

A BILL

i n t i t u l e d

An Act to amend the Advocates Ordinance of Sabah.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Advocates Ordinance (Sabah) (Amendment) Act 2021.

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

Amendment of section 7c

2. The Advocates Ordinance [*Sabah Cap. 2*], which is referred to as the “Ordinance” in this Act, is amended in subsection 7c(1) by inserting after the words “preceding year” the words “or, in the case of admission of a person as an advocate, after such admission”.

Amendment of section 12A**3.** Section 12A of the Ordinance is amended—

- (a) in subsection (5), by deleting the words “with a member each from paragraphs 2(a), (b) and (c)”;
- (b) in subsection (6), by inserting after the words “the Law Society” the words “or his alternate”;
- (c) in subsection (7), by inserting after the words “the Law Society” the words “or his alternate”;
- (d) in subsection (9), by substituting for the words “a full-time employee” the words “an employee”; and
- (e) by inserting after subsection (9) the following subsections:

“(9A) Wherever it is deemed necessary and expedient, the Disciplinary Board may sit in two or more panels consisting of members who shall be appointed by the Chairman from amongst the members of the Disciplinary Board.

(9B) The quorum of the panel shall be three members.

(9C) Any hearing, disposal, determination, decision, ruling, direction, order or final order of the panel shall be deemed to be the hearing, disposal, determination, decision, ruling, direction, order or final order of the Disciplinary Board.”.

Amendment of section 12c**4.** Section 12c of the Ordinance is amended in subsection (1) by substituting for the words “such rules as may from time to time be made under this Ordinance” the words “section 12d”.

Amendment of section 12D

5. Section 12D of the Ordinance is amended—

(a) by substituting for the marginal note the following marginal note:

“Classification and handling of complaints.”; and

(b) by substituting for subsection (1) the following subsection:

“(1) Where a written complaint is made or referred to the Disciplinary Board, the Disciplinary Board shall, if it is satisfied that—

(a) there is no merit in the complaint or the complaint is frivolous and vexatious, dismiss the complaint and notify the complainant and the advocate concerned of its decision; or

(b) there is merit in the complaint, proceed to hear such complaint in accordance with such rules as may from time to time be made under this Ordinance.”.

Amendment of section 12G

6. Section 12G of the Ordinance is amended—

(a) in subparagraph (1)(c)(i), by substituting for the words “reprimand or censure” the words “having costs awarded against him”; and

(b) by inserting after subsection (2) the following subsection:

“(3) The Disciplinary Board may, at any stage of the disciplinary proceedings or in its decision in appropriate cases, make an order of costs against the complainant or against the advocate concerned, as the case may be, to be paid to the opposite party as the Disciplinary Board may deem fit.”.

Amendment of section 12H

7. Section 12H of the Ordinance is amended in subsection (5) by substituting for the word “motion” the word “summons”.

Amendment of section 13D

8. Section 13D of the Ordinance is amended—

- (a) in paragraph (2)(g), by substituting for the word “six” the word “eight”;
- (b) in subsection (7), by inserting after the words “shall be elected” the word “biennially”; and
- (c) by inserting after subsection (7) the following subsections:

“(7A) Election of members of the Executive Committee may be by show of hands or by secret ballot if the members at the meeting so decide, provided that the Law Society may make rules to provide for and to regulate voting by online voting or postal ballot in such cases as it may deem fit.

(7B) Any rules made under subsection (7A) shall not come into operation until they have been published in the *Sabah Government Gazette*.”.

Amendment of section 13K

9. Section 13K of the Ordinance is amended in paragraph (1)(c) by inserting after the words “Executive Committee” the word “biennially”.

Amendment of section 15

10. Section 15 of the Ordinance is amended in subsection (1) by inserting after the words “he has” the words “a valid Annual Certificate and”.

Amendment of section 16B

11. Section 16B of the Ordinance is amended in subsection (1)—

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

(b) by substituting for the comma at the end of paragraph (d) the words “; or”; and

(c) by inserting after paragraph (d) the following paragraph:

“(e) is incapacitated due to illness or any other cause,”.

Commencement of section 23 of Act A1528

12. Notwithstanding subsection 1(2) of the Advocates Ordinance (Sabah) (Amendment) Act 2017 [*Act A1528*], the Minister may appoint different dates for the coming into operation of section 23 of the Advocates Ordinance (Sabah) (Amendment) Act 2017 in the State of Sabah and the Federal Territory of Labuan.

EXPLANATORY STATEMENT

This Bill seeks to amend the Advocates Ordinance [*Sabah Cap. 2*] (“Ordinance”).

2. *Clause 1* contains the short title and seeks to empower the Minister to appoint the date of commencement of the proposed Act including the power to appoint different dates for the coming into operation of different provisions of the proposed Act.

3. *Clause 2* seeks to amend subsection 7c(1) of the Ordinance to deal with the issuance of Annual Certificate by the Law Society to any newly admitted advocate.

4. *Clause 3* seeks to amend section 12A of the Ordinance, in particular subsection (5) to remove the requirement of compulsory attendance of the Chairman, and the President or the Vice-President of the Law Society, and any one of the eight advocates as provided in paragraph 12A(2)(c) of the Ordinance in a Disciplinary Board meeting in order to constitute a quorum. This *clause* also seeks to amend subsection 12A(6) to empower the Vice-President of the Law Society as the alternate of the President of the Law Society to have the same right to chair a meeting of the Disciplinary Board in the absence of the Chairman and may similarly be disqualified from deliberating on any complaint under subsection 12A(7) of the Ordinance. Section 12A is also amended by inserting new subsections (9A), (9B) and (9C) to empower the Disciplinary Board to sit in two or more panels provided that each panel shall have a quorum of three members in order to speed up disposal of complaints, and to provide that any hearing, disposal, determination, decision, ruling, direction, order or final order of the panel shall be deemed to be the hearing, disposal, determination, decision, ruling, direction, order or final order of the Disciplinary Board.
5. *Clause 4* seeks to amend subsection 12C(1) of the Ordinance to allow any complaint against an advocate or a pupil to be dealt with in accordance with section 12D of the Ordinance.
6. *Clause 5* seeks to substitute subsection 12D(1) of the Ordinance with a new subsection to empower the Disciplinary Board to dismiss summarily any complaint which has no merit or is frivolous or vexatious and if the complaint has merit, the Disciplinary Board shall proceed to hear the complaint in accordance with rules made under the Ordinance.
7. *Clause 6* seeks to amend section 12G of the Ordinance by inserting a new subsection to allow the Disciplinary Board to make an order of costs against any of the parties to be paid to the opposite party at any stage of the disciplinary proceedings.
8. *Clause 8* seeks to amend section 13D of the Ordinance, including paragraph (2)(g) to increase the number of committee members in the Executive Committee of the Law Society from six members to eight members, and subsection (7) to provide for the election of office-bearers of the Executive Committee other than the immediate past President, to be held once every two years. This *clause* also seeks to introduce new subsections (7A) and (7B) to provide for the voting procedures at a meeting of the Law Society and the power to make rules to provide for and to regulate voting by online voting or postal ballot.
9. *Clause 9* seeks to amend paragraph 13K(1)(c) of the Ordinance to provide for the election of office-bearers of the Executive Committee of the Law Society to be held once every two years.
10. *Clause 10* seeks to amend subsection 15(1) of the Ordinance to include the requirement that in addition to having a valid certificate of practise, an advocate shall have a valid Annual Certificate before he can practise as an advocate or do any act as an advocate.

11. *Clause 11* seeks to amend subsection 16B(1) of the Ordinance to introduce a new paragraph (e) to provide that if an advocate is incapacitated due to illness or any other cause, the Law Society may take possession and control of property of the advocate in accordance with the Second Schedule of the Ordinance.

12. *Clause 12* seeks to empower the Minister to appoint different dates for the coming into operation of section 23 of the Advocates Ordinance (Sabah) (Amendment) Act 2017 [*Act A1528*], which inserts a new Part VII that deals with international partnerships, qualified foreign law firms and registration of foreign lawyers, in the State of Sabah and the Federal Territory of Labuan.

13. Other amendments not specifically dealt with in the Explanatory Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

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

[PN(U2)3183]