any rules made under section 65;

- (c) state, if the accountant is not satisfied, the matters in respect of which he is not satisfied with;
- (d) contain any information as prescribed by the rules made by the *Majlis Peguam Syarie* under section 65; and
- (e) submit to the Chief Registrar within the period of not more than twelve months or such other period as prescribed by the rules made under this section, after the end of the accounting period specified in the report.

(3) Subject to any rules made under this section, the accounting period for the purposes of an accountant's report referred to in subsection (1) shall—

- (a) begin at the expiry of the last preceding accounting period for which an accountant's report has been delivered;
- (b) cover not less than twelve months in a calendar year;
- (c) end not more than twelve months before the date on which the report is submitted to the Chief Registrar; and
- (d) consistent with paragraphs (a), (b) and (c) correspond to a period or consecutive period for which the accounts of a *Peguam Syarie* or his firm are ordinarily made up.

(4) Any *Peguam Syarie* who fails to comply with this section shall be subject to disciplinary proceedings.

**Power to make rules in relation to examination of accountant's report, etc.**

**68.** (1) The *Majlis Peguam Syarie* shall, with the approval of the Minister, make rules to give effect to this section and without prejudice to the generality of sections 65 and 67, the rules shall prescribe the nature and extent of the examination to be made by the accountant of the books and accounts of the firm of any *Peguam Syarie* and of any other relevant documents with a view to the preparation of the report to be submitted by the *Peguam Syarie* under this section.



(2) The rules referred to in subsection (1) may include provisions for—

- (a) permitting in any special circumstances as defined in the rules a different accounting period from the period specified in subsection 67(3); and
- (b) regulating any matters of procedure or matters incidental or supplemental to this section.

(3) Any *Pegum Syarie* who fails to comply with this section or any rules made under this section shall be subject to disciplinary proceedings.

***Pegum Syarie shall not wilfully and knowingly acting as agent***

**69.** (1) Any *Pegum Syarie* shall not wilfully and knowingly—

- (a) act as an agent in any legal proceedings of any kind or in any matter which under this Act may be done only by a *Pegum Syarie* who has a valid Annual Practising Certificate;
- (b) permit his name to be used in any legal proceedings or matter on behalf or for the profit of such other *Pegum Syarie*, or send any process to such other *Pegum Syarie*, or
- (c) do any other act enabling the *Pegum Syarie* to appear, act, practise or purport to practise as a *Pegum Syarie* in any such proceedings or matter.

(2) A *Pegum Syarie* shall not authorize any unauthorized person to operate any bank account in his name or in the name of his firm and maintained by him or his firm in connection with his practice as a *Pegum Syarie*.

(3) Any *Pegum Syarie* who has acted in contravention of subsection (1) or (2) shall be subject to disciplinary proceedings.

***Pegum Syarie shall not to employ undischarged bankrupt, etc.***

**70.** (1) A *Pegum Syarie* shall not, in connection with his practice, employ or remunerate any person who to his knowledge—

- (a) is an undischarged bankrupt;

- (b) his name has been struck off from the Register otherwise than at his own request in any State and his name remains struck off;
- (c) has been suspended from practising as a *Peguam Syarie* in any State and remains suspended;
- (d) has been convicted of any offence under this Act;
- (e) has been convicted of an offence involving dishonesty or fraud or has been found guilty of an offence under the Malaysian Anti-Corruption Commission Act 2009 [Act 694];
- (f) has been convicted of any offence under section 15A of the Minor Offences Act 1955 [Act 336]; or
- (g) is employed as a public officer.

(2) Any *Peguam Syarie* who acts in contravention of this section shall be subject to disciplinary proceedings.

*Client's property, document, money, etc.*

### **Taking over property, etc., by the *Majlis Peguam Syarie***

**71.** (1) The *Majlis Peguam Syarie* may, if it has reasonable cause to believe that the *Peguam Syarie*, his partner or employee has committed an offence of dishonesty in connection with the *Peguam Syarie* practice as a *Peguam Syarie* or in connection with any trust of which the *Peguam Syarie* is a trustee or co-trustee with his partner or one or more of his employee, issue a certificate to that effect.

(2) Upon issuance of the certificate, any property, document which belong to, or any money due to, the client of the *Peguam Syarie* or any trust held by the *Peguam Syarie*, his partner or employee shall be dealt with by the *Majlis Peguam Syarie* in accordance with the provisions of the Third Schedule.

**Making arrangements when *Pegulam Syarie* is suspended from practice**

72. (1) Where the name of a *Pegulam Syarie* is removed from the Register or a *Pegulam Syarie* is suspended from practice, the *Pegulam Syarie* shall, within twenty-one days from the material date, satisfy the *Majlis Pegulam Syarie* that he has made suitable arrangements for making available to his client or to some other *Pegulam Syarie* instructed by his client or by himself—

- (a) all deeds, wills, documents constituting or evidencing the title to any property, papers, books of account, records, vouchers and other documents in the possession or control of the *Pegulam Syarie* or his firm, partner or employee or relating to any trust of which he is a sole trustee or co-trustee with one or more of his partner or employee; and
- (b) all sums of money due from him or his firm to his client, or held by him or his firm on behalf of his clients or subject to any such trust under paragraph (a).

(2) If the *Pegulam Syarie* fails to give an explanation that satisfies the *Majlis Pegulam Syarie*, the provision of the Third Schedule shall apply to the *Pegulam Syarie*.

(3) In subsection (1), “the material date” means the latest of whichever of the following dates—

- (a) the date when the order of the Disciplinary Board or the Syariah High Court by or in pursuance of which the *Pegulam Syarie*’s name is removed or struck off from the Register, or the *Pegulam Syarie* is suspended from practice, is to take effect;
- (b) the last date on which an appeal against the order in paragraph (a) may be lodged; or
- (c) the date on which an appeal under paragraph (b) is dismissed or withdrawn.

(4) In this section and the Third Schedule, the words “trust” and “trustee” have the same meaning as in subsection 65(4).

**Power of *Majlis Peguam Syarie* to take possession of documents, etc., from *Peguam Syarie***

73. (1) If—

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

the provision of the Third Schedule except paragraph 10 shall apply to the *Peguam Syarie*, but as regards the documents specified in paragraph 1 of the Third Schedule to the Act and the sums of money specified in paragraph 12 of the Third Schedule to the Act, only in so far as the documents and money relate to the subject matter of the complaint.

(2) The *Majlis Peguam Syarie* may, for the purposes of paragraph 9 of the Third Schedule to the Act, take copies of, or extracts from, documents which relate to the matter complained of and to other matters in the *Peguam Syarie* practice.

(3) In this section, the words “trust” and “trustee” have the same meaning as in subsection 65(4).

**Power of *Majlis Peguam Syarie* to take possession of documents, etc., from *Peguam Syarie* when he is undischarged bankrupt, etc.**

**74.** (1) If a *Peguam Syarie* practises in his own name or as a *Peguam Syarie* under a firm name and—

- (a) is an undischarged bankrupt or a bankruptcy order is in force against him;
- (b) has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors;
- (c) has had an order of committal or an order for the issue of a writ of attachment made against him; or
- (d) is a mentally disordered person as defined under the Mental Health Act 2001 [*Act 615*],

and the *Majlis Peguam Syarie* has reasonable cause to believe that in consequence of the act, default or disability of the *Peguam Syarie* or his employee—

- (i) there has been undue delay in connection with any matter in which the *Peguam Syarie* 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 *Peguam Syarie* is the sole trustee or co-trustee with one or more of his partner or employee; or
- (ii) any sum of money due from the *Peguam Syarie* or his firm to his clients 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 with one or more of his partner or employee, are in jeopardy while in the control or possession of that *Peguam Syarie* or his firm,

the provision of the Third Schedule except paragraph 10 shall apply to the *Peguam Syarie*.

(2) The *Majlis Peguam Syarie* may, for the purposes of paragraph 9 of the Third Schedule to the Act take copies of, or extracts 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 practice of the *Peguam Syarie*.

(3) In this section, the words “trust” and “trustee” have the same meaning as in subsection 65(4).

**Personal representative liable for acts of deceased *Pegulam Syarie***

75. (1) Where—

- (a) the *Majlis Pegulam Syarie* has reasonable cause to believe that the personal representatives of a deceased *Pegulam Syarie* who immediately before his death was practising as a *Pegulam Syarie* in his own name, have been guilty of dishonesty or undue delay in administering the affairs of the *Pegulam Syarie* practice or in connection with any trust of which the *Pegulam Syarie* was the sole trustee or co-trustee with one or more of his partner or employee; or
- (b) a *Pegulam Syarie* dies and immediately before his death the provisions of the Third Schedule applies to him,

the provisions of the Third Schedule except paragraph 10 shall apply to the personal representatives of the *Pegulam Syarie* and shall continue to apply to the personal representatives of the *Pegulam Syarie* as they apply or applied, as the case may be, in relation to the *Pegulam Syarie* referred to in those provisions and as if the words “the personal representatives” were, with the necessary adaptations, substituted for the words “the *Pegulam Syarie*” wherever these words appear in those provisions.

(2) In this section, the words “trust” and “trustee” have the same meaning as in subsection 65(4).

***Majlis Pegulam Syarie* shall operate bank account of deceased *Pegulam Syaries*' client**

76. Upon the death of any *Pegulam Syarie* who immediately before his death was practising as a *Pegulam Syarie* in his own name, the right to operate, or otherwise deal with, any banking account in the name of the *Pegulam Syarie* or his firm, being an account into which has been paid any clients' money, shall,

notwithstanding anything to the contrary contained in this Act, vest in the *Majlis Peguam Syarie* to the exclusion of any personal representatives of the *Peguam Syarie* and shall be exercisable as from the death of the *Peguam Syarie*.

## PART IX

### DISCIPLINARY PROCEEDINGS

#### **Disciplinary Authority**

77. (1) The *Majlis Peguam Syarie* shall have disciplinary authority over all *Peguam Syarie* and pupil.

(2) The *Majlis Peguam Syarie* may exercise disciplinary jurisdiction over any complaint concerning the misconduct of any *Peguam Syarie* and pupil.

(3) The *Majlis Peguam Syarie* shall establish a mechanism, including the establishment of a Disciplinary Board to deal with the complaint or information received against a *Peguam Syarie* and any other committees to assist the Disciplinary Board.

(4) For the purposes of this Part—

“Disciplinary Board” means the Disciplinary Board established by the *Majlis Peguam Syarie* under subsection (3);

“misconduct” means any conduct of, or omission to act by, a *Peguam Syarie* in a professional capacity or otherwise which amounts to grave impropriety and includes—

- (a) conviction of a criminal offence which makes him unfit to be a member of his profession;
- (b) breach of duty to a syariah court including any failure by him to comply with an undertaking given to the syariah court;
- (c) dishonest or fraudulent conduct in the performance of his duties;
- (d) breach of any rules of practice and etiquette of the profession made by the *Majlis Peguam Syarie* under this Act or otherwise;

- (e) being an adjudicated bankrupt;
- (f) the tendering or giving of any gratification to any person for having procured the employment in any syariah legal business of himself or any other *Peguam Syarie*;
- (g) directly or indirectly procuring or attempting to procure the employment of himself or any other *Peguam Syarie* through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;
- (h) accepting employment in any syariah legal business through a tout;
- (i) allowing any unauthorised person to carry on syariah legal business in his name without his direct and immediate control as principal or without proper supervision;
- (j) the carrying on by himself, directly or indirectly, of any profession, trade, business or calling which is incompatible with the syariah legal profession or being employed for reward or otherwise in any such profession, trade, business or calling;
- (k) the breach of any provision of this Act or any rules made under this Act or any direction or decision of the *Majlis Peguam Syarie*;
- (l) the removal or the striking off of his name from the Register, suspension or censure in his capacity as a *Peguam Syarie* in any other States or being guilty of misconduct which would render him to be punished in any other States;
- (m) the charging, in the absence of a written agreement, in respect of the professional services rendered to a client, of fees or costs which are grossly excessive in all the circumstances;
- (n) gross disregard of his client's interests; and
- (o) acting in any matter which is unbecoming of a *Peguam Syarie* or which brings or is calculated to bring the syariah legal profession into disrepute.



### **Complaint against *Peguam Syarie* or pupil**

**78.** (1) Any complaint to the Disciplinary Board concerning the misconduct of any *Peguam Syarie* or of any pupil shall be in writing.

(2) Any syariah court, Syariah Court Judge or Syariah Prosecutor may at any time refer any complaints against any *Peguam Syarie* or pupil to the Disciplinary Board.

(3) Nothing in this section shall be taken to preclude the *Majlis Peguam Syarie* from making any complaint of its own motion to the Disciplinary Board against any *Peguam Syarie* or pupil.

(4) All complaints made or referred to the Disciplinary Board under this section shall be dealt with in accordance with the rules made under this Act.

### **Complaint against firm**

**79.** (1) Any complaint to the Disciplinary Board against a firm shall be in writing and the complaint shall be deemed to be made—

(a) in the case of a sole proprietorship, against the *Peguam Syarie* who was at the material time the sole proprietor of the firm; or

(b) in the case of a partnership, against all the *Peguam Syarie* who were at the material time partners of the firm, unless the firm satisfies the Disciplinary Board of the identity of the *Peguam Syarie* in the firm against whom the complaint has arisen.

(2) If at any stage of the proceedings the Disciplinary Board is satisfied that a complaint made against a firm shall be directed against a particular *Peguam Syarie*, the Disciplinary Board shall forthwith replace the name of the firm with the name of the *Peguam Syarie* concerned.

(3) All complaints against any firm shall be dealt with in accordance with the rules made under this Act.

**Limitation of disciplinary jurisdiction**

**80.** (1) Any complaint in respect of the misconduct of any *Peguam Syarie* or of any pupil shall not be inquired into by the Disciplinary Board after the expiration of six years from the date on which the right of action accrued.

(2) Notwithstanding subsection (1), if—

- (a) the complaint is based upon the fraud of the *Peguam Syarie* or his agent or of any person through whom the *Peguam Syarie* or his agent claims; or
- (b) the right of action to bring the complaint is concealed by the fraud of the *Peguam Syarie* 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.

**Power to obtain documents**

**81.** (1) The Disciplinary Board may, at any stage after a complaint has been received, require the production of such further documents or explanations from the complainant, *Peguam Syarie* or any other person as the Disciplinary Board may require.

(2) Any *Peguam Syarie* or any other person who without reasonable excuse refuses or fails to produce to the Disciplinary Board any document or fails to give any information which may relate to the subject matter of the complaint 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 ninety days or to both.

**Disciplinary penalty or punishment**

**82.** (1) The Disciplinary Board may, upon the conclusion of any stage of the disciplinary proceedings, impose one or more of the following penalties or punishments:

- (a) the recording of a reprimand or censure against the name of the *Peguam Syarie* in the Register;
- (b) imposition of a fine not exceeding fifty thousand ringgit;
- (c) the suspension of the *Peguam Syarie* from practice for such period not exceeding five years; or
- (d) the striking off the name of the *Peguam Syarie* from the Register.

(2) Notwithstanding subsection (1), the Disciplinary Board may also make an order of restitution of the complainant's moneys if it is established that the moneys were or are held by the *Peguam Syarie* in his professional capacity and the complainant is entitled to the return of the moneys or part of the moneys.

(3) The Disciplinary Board shall, before imposing any one or more of the penalties or punishments under subsection (1) or making an order of restitution under subsection (2), notify the *Peguam Syarie* of its intention to do so and give him a reasonable opportunity to be heard.

(4) If the Disciplinary Board makes an order that the *Peguam Syarie* should make restitution to the complainant, the Disciplinary Board may stipulate the time within which such restitution shall be made.

(5) The return of the moneys or part of the moneys referred to in subsection (3) may be recoverable by the complainant as a civil debt.

### **Suspension of *Peguam Syarie***

**83.** (1) If a *Peguam Syarie*—

- (a) has been found guilty by a court of law of any offence involving dishonesty, misuse or misappropriation of any money or property of a client or of any other person;
- (b) has been struck off his name from the Register;

- (c) has been barred, suspended, reprimanded or censured in his capacity as *Peguam Syarie* in any other States;
- (d) is the subject of a complaint concerning any dishonest act committed by him in his capacity as a *Peguam Syarie*;
- (e) has left the country or has not attended his office in such circumstances that the *Majlis Peguam Syarie* may reasonably presume that he has absconded; or
- (f) is otherwise incapable from infirmity of body or mind or any other cause of effectively performing the functions of a *Peguam Syarie*,

and the *Majlis Peguam Syarie* considers that it would be in the public interest or in the interest of his clients or of the profession that the *Peguam Syarie* be suspended from practice, the *Majlis Peguam Syarie* may apply to the Disciplinary Board for an order suspending the *Peguam Syarie* from practice until further notice is given.

### **Appeal against order or decision of the Disciplinary Board**

**84.** Any person who is aggrieved by any order or decision made against him by the Disciplinary Board in exercise of its disciplinary jurisdiction may appeal to the Syariah High Court within thirty days of the receipt of the notification of the order or decision.

### **Power to make rules in relation to disciplinary proceedings**

**85.** (1) The *Majlis Peguam Syarie* may make rules to regulate—

- (a) the receipt of complaints or information relating to any disciplinary matter that may be inquired into by the Disciplinary Board;
- (b) the procedure for the establishment of other committees to assist the Disciplinary Board in conducting inquiry relating to any disciplinary matter that may be inquired into by the Disciplinary Board; and

(c) the procedure relating to the conduct of the disciplinary proceedings.

(2) Rules made under this section may prescribe any act in contravention of the rules to be an offence and may be prescribe penalties of a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding three years or both for such offence.

## PART X

### DISCIPLINE FUND

#### **Establishment of Discipline Fund**

**86.** (1) The *Badan Peguam Syarie* shall establish, maintain and administer a fund which shall be known as the Discipline Fund.

(2) Every *Peguam Syarie* shall, when he applies for a Supporting Acknowledgement, pay to the *Badan Peguam Syarie* a contribution to the Discipline Fund as determined by the *Majlis Peguam Syarie*.

#### **Payment of cost, etc., out of Discipline Fund**

**87.** All cost, charges and expenses for the purposes of any disciplinary proceeding under this Act shall be defrayed out of the Discipline Fund.

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

**88.** Any fine, penalty, or any other payment ordered to be paid by the Disciplinary Board shall be paid into the Discipline Fund.

## PART XI

## MISCELLANEOUS

**No action against *Badan Peguam Syarie*, *Majlis Peguam Syarie*,  
Disciplinary Board, etc., for act done**

**89.** No action or proceeding shall be brought against the *Badan Peguam Syarie*, *Majlis Peguam Syarie*, Disciplinary Board or any of its members for any act or thing done under this Act in any court unless it is proven that the act or thing was done in bad faith or with malice.

**Confidentiality**

**90.** The order, decision, resolution and direction of the Disciplinary Board, *Badan Peguam Syarie* and *Majlis Peguam Syarie* shall be treated as confidential unless and until it is necessary to disclose for the purpose of enforcing this Act.

***Peguam Syarie* removed from Advocate and Solicitor's Roll**

**91.** Any *Peguam Syarie* who is practising as an advocate and solicitor under the Legal Profession Act 1976 whose name has been removed from the Roll of Advocates and Solicitors of the High Court kept by the Registrar of the High Court shall be duly removed from all the registers kept and maintained under this Act.

**Power to prescribe fees**

**92.** The Minister may make rules relating to the fees payable under sections 23, 24, 29 and 31.

**Power to amend Schedules**

**93.** The Minister may by order published in the *Gazette* amend the Schedules to this Act.

FIRST SCHEDULE

[Subsection 6(5)]

SUPPLEMENTARY PROVISIONS RELATING TO THE  
SYARIE LEGAL PROFESSION QUALIFYING BOARD

**Meeting of the Board**

1. (1) The Chairman may at any time direct the Secretary to summon a meeting of the Board.

(2) Any three members of the Board may at any time in writing request the Secretary to summon a Board's meeting, provided that the three members inform the Secretary their motion to convene the meeting.

(3) The Chairman, or in his absence, the Deputy Chairman, shall preside at the meeting of the Board.

(4) If the Chairman and the Deputy Chairman are absent, the members of the Board present shall elect from among themselves a member to preside over the meeting and the person elected shall have all the powers of the chairman for the purpose of and for the duration of the meeting.

(5) The Board shall meet at least four times a year.

**Secretary to summon meeting**

2. (1) The Secretary shall summon a meeting within fourteen days from the receipt of a direction from the Chairman or a request from the members of the Board under subparagraph 1(1) or 1(2), respectively.

(2) The written notice shall be served at least seven days before the meeting, but the Chairman may, if he considers that there is an urgent need to summon a meeting at a shorter notice, direct that the requirement of seven days' notice be dispensed with.

**Quorum**

3. Five members of the Board shall constitute a quorum for any meetings of the Board.

**Casting vote**

4. All matters required to be determined in the meeting shall be decided by the majority of votes of the members present and where there is an equality of votes, the Chairman or the acting Chairman shall have a casting vote in addition to his deliberative vote.

**Attendance of non-members**

5. (1) The Chairman may invite any person who is not a member of the Board to any meeting of the Board, if the business before the meetings renders the presence of such person.

(2) The person invited under subsection (1) shall be entitled to participate in its deliberation, but shall not be entitled to vote.

**Minutes of the Board's meeting**

6. (1) The Secretary shall cause minutes of all meetings to be maintained and kept in a proper form.

(2) At every meeting the minutes of the previous meeting shall be read and confirmed, subject to any amendment which may be required.

(3) All minutes shall be verified and signed by the Chairman.

(4) The minutes of the meetings of the Board shall be accepted as an evidence of the fact specified in the minutes without any further proof if it is duly signed.

**Procedure**

7. The Board may regulate its own procedure.

**Disclosure of interest**

8. (1) Every member of the Board who has, directly or indirectly, any interest in matters which will be considered by the Board shall disclose to the Board the fact and type of the interest.

(2) The disclosure under subsection (1) shall be recorded in minutes of the meetings of the Board, and unless it is permitted by the Chairman, the member who has any interest in such matter shall not take part or be present in any deliberation or decision process of the Board relating to that matter.

**Validity of acts and proceedings**

9. No act done or proceedings taken under this Act may be questioned on the ground that—

- (a) there is any vacancies in the membership;
- (b) there is any defects in the establishment of the Board;
- (c) there is an infringement of paragraph 8 by any members of the Board; or
- (d) there is any omissions, defects or irregularities affecting the merit of the case.



SECOND SCHEDULE

[Subsections 45(2), 48(3) and 56(8)]

SUPPLEMENTARY PROVISIONS RELATING TO THE *BADAN PEGUAM SYARIE*  
AND *MAJLIS PEGUAM SYARIE*

PART I

*BADAN PEGUAM SYARIE*

**Annual General Meeting**

1. (1) The *Majlis Peguam Syarie* shall convene an annual general meeting of the *Badan Peguam Syarie* before the first day of November each year.

(2) A notice of an annual general meeting of the *Badan Peguam Syarie* shall be served to all members, in such manner as the *Majlis Peguam Syarie* may determine, not less than fourteen days before the date of the meeting.

(3) The requirement under subparagraph (2) shall not apply if an annual general meeting is adjourned under subparagraph 2(2).

(4) If any member desires to propose any motion to be considered at an annual general meeting convened under this paragraph, he shall, not less than seven days before the date first appointed for holding the meeting, serve on the Secretary of the *Badan Peguam Syarie* a notice of such motion in writing.

**Quorum of annual general meeting**

2. (1) The quorum for an annual general meeting shall be four times of the number of the members of *Majlis Peguam Syarie* and no business shall be transacted at any annual general meeting unless a quorum is present when the meeting proceeds to business.

(2) If a quorum referred to in subparagraph (1) is not present within one hour from the time appointed for holding the meeting, the meeting shall be adjourned to the following day at the same time and place unless otherwise notified to the members by *Majlis Peguam Syarie* in the notice summoning the original meeting, and if at such adjourned annual general meeting the quorum is not present within one hour from the time appointed for holding the adjourned meeting, the members present shall constitute the quorum.

**Extraordinary General Meeting**

3. (1) The *Majlis Peguam Syarie* may convene a general meeting of the *Badan Peguam Syarie* other than the annual general meeting at any time the *Badan Peguam Syarie* considers it necessary or expedient and such meeting shall be known as an extraordinary general meeting.

(2) Not less than one fifth of the members of the *Badan Peguam Syarie* may at any time request an extraordinary general meeting by written notice signed by them and served on the President, Vice President or the Secretary of the *Badan Peguam Syarie*.

(3) The written notice shall specify the matter to be discussed in the proposed extraordinary general meeting.

(4) The *Majlis Peguam Syarie* shall, upon receiving the written notice under subparagraph (2), convene an extraordinary general meeting within thirty days.

(5) If the *Majlis Peguam Syarie* fails to convene an extraordinary general meeting as required under subparagraph (4), the member who requested for the extraordinary general meeting may convene the extraordinary general meeting within sixty days of the receipt of the written notice under subparagraph (2).

(6) If any member of the *Badan Peguam Syarie* desires to propose any motion to be considered at an extraordinary general meeting to be convened under this paragraph, he shall serve upon the Secretary of the *Badan Peguam Syarie* notice of motion in writing within a period of not less than seven days before the date of the meeting.

#### **Quorum of extraordinary general meeting**

4. (1) The quorum for an extraordinary general meeting convened under paragraph 3 shall be one third of the members of *Badan Peguam Syarie*, and no business shall be transacted at any extraordinary general meeting unless a quorum is present when the meeting proceeds to business.

(2) An extraordinary general meeting convened under this paragraph shall be dissolved if a quorum is not present within one hour from the time appointed for holding the meeting.

#### **Voting**

5. At every annual general meeting and extraordinary general meeting of the *Badan Peguam Syarie*, every member present shall have one vote and where there is an equality of votes, the chairman or the acting chairman of the meeting shall have a casting vote in addition to his deliberative vote.

## PART II

### MAJLIS PEGUAM SYARIE

#### **Meeting of *Majlis Peguam Syarie***

6. Meeting of the *Majlis Peguam Syarie* shall be held at least three times a year at any time and place set by the Chairman or the *Majlis Peguam Syarie*.

**Quorum**

7. Five members personally present at any meeting of the *Majlis Peguam Syarie* shall constitute a quorum for the transaction of any business.

**Voting**

8. (1) A decision of the majority of the members of the *Majlis Peguam Syarie* present and voting at any meeting of the *Majlis Peguam Syarie* shall be deemed to be a decision of the *Majlis Peguam Syarie*.

(2) The Chairman shall have a casting vote at any meeting of the *Majlis Peguam Syarie* in addition to his deliberative vote.

**Procedure**

9. The *Majlis Peguam Syarie* may regulate its own procedure.

**Expenses of members**

10. No fees shall be paid to any member of the *Majlis Peguam Syarie* but a member may be reimbursed from the funds of the *Badan Peguam Syarie* for the travelling expenses incurred by him in relation to the affairs of the *Badan Peguam Syarie*.

THIRD SCHEDULE

[Subsections 64(1), 71(2), sections 72, 73, 74 and 75]

CONTROL OF PROPERTY, DOCUMENT, MONEY, ETC., OF A  
CLIENT IN CERTAIN CASES

1. The *Majlis Peguam Syarie* may require the production or delivery of all deeds, wills, documents constituting or evidencing the title to any property, papers, books of account, records, vouchers and other documents in the possession or control of the *Peguam Syarie* or his firm, partner or employee or relating to any trust of which he is a sole trustee or co-trustee with one or more of his partner or employee.

2. The production and delivery of documents referred to in paragraph 1 shall be made to a person appointed by the *Majlis Peguam Syarie* at the time and place to be determined by the *Majlis Peguam Syarie* and the appointed person may take possession of the documents on behalf of the *Majlis Peguam Syarie*.

3. Any *Peguam Syarie*, his partner or his employee who fails to comply with any requirement under paragraphs 1 and 2, commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit.

4. The *Majlis Peguam Syarie* may apply to the Syariah High Court or judge in chambers to allow any persons appointed by the *Majlis Peguam Syarie* to enter any premises using such force as is reasonably necessary to search for, and take possession of, the documents referred to in the paragraph 1.
5. The *Majlis Peguam Syarie* shall, upon the taking possession of such documents, serve upon the *Peguam Syarie*, his partner or employee or any person from whom those documents were received, or from whose premises the documents were taken pursuant to an order made under paragraph 4, a notice giving particulars and the date of taking possession.
6. Any requirement or notice under this Schedule shall be made in writing under the hand of such person as appointed by the *Majlis Peguam Syarie* 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.
7. The *Peguam Syarie* or other person upon whom the notice was served may, within fourteen days after the service of a notice under paragraph 5, apply to a judge in chambers for an order directing the *Majlis Peguam Syarie* to return those documents to the person from whom the documents were received, or from whose premises the documents were taken, as the case may be, by the *Majlis Peguam Syarie* or to such other person as the applicant may require, and on the hearing of any such application the judge in chambers may make such order with respect to the matter as he may think fair and reasonable.
8. If no application is made under paragraph 7 or if the judge in chambers to whom any such application is made directs that the documents shall remain in the custody or control of the *Majlis Peguam Syarie*, the judge in chambers may make inquiries to ascertain the person to whom those documents belong and may deal with those documents in accordance with the directions of that person.
9. The *Majlis Peguam Syarie* may, before dealing with the documents, take copies of, or extracts from, any of the documents.
10. The Syariah High Court or judge in chambers may, on the application of the *Majlis Peguam Syarie*, order that no payment shall be made, without the leave of the Syariah High Court or judge in chambers, by any banker in the name of a *Peguam Syarie* or his firm.
11. In any case where the *Majlis Peguam Syarie* has taken possession of the documents under paragraph 2, and has not been required to return the documents under paragraph 7, the following paragraphs shall apply.
12. The *Majlis Peguam Syarie* may, on a resolution, take control of all sums of money due from the *Peguam Syarie* or 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 the *Peguam Syarie* is the sole trustee or co-trustee with one or more of his partner or employee and for that purpose the *Majlis Peguam Syarie* shall serve

on the *Peguam Syarie* 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 14 or 15.

**13.** The *Peguam Syarie* or his firm, or the banker or other person upon whom the notice was served may, within fourteen days of the service of a notice under paragraph 12, apply to a judge in chambers for an order directing the *Majlis Peguam Syarie* to withdraw the notice and on the hearing of the application the judge in chambers may make any order with respect to the matter as he may think fair and reasonable.

**14.** The *Majlis Peguam Syarie* or any person appointed by the *Majlis Peguam Syarie* may, subject to the service of any notice under paragraph 12, and to any application that may be made under paragraph 13, withdraw the moneys or any part of the moneys, in any banking account in the name of the *Peguam Syarie* or his firm due to be held on behalf of his client, and deposit the money into a special account in the name of the *Majlis Peguam Syarie* or such person appointed by the *Majlis Peguam Syarie* and otherwise deal with, such special account as the *Peguam Syarie* or his firm might have operated on, or otherwise deal with, the banking account.

**15.** Any banker with whom any such special account is kept shall be under no obligation to ascertain that account is being operated or otherwise dealt with.

**16.** (1) The *Majlis Peguam Syarie* may, subject to paragraphs 13 and 15, serve a notice on the *Peguam Syarie* or his firm, banker or other person upon whom a notice has been served under paragraph 11, directing that, immediately after the expiration of eight days from the service of the notice referred to in paragraph 5, such moneys as referred to in that notice be transferred in accordance with the directions of the *Majlis Peguam Syarie*.

(2) Notwithstanding subparagraph (1)—

(a) no such directions shall be given by the *Majlis Peguam Syarie* except with the approval of the person to whom the moneys belong, in the case of a trust the trustee, and, where the *Peguam Syarie* is the sole trustee or co-trustee with one or more of his partner or employee, the person beneficially entitled to the moneys; and

(b) the person upon whom the notice referred to in paragraph 3 has been served shall be under no obligation to ascertain whether any approval has been obtained.

(3) In any case where the *Majlis Peguam Syarie* is unable to ascertain the person to whom the moneys belong or where the *Majlis Peguam Syarie* otherwise thinks it expedient so to do, the *Majlis Peguam Syarie* may apply to the Syariah High Court or a judge in chambers for directions as to the transfer of the moneys.

17. If any person fails to comply with the requirements of any notice given under paragraph 12 or 13—

- (a) he commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit; and
- (b) the Syariah High Court or a judge in chambers may, on the application of the *Majlis Peguam Syarie*, order that person to comply with the requirements of the notice within the time as may be specified in the order.

18. Subject to any order for the payment of costs that may be made on an application under this Schedule, any costs incurred by the *Majlis Peguam Syarie* for the purpose of this Schedule shall be paid by the *Peguam Syarie* and shall be recoverable from him as a debt due to the *Majlis Peguam Syarie*.

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#### EXPLANATORY STATEMENT

The proposed *Syarie* Legal Profession (Federal Territories) Act 2019 (“the proposed Act”) seeks to establish the *Syarie* Legal Profession Qualifying Board, *Badan Peguam Syarie* and *Majlis Peguam Syarie*. The functions of the *Syarie* Legal Profession Qualifying Board, *Badan Peguam Syarie* and *Majlis Peguam Syarie* are mainly to govern and regulate the practice of the *Syarie* Legal Profession. Currently, the admission of persons as a *Peguam Syarie* and the conduct of *Peguam Syarie* are governed by the *Peguam Syarie* Rules 1993 [*P.U.(A) 408/1993*] made under subsection 59(2) of the Administration of Islamic Law (Federal Territories) Act 1993 [*Act 505*]. With the passing of the proposed Act, the *Peguam Syarie* Rules 1993 is revoked and subsection 59(2) of Act 505 is deleted.

#### PART I

2. Part I of the proposed Act contains preliminary matters.

*Clause 1* contains the short title and seeks to empower the Yang di-Pertuan Agong to appoint the date of commencement of the proposed Act and to appoint different dates for the coming into operation of different provision of the proposed Act.

*Clause 2* contains the definitions of certain expression used in the proposed Act.

#### PART II

3. Part II of the proposed Act provides for the establishment of the *Syarie* Legal Profession Qualifying Board (“the Board”).

*Clause 3* seeks to provide for the establishment of the Board.

*Clause 4* sets out the functions of the Board which includes to determine the qualifications of persons intending to apply for an admission as a *Pegum Syarie* and to provide for the course of instruction, training, education and examination by the Board for such persons, etc.

*Clause 5* sets out the powers of the Board which includes to appoint any lecturers and examiners for the purpose of providing course of instruction, to impose fees, to appoint any committee to assist the Board.

*Clause 6* contains provision on the membership of the Board.

*Clause 7* seeks to provide that the Chief Registrar of the Syariah Appeal Court shall be the Secretary to the Board.

*Clause 8* seeks to provide for the payment of allowance to the members of the Board, committee and any other person invited to attend any meeting of the Board.

*Clause 9* seeks to empower the Board to make rules in relation to the admission, etc. of a *Pegum Syarie*.

*Clause 10* seeks to empower the Board to exempt any person or a group of persons from undergoing courses of instruction, training, etc.

### PART III

4. Part III of the proposed Act provides for the admission of person as a *Pegum Syarie*.

*Clause 11* provides for the definition of a “qualified person”.

*Clause 12* sets out the conditions for the admission as a *Pegum Syarie*.

*Clause 13* seeks to provide that a qualified person shall serve a period of pupillage for six months before he is eligible for the admission as a *Pegum Syarie*.

*Clause 14* seeks to provide for the exemption from pupillage.

*Clause 15* sets out the procedures for the application for admission as a *Pegum Syarie*.

*Clause 16* seeks to impose the obligation on the applicant to file a copy of his application for admission accompanied by a notice stating the particulars of his application at the Chief’s Registrar Office and the Chief Registrar thereafter shall cause to be posted the notice at the Syariah High Court in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya.

*Clause 17* seeks to impose the obligation on the applicant to serve a copy of the application and its related document on the Board, the Chief Syariah Prosecutor and *Majlis Peguam Syarie*.

*Clause 18* seeks to require the *Majlis Peguam Syarie* to make full inquiries into the character of the applicant and submit the report to the Chief Registrar upon receiving a copy of the application and its related document from the applicant.

*Clauses 19* and *20* seek to allow the Chief Syariah Prosecutor, *Majlis Peguam Syarie* and any other person to object to the application for the admission.

*Clause 21* seeks to provide for the admission of a *Peguam Syarie*.

*Clause 22* seeks to allow any person aggrieved by the decision of the Syariah High Court under *clause 21* to appeal to the Syariah Appeal Court.

*Clause 23* seeks to provide that the Chief Registrar shall issue a Certificate of *Peguam Syarie* to the applicant upon his admission as a *Peguam Syarie* and upon payment of a prescribed fee.

*Clause 24* requires the Chief Registrar to keep and maintain the Register of *Peguam Syarie*.

*Clause 25* seeks to allow the removal of name of any *Peguam Syarie* from the Register if his application for admission contains false or misleading statement.

*Clause 26* seeks to provide that the *Peguam Syarie* may apply to the Syariah High Court to have his name removed from the Register.

*Clause 27* seeks to provide for the power of the Syariah High Court to order the Chief Registrar to restore the name of a *Peguam Syarie*, which has been removed or struck off from the Register, in the Register.

#### PART IV

5. Part IV of the proposed Act provides for the procedures for the issuance of an Annual Practising Certificate.

*Clause 28* sets out the procedures for the application of a Supporting Acknowledgement for the purpose of the issuance of an Annual Practising Certificate.

*Clause 29* sets out the procedures for the application of Annual Practising Certificate by any *Peguam Syarie* and the issuance of Annual Practising Certificate by the Chief Registrar.

*Clause 30* seeks to provide for the circumstances which disqualify a *Peguam Syarie* from applying for an Annual Practising Certificate.



*Clause 31* requires the Chief Registrar to keep and maintain the Register of Practitioners.

*Clause 32* seeks to provide that a *Pegum Syarie* shall submit his Annual Practising Certificate if he is required to do so by any syariah court.

#### PART V

6. Part V of the proposed Act provides for the rights and privileges of a *Pegum Syarie*.

*Clause 33* deals with the rights and privileges of a *Pegum Syarie* and all the *Pegum Syarie* shall have the same rights and privileges without differentiation.

*Clause 34* prohibits any person from practicing as a *Pegum Syarie* without being registered as a *Pegum Syarie* and without possessing a valid Annual Practising Certificate.

*Clause 35* prohibits any unauthorized person from acting as a *Pegum Syarie*.

*Clause 36* allows certain persons to act as a *Pegum Syarie*.

*Clause 37* requires a *Pegum Syarie* to endorse his name and address or the name and address of his firm on the instrument prepared by him.

*Clause 38* seeks to provide that any costs in respect of anything done by an unauthorized person as a *Pegum Syarie* shall not be recoverable by any person in any action, suit or matter.

#### PART VI

7. Part VI of the proposed Act seeks to provide for the registration of name of firm.

*Clause 39* sets out the procedure on the application for registration of name of firm.

*Clause 40* requires the *Majlis Pegum Syarie* to keep and maintain a register of name of firm.

*Clause 41* provides for the restoration of name of firm in the register of name of firm.

#### PART VII

8. Part VII of the proposed Act provides for the establishment of the *Badan Pegum Syarie* and *Majlis Pegum Syarie* of the Federal Territories.

Clause 42 seeks to provide for the establishment of the *Badan Peguam Syarie*.

Clause 43 sets out the object of the *Badan Peguam Syarie* which includes to promote and maintain the interest of the *syarie* legal profession, to uphold the cause of justice, to maintain and improve the standards of conduct and learning of the *syarie* legal profession in the Federal Territories, to maintain the integrity and status of the *Peguam Syarie*, etc.

Clause 44 seeks to empower the *Badan Peguam Syarie* to make rules in relation to procedures of the meeting of the *Badan Peguam Syarie* under the proposed Act.

Clause 45 contains provisions on the membership of the *Badan Peguam Syarie*.

Clause 46 deals with the eligibility as a member of the *Badan Peguam Syarie* to attend and vote at any general meeting, to be elected as a member of the *Majlis Peguam Syarie*, to vote on the election of members to the *Majlis Peguam Syarie* and to serve in any Committee of the *Majlis Peguam Syarie*.

Clause 47 seeks to provide for the annual subscription and levy of the member of *Badan Peguam Syarie*.

Clause 48 seeks to provide for the establishment of the *Majlis Peguam Syarie* and the membership of the *Majlis Peguam Syarie*.

Clause 49 seeks to provide for the election of the first *Majlis Peguam Syarie* members. The Chief Registrar is responsible to conduct the election of the first *Majlis Peguam Syarie*.

Clause 50 seeks to provide for the next election of the *Majlis Peguam Syarie* members. Under this proposed clause, the *Majlis Peguam Syarie* is responsible to conduct the election.

Clause 51 seeks to provide that every member of the *Badan Peguam Syarie* shall be eligible to be nominated or appointed as a member of the *Majlis Peguam Syarie*.

Clause 52 sets out the procedure on the nominations of the election for the members of the *Majlis Peguam Syarie*.

Clause 53 seeks to provide for the circumstances when there is insufficient nomination. The proposed *subclause (1)* provides that if the number of candidates candidate nominated for an election to the *Majlis Peguam Syarie* are the number of members required to be elected, those candidates shall be deemed to be elected. However, if fewer, the nominated candidates shall be deemed to have been elected as the next members of *Majlis Peguam Syarie* and the deemed elected members together with other current members of the *Majlis Peguam Syarie* shall appoint such other members as may be necessary to form the *Majlis Peguam Syarie*.

The proposed *subclause (2)* provides that if no nominations are made for the election of the next members of the *Majlis Peguam Syarie*, the current *Majlis Peguam Syarie* shall appoint thirteen members of the *Badan Peguam Syarie* to be the next members of the *Majlis Peguam Syarie* to satisfy the requirement under paragraph 48(2)(b).

*Clauses 54 and 55* deal with the period of holding office of the members of the *Majlis Peguam Syarie* and the casual vacancy of the member of the *Majlis Peguam Syarie*.

*Clause 56* provides for the holders of the office of a President, Vice President, Secretary and Treasurer of the *Badan Peguam Syarie*.

*Clause 57* provides for the circumstances when a member of the *Majlis Peguam Syarie* shall vacate his office.

*Clause 58* deals with the disqualification of a member or any of its Committee of the *Majlis Peguam Syarie*.

*Clause 59* sets out the powers of the *Majlis Peguam Syarie*.

*Clause 60* enables *Majlis Peguam Syarie* to establish any committee.

*Clause 61* places a duty on the *Majlis Peguam Syarie* to prepare and present the returns, reports, accounts and information to the members of the *Badan Peguam Syarie*.

*Clause 62* provides for the right of the *Majlis Peguam Syarie* to inspect the file of the proceedings in bankruptcy relating to any *Peguam Syarie* against whom the proceedings have been taken.

*Clause 63* requires the names of the members and Secretary to the *Majlis Peguam Syarie* to be published in the *Gazette*.

## PART VIII

9. Part VIII of the proposed Act deals with the professional practice, etiquette, conduct and discipline of *Peguam Syarie*.

*Clauses 64, 65 and 66* seek to empower the *Majlis Peguam Syarie*, with the approval of the Minister, to make rules regulating practice, professional indemnity, etc.

*Clause 67* requires the *Peguam Syarie* to submit accountant's report to the *Majlis Peguam Syarie*.

*Clause 68* seeks to empower the *Majlis Peguam Syarie* to make rules in relation to the examination of accountant's report.

*Clause 69* prohibits a *Peguam Syarie* from acting as an agent, permit his name to be used, etc., in any legal proceedings.

Clause 70 prohibits a *Peguam Syarie* from employing or paying the remuneration of any person who to his knowledge—

- (a) is an undischarged bankrupt;
- (b) his name has been struck off from the Register otherwise than at his own request in any States and his name remains struck off;
- (c) has been suspended from practising as a *Peguam Syarie* in any States and remains suspended;
- (d) has been convicted of an offence involving dishonesty or fraud or has been found guilty of an offence under the Malaysian Anti-Corruption Commission Act 2009 [Act 694];
- (e) has been convicted of any offence under section 15A of the Minor Offences Act 1955 [Act 336] or under this Act; or
- (f) employed as a public officer.

Clause 71 provides that the *Majlis Peguam Syarie* may, if it has reasonable cause to believe that the *Peguam Syarie* or his employee has been guilty of dishonesty in connection with the *Peguam Syarie* practice as a *Peguam Syarie* or in connection with any trust of which the *Peguam Syarie* is a trustee, issue a certificate to that effect. Upon issuance of the certificate, the provision of the Third Schedule to the Act shall apply to the *Peguam Syarie*.

Clause 72 requires the *Peguam Syarie* who is suspended from practice to make an arrangement and to make available the documents, moneys, etc., in his possession to his client.

Clause 73 empowers the *Majlis Peguam Syarie* to take possession of the documents in the possession of the *Peguam Syarie* if there is any complaint, etc.

Clause 74 empowers the *Majlis Peguam Syarie* to take possession of the documents in the possession of a *Peguam Syarie* when he is an undischarged bankrupt, etc.

Clause 75 sets out the circumstances where personal representatives may be liable for the acts of a deceased *Peguam Syarie*.

Clause 76 empowers the *Majlis Peguam Syarie* to operate a bank account of the deceased *Peguam Syaries'* client.

## PART IX

10. Part IX of the proposed Act contains the provision relating to disciplinary proceedings.

*Clause 77* provides that the *Majlis Peguam Syarie* shall have the disciplinary authority over all *Peguam Syarie* admitted and registered under this proposed Act. The proposed *clause* also seeks to provide for the establishment of the Disciplinary Board and other disciplinary committees.

*Clause 78* sets out the procedures relating to the complaint against a *Peguam Syarie* or pupil.

*Clause 79* provides the procedure relating to any complaint against a firm.

*Clause 80* seeks to provide that any complaint in respect of the misconduct of a *Peguam Syarie* shall not be inquired after the expiration of six years from the date on which the right of action accrued.

*Clause 81* empowers the Disciplinary Board to obtain documents and other information from the complainant or the *Peguam Syarie* after receiving the complaint.

*Clause 82* sets out the disciplinary penalty or punishment that can be imposed on any *Peguam Syarie* who has been guilty of any misconduct which includes his name to be struck off from the Register, to be suspended from practice for any period not exceeding five years, etc.

*Clause 83* provides for the circumstances of suspension of a *Peguam Syarie*.

*Clause 84* provides that any party aggrieved by any order or decision made by the Disciplinary Board shall have the right to appeal to the Syariah High Court within thirty days of the receipt of the notification of that order or decision.

*Clause 85* empowers the Disciplinary Board to make rules to regulate the procedure in relation to disciplinary proceedings.

#### PART X

11. Part X of the proposed Act contains the provision relating to Disciplinary Fund.

*Clauses 86, 87 and 88* seek to provide for the establishment of the Disciplinary Fund which consist of the contribution by every *Peguam Syarie* when he applies for a Supporting Acknowledgement and any fine, penalty or any other payment ordered by the Disciplinary Board.

#### PART XI

12. Part XI of the proposed Act provides for the miscellaneous provisions.

*Clause 89* provides that action or proceeding shall not be taken against the *Badan Peguam Syarie*, *Majlis Peguam Syarie*, Disciplinary Board, or any of its members for any act or thing done under this proposed Act unless it is proved that the act or thing was done in bad faith or with malice.

*Clause 90* seeks to provide that the order, decision, resolution and direction of the *Majlis Peguam Syarie*, etc., are to be treated as confidential.

*Clause 91* seeks to provide that the *Peguam Syarie* whose name has been removed from the Roll under the Legal Profession Act 1976 [*Act 166*] shall be removed from all the registers under the proposed Act.

*Clause 92* empowers the Board to prescribe fees.

*Clause 93* empowers the Minister to amend the Schedules to the proposed Act.

*FINANCIAL IMPLICATION*

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

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