

A BILL

i n t i t u l e d

An Act to amend the Legal Profession Act 1976.

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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 Legal Profession (Amendment) Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 13

2. The Legal Profession Act 1976 [*Act 166*], which is referred to as the “principal Act” in this Act, is amended by deleting subsection 13(5).

Amendment of section 37**3.** Section 37 of the principal Act is amended—

- (a) in subsection (2), by inserting after the words “subsection (1)” the words “and (2A)”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) Any unauthorized person who either directly or indirectly, does or solicits the right to do any act which is customarily within the function or responsibility of an advocate and solicitor, including but not limited to advising on law (whether Malaysian or otherwise) shall, unless he proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence under this subsection.”; and
- (c) in subsection (4), by inserting after the words “subsection (2)” the words “,(2A)”.

New Part IVA**4.** The principal Act is amended by inserting after section 40 the following Part:

“PART IVA

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

Interpretation**40A.** In this Part, unless the context otherwise requires—

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

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

“foreign lawyer” means a person who is—

- (a) duly authorized or registered to practise law in a state or territory other than Malaysia; and
- (b) a partner, director (who holds equity in the corporation, in the case of a corporation duly constituted for the purpose of practising law) or an employee of a foreign law firm or a Malaysian law firm;

“international partnership” means a partnership or any other arrangement between a foreign law firm and a Malaysian law firm in respect of which a licence has been granted under section 40F;

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

“prescribed” means prescribed by the Bar Council by rules made under this Act;

“qualified foreign law firm” means a foreign law firm licensed under section 40G.

Licence required for foreign law firm

40B. (1) No foreign law firm shall practise in Malaysia unless it is licensed under this Part.

(2) Any foreign law firm which contravenes the provision of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Selection Committee

40c. (1) A Selection Committee is established under this Part to make recommendations to the Bar Council for the granting of licence for international partnerships and qualified foreign law firms and to Malaysian law firms to employ foreign lawyers and the registration of foreign lawyers to practise in the permitted practice areas.

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

- (a) the Attorney General;
- (b) the President of the Malaysian Bar;
- (c) a person to be appointed by the Attorney General from the public sector; and
- (d) two members of the Malaysian Bar practising in the permitted practice areas relevant to the applications to be appointed by the Bar Council.

(3) The Attorney General and the President of the Malaysian Bar shall be the Co-Chairmen of the Selection Committee.

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

Alternate members

40d. (1) The Attorney General may, in respect of the member appointed under paragraph 40c(2)(c), appoint a person to be an alternate member to attend, in place of the member, meetings of the Selection Committee.

(2) The Bar Council may, in respect of each member appointed under paragraph 40c(2)(d), appoint a person to be an alternate member to attend, in place of the member, meetings of the Selection Committee.

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

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

Meetings of the Selection Committee

40E. (1) Meetings of the Selection Committee shall be co-chaired by the Attorney General and the President of the Malaysian Bar.

(2) The Selection Committee shall meet on such date and at such time and place as the Attorney General and the President of the Malaysian Bar may appoint.

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

(4) All decisions of the Selection Committee shall be by the affirmative vote of a majority of the members of the Selection Committee.

(5) The Selection Committee shall inform the Bar Council of its recommendation as to the granting of a licence under section 40F, 40G or 40H or the registration of a foreign lawyer under section 40J.

(6) The Bar Council shall be the Secretariat for the Selection Committee.

International partnership

40F. (1) A foreign law firm and a Malaysian law firm may apply jointly to the Bar Council for an international partnership licence if they satisfy such conditions as the Bar Council may think fit to impose in any particular case.

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

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

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

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

(6) The Bar Council may, by notice in writing—

- (a) impose any new or additional conditions on the licence;
or
- (b) vary or revoke any of the conditions imposed on the licence.

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

(8) An international partnership is entitled to—

- (a) practise in the permitted practice areas in accordance with such conditions as may be prescribed;
- (b) bill its clients as a single law firm; and
- (c) recover costs and retain payments in respect of such practice.

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

Qualified foreign law firm

40G. (1) A foreign law firm may apply for a qualified foreign law firm licence if it satisfies such conditions as the Bar Council may think fit to impose in any particular case.

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

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

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

(5) The Bar Council may, by notice in writing—

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

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

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

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

(8) A Malaysian lawyer employed in a qualified foreign law firm shall be disqualified from obtaining a practising certificate under Part III.

Employment of a foreign lawyer by a Malaysian law firm

40H. (1) A Malaysian law firm may apply to the Bar Council for a licence to employ a foreign lawyer to practise in the permitted practice areas in the Malaysian law firm if it satisfies such conditions as the Bar Council may think fit to impose in any particular case.

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

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

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

Suspension or revocation of licence

40I. (1) The Bar Council may, by notice in writing, suspend or revoke the licence granted under section 40F, 40G or 40H if the Bar Council is satisfied that there is sufficient reason for doing so.

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

- (a) the appropriate licensing authority of a state or territory other than Malaysia suspends or revokes the licence of the constituent foreign law firm in the international partnership or the qualified foreign law firm as a result of criminal, civil or disciplinary proceedings;
- (b) there is any change in respect of any information regarding the foreign law firm which was submitted for the purposes of obtaining the international partnership licence or the qualified foreign law firm licence including but not limited to—
 - (i) a change of any international partnership name without the prior approval of the Bar Council;
 - (ii) a merger of the international partnership with any other firm or body corporate; or
 - (iii) a change of up to one-half ($\frac{1}{2}$) in the number of the partners in any international partnership;
- (c) the international partnership or qualified foreign law firm fails to comply with any requirement imposed under this Act or any other written law;

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

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

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

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

40J. (1) A foreign lawyer shall not practise in an international partnership, a qualified foreign law firm or a Malaysian law firm, or in any other manner, unless he has been registered under this section.

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

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

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

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

- (a) such conditions as the Bar Council may think fit to impose in any particular case; and
- (b) the payment of a registration fee to the Bar Council at such times and in such manner as may be prescribed.

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

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

(8) Any foreign lawyer who fails to comply with the provision of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Suspension or revocation of registration

40K. (1) The Bar Council may, by notice in writing, suspend or revoke the registration of a foreign lawyer under section 40J if the Bar Council is satisfied that there is sufficient reason for doing so.

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

- (a) the international partnership licence or qualified foreign law firm licence issued in respect of the international partnership or qualified foreign law firm, as the case may be, is suspended or revoked under section 40I;

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

Professional conduct, ethics and accounts

40L. (1) International partnerships, qualified foreign law firms and registered foreign lawyers shall comply with such laws, rulings and directives applicable to advocates and solicitors under this Act relating to professional conduct or ethics.

(2) Section 79 and any rules made thereunder shall apply to a foreign lawyer registered under section 40J with such modifications as may be prescribed by the Bar Council.

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

Disciplinary authority

40M. A registered foreign lawyer shall be subject to, for the purposes of all disciplinary actions, the control of the Disciplinary Board.

Power to require documents, etc.

40N. The Bar Council may require any international partnership, qualified foreign law firm, Malaysian law firm or foreign lawyer to provide the Bar Council with such

documents, particulars or information as the Bar Council considers necessary for the purpose of ascertaining compliance of this Part.

Power to make rules

40o. The Bar Council may, with the approval of the Attorney General, make rules to provide for—

- (a) the conditions and criteria for the granting of international partnership licences, qualified foreign law firm licences or licences under section 40H and for the registration of foreign lawyers under section 40J;
- (b) the manner and means of application and the information and documents to be furnished for the application of international partnership and qualified foreign law firm licences and licences under section 40H, including but not limited to the forms, proceedings, fees, information and documents in connection therewith;
- (c) the conditions relating to qualifying legal skills, experience and expertise required under this Part;
- (d) the manner and means of application for registration of foreign lawyers including but not limited to the forms, proceedings, fees, information and documents in connection therewith;
- (e) the submission of information and particulars relating to foreign law firms, lawyers and other persons practising in or employed by the foreign law firms;
- (f) the maintenance of a register of international partnerships, qualified foreign law firms, Malaysian law firms which employ foreign lawyers under section 40H, foreign lawyers practising in Malaysia and Malaysian lawyers practising in international partnerships and qualified foreign law firms under this Part and the form and manner in which the registers are to be kept;

- (g) the permitted practice areas;
- (h) the manner and means by which an international partnership, a qualified foreign law firm or a Malaysian law firm licensed under section 40H may conduct its business or publicise itself;
- (i) the exemption of any person or class of persons from any provision of this Part; and
- (j) any other matters for purposes of implementing the provisions of this Part.”.

Amendment of section 76

5. Section 76 of the principal Act is amended—

- (a) by substituting for the shoulder note the following shoulder note:

“Names of members of the Bar Council, *etc.*, to be published and confidentiality of deliberations”;

- (b) by substituting for subsection (2) the following subsection:

“(2) Except and 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, the Bar Council, the State Bar Committee, the Disciplinary Board and the Disciplinary Committee and in respect of all documents pertaining to the deliberative process shall be maintained by the members of the Board, the Bar Council, the State Bar Committee, the Disciplinary Board and the Disciplinary Committee and by their staff.”; and

- (c) in subsection (3)—

- (i) by substituting for the words “proceedings or matters conducted by them” the words “deliberations referred to in subsection (2)”;
- (ii) by substituting for the words “proceedings or matters” the words “deliberations unless the court considers such disclosure essential in the interest of justice”.

Amendment of section 80

6. Subsection 80(8A) of the principal Act is amended by inserting after the words “members of the Malaysian Bar” the words “and to a fund established for the purpose of providing legal aid”.

New section 92A

7. The principal Act is amended by inserting before section 93 in Part VII the following section:

“Interpretation of “advocate and solicitor” in certain provisions

92A. For the purposes of disciplinary proceedings under this Part, except under subsection 93(5), subsection 94(2), section 96 and paragraph 98(1)(a), “advocate and solicitor” includes a foreign lawyer registered under section 40J.”.

Amendment of section 93

8. Section 93 of the principal Act is amended—

(a) in subsection (3)—

(i) by substituting for paragraph (a) the following paragraph:

“(a) the chairman of the Disciplinary Board appointed by the Chief Judge after consultation with the Bar Council for a term of two years and such person shall be a retired Judge of the High Court or the Court of Appeal or the Federal Court or any other person who is qualified to be a Judge of the High Court or the Court of Appeal or the Federal Court:

Provided that the Chief Judge may, after consultation with the Bar Council, extend such term of appointment for another two years and may reappoint for another period not exceeding two years;”;

(ii) in paragraph (c)—

(A) by substituting for the words “fifteen years’ standing” the words “ten years’ standing”; and

(B) in the proviso, by deleting the words “and may reappoint them”;

(b) by deleting subsection (3A);

(c) in subsection (4A), by deleting the words “or his representative”;

(d) by substituting for subsection (4B) the following subsection:

“(4B) If the President of the Malaysian Bar also disqualifies himself from deliberating on any complaint pursuant to subsection (4C) or is unable, through illness or any other cause, to attend the meeting, the members present shall elect one of their number to preside at the meeting for the purposes of the complaint.”; and

(e) by substituting for subsection (4C) the following subsection:

“(4C) The Chairman of the Disciplinary Board, the President of the Malaysian Bar and any other member of the Disciplinary Board shall, where it is necessary in the interest of justice, disqualify himself from deliberating on any complaint.”.

Amendment of section 94

9. Section 94 of the principal Act is amended—

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

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

(a) to be struck off the Roll;

(b) to be suspended from practice for any period not exceeding five years;

(c) to be ordered to pay a fine not exceeding fifty thousand ringgit; or

(d) to be reprimanded or censured.”;

(b) by inserting after subsection (4) the following subsection:

“(4A) Notwithstanding subsection (2), any registered foreign lawyer who has been guilty of any misconduct shall be liable to be suspended, for any period not exceeding five years, or revocation of his registration or reprimanded or censured or ordered to pay a fine, as the case may be.”;

(c) in subsection (5)—

(i) by inserting after the words “an advocate and solicitor” the words “, and any reference to advocate and solicitor in this Part shall *mutatis mutandis* include a pupil”; and

(ii) by substituting for the words “petitioning the Court” the words “proceeding with any petition”; and

(d) by inserting after subsection (5) the following subsection:

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

Amendment of section 99

10. Section 99 of the principal Act is amended—

(a) in subsection (2) in the national language text, by substituting for the word “Perindustrian” the word “Perusahaan”;

- (b) by inserting after subsection (3) the following subsection:

“(3A) No complaint concerning the conduct of any advocate and solicitor or of any pupil shall be inquired into by the Disciplinary Board after the expiration of six years from the date when the right of action to bring the complaint accrued:

Provided that where—

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

- (c) by inserting after subsection (5) the following subsection:

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

Substitution of section 100

- 11.** The principal Act is amended by substituting for section 100 the following section:

“Inquiry into application or complaint

100. (1) Where a written application or 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 application or complaint, dismiss the application or complaint and notify the complainant and the advocate and solicitor of its decision; or

(b) there is merit in the application or complaint—

- (i) post or deliver to the advocate and solicitor concerned a copy of the application or complaint together with all supporting documents, if any, furnished to the Disciplinary Board; and
- (ii) request the advocate and solicitor to furnish his written explanation in quadruplicate together with supporting documents, if any, within fourteen days of the request or within such longer time as the Disciplinary Board may allow.

(2) Where the advocate and solicitor does not furnish his written explanation to the Disciplinary Board as requested under subparagraph (1)(b)(ii), the Disciplinary Board shall proceed to appoint a Disciplinary Committee.

(3) Where the advocate and solicitor has furnished his written explanation to the Disciplinary Board under subparagraph (1)(b)(ii), the Disciplinary Board shall review the matter and—

- (a) if it is satisfied that there is no merit in the application or complaint, dismiss the application or complaint and notify the parties accordingly; or
- (b) if it is still of the view that there is merit in the application or complaint, proceed to appoint a Disciplinary Committee.

(4) Notwithstanding subsection (2) and paragraph (3)(b), if the Disciplinary Board considers that the application or complaint may be dealt with summarily, it shall give a written notice to the advocate and solicitor to determine whether the advocate and solicitor agrees that the application or complaint be dealt with summarily.

(5) If the advocate and solicitor fails to respond within fourteen days from the date of the notice referred to in subsection (4), the Disciplinary Board shall proceed to appoint a Disciplinary Committee.

(6) If the advocate and solicitor agrees that the application or complaint be dealt with summarily, the Disciplinary Board may, having ascertained that the advocate and solicitor understands the nature and consequences of the application or complaint being dealt with summarily, proceed to do so.

(7) After dealing summarily with the application or complaint, the Disciplinary Board may impose one or more of the following penalties or punishments:

- (a) reprimand or censure the advocate and solicitor;
- (b) impose a fine—
 - (i) not exceeding five thousand ringgit on the advocate and solicitor if no cause of sufficient gravity exists for a formal inquiry; or
 - (ii) not exceeding fifty thousand ringgit on the advocate and solicitor where the advocate and solicitor has admitted to the misconduct or the material facts establishing the misconduct or where the material facts establishing the misconduct are evident and do not warrant further inquiry;
- (c) suspend the advocate and solicitor from practice or in the case of a foreign lawyer, recommend to the Bar Council for his suspension, as the case may be, for such period not exceeding five years as the Disciplinary Board deems appropriate in the circumstances; or
- (d) strike the advocate and solicitor off the Roll or in the case of a foreign lawyer, recommend to the Bar Council for the revocation of his registration.

(8) Notwithstanding subsection (7), the Disciplinary Board may also make an order of restitution of the complainant's monies if it is established that such monies were or are held by the advocate and solicitor in his professional capacity and the complainant is entitled to the return of such monies or part thereof.

(9) Before imposing any one or more of the penalties or punishments under subsection (7) or making an order of restitution under subsection (8), the Disciplinary Board shall notify the advocate and solicitor of its intention to do so and give him a reasonable opportunity to be heard.

(10) An order of restitution made pursuant to subsection (8) shall be deemed to be an order of the High Court and be enforced accordingly by the complainant.

(11) If the advocate and solicitor does not agree that the application or complaint be dealt with summarily, the Disciplinary Board shall proceed to appoint a Disciplinary Committee pursuant to section 103A.

(12) The Disciplinary Board may, at any stage after an application or a complaint has been received, require the production of such further documents or explanations from either the complainant or the advocate and solicitor or both or from such other person as the Disciplinary Board may require, and the parties to the application or complaint shall be provided with all such documents or explanations.

(13) Any advocate and solicitor 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 or be connected with the subject matter of the complaint shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to a term of imprisonment not exceeding three months or to both.

(14) The Disciplinary Board may, at any stage of an inquiry into an application or complaint, determine that a formal inquiry is required and appoint a Disciplinary Committee accordingly.

(15) Nothing in this section shall preclude the Disciplinary Board from dismissing an application or complaint at any stage.”.

Amendment of section 103

12. Section 103 of the principal Act is amended—

- (a) by substituting for the shoulder note the following shoulder note:

“Effect of Disciplinary Board’s order of fine or restitution”;

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

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

- (c) in subsection (2), by substituting for the words “Disciplinary Board” the words “Malaysian Bar”.

Amendment of section 103A

13. Subsection 103A(1) of the principal Act is amended—

- (a) in paragraph (a), by substituting for the words “there should be a formal investigation” the words “a Disciplinary Committee ought to be appointed”; and
- (b) by deleting the words “to investigate and make recommendations to the Disciplinary Board”.

Amendment of section 103B**14.** Section 103B of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “Investigation” the word “Inquiry”;
- (b) by substituting for subsection (1) the following subsection:

“(1) The Disciplinary Committee shall, within one month of its appointment, commence its inquiry into the written application or complaint and shall make its findings expeditiously.”;
- (c) by inserting after subsection (1) the following subsection:

“(1A) The Disciplinary Committee shall keep a note of the proceedings of the inquiry and submit the findings and the notes of the proceedings to the Disciplinary Board.”;
- (d) in subsection (2), by substituting for the word “investigation” wherever it appears the word “inquiry”; and
- (e) in subsection (3)—
 - (i) by substituting for the word “lawful” wherever it appears the word “reasonable”; and
 - (ii) in paragraph (a), by substituting for the word “investigation” the word “inquiry”.

Amendment of section 103C**15.** Section 103C of the principal Act is amended—

- (a) in the shoulder note, by inserting after the word “Findings” the words “and recommendations”;
- (b) in subsection (1)—
 - (i) by substituting for the words “After hearing and investigating any matter referred to it” the words “Upon conclusion of the inquiry”;

- (ii) in paragraph (a), by inserting after the word “exists” the words “and that the application or complaint be dismissed”; and
- (iii) by substituting for paragraph (c) the following paragraph:

“(c) that cause for disciplinary action exists and is of sufficient gravity to warrant the advocate and solicitor to be subject to one or more of the following penalties or punishments:

- (i) reprimand or censure;
 - (ii) imposition of a fine not exceeding fifty thousand ringgit;
 - (iii) suspension of the advocate and solicitor from practice, or in the case of a foreign lawyer, recommendation to the Bar Council for suspension of registration, for such period not exceeding five years as the Disciplinary Committee deems appropriate in the circumstances; or
 - (iv) striking the advocate and solicitor off the Roll or in the case of a foreign lawyer, recommendation to the Bar Council for revocation of the registration of the foreign lawyer.”; and
- (c) in subsection (2), by substituting for the words “any sum found due and owing to the complainant” the words “the complainant’s monies if it is established that such monies were or are held by the advocate and solicitor in his professional capacity and the complainant is entitled to the return of such monies or part thereof”.

Amendment of section 103D**16.** Section 103D of the principal Act is amended—

- (a) in subsection (1), by inserting after the words “recommendation of the Disciplinary Committee” the words “and if the Disciplinary Board rejects the finding or recommendation of the Disciplinary Committee, the Disciplinary Board shall record the reason for the rejection”;
- (b) in subsection (2), by substituting for the words “greater punishment” the words “greater or lesser penalty or punishment”;
- (c) in subsection (4)—
 - (i) by deleting the words “under subsection (2) or any order”; and
 - (ii) by substituting for the words “subsection (3)” the words “subsection (2) or (3)”; and
- (d) by substituting for subsection (5) the following subsection:

“(5) Where the Disciplinary Board makes an order that the advocate and solicitor should make restitution to the complainant, it may stipulate the time within which such restitution ought to be made.”.

Amendment of section 103E**17.** Section 103E of the principal Act is amended—

- (a) in the shoulder note, by inserting before the word “decision” the words “final order or”;
- (b) by substituting for subsection (1) the following subsection:

“(1) Any party aggrieved by any final order or decision made by the Disciplinary Board—

 - (a) pursuant to subsection 94(4);

(b) under paragraph 100(1)(a), (3)(a) or subsection 100(7) or (8); or

(c) under section 103D,

shall have the right to appeal to the High Court within one month of the receipt of the notification of that order or decision.”; and

(c) by deleting subsections (2), (3) and (8).

New sections 103EA and 103EB

18. The principal Act is amended by inserting after section 103E the following sections:

“Objection from any decision, etc., other than final order or decision made by the Disciplinary Board

103EA. (1) Where a party is aggrieved by any decision, order, ruling or direction of the Disciplinary Committee or the Disciplinary Board, other than a final order or decision made by the Disciplinary Board referred to in section 103E, the aggrieved party may file an objection in writing in respect of any such decision, order, ruling or direction with the Disciplinary Committee or Disciplinary Board, as the case may be, within fourteen days of being duly notified of the decision, order, ruling or direction.

(2) Where the objection raised is in respect of the composition or participation of any member of the Disciplinary Committee or the Disciplinary Board, as the case may be, in meetings, proceedings or inquiries before the Disciplinary Committee or Disciplinary Board, the procedures to deal with the objection shall be as set out in the rules made under this Part.

(3) After the objection referred to in subsection (2) has been dealt with, the Disciplinary Committee or the Disciplinary Board, as the case may be, shall proceed with the inquiry or proceeding until its completion.

(4) Where the objection raised is not related to matters referred to in subsection (2), the Disciplinary Committee or Disciplinary Board, as the case may be—

- (a) shall make such decision, order, ruling or direction on the objection as it deems just; and
- (b) shall proceed with the inquiry or proceeding until its completion.

(5) Where the inquiry or proceeding referred to in subsection (3) and paragraph (4)(b)—

- (a) is before the Disciplinary Committee, after the completion of the inquiry or proceeding, the Disciplinary Committee shall make its recommendation to the Disciplinary Board pursuant to section 103c; or
- (b) before the Disciplinary Board, after the completion of the inquiry or proceeding, the Disciplinary Board shall make its order or decision pursuant to section 103D.

(6) The order or decision of the Disciplinary Board under paragraph (5)(b) shall be suspended from coming into effect for thirty days from the date of the order or decision or to such further time as the Court may allow to enable an aggrieved party to apply to the Court for a review.

(7) If an aggrieved party does not apply for review, the order or decision of the Disciplinary Board shall take effect immediately upon the expiration of the period of thirty days.

(8) Nothing in this section shall preclude an aggrieved party from raising any objections under this section as grounds of appeal in any appeal he may file under section 103E.

Costs against frivolous or vexatious application or complaint

103EB. (1) Where the Disciplinary Board—

- (a) determines that the application or complaint be dismissed under paragraph 100(1)(a) or (3)(a) or subsection 103D(1); and

(b) further records the opinion that the application or complaint was frivolous or vexatious,

the advocate and solicitor may, by originating summons to be heard before a judge, ask the Court to order that costs of the application or complaint shall be paid by the person who made the application or complaint.

(2) After hearing the summons, the Court may determine the quantum of such costs, and may order that those costs or any part thereof shall be paid by that person.

(3) Any order made by the Court pursuant to this section shall be enforceable in the same manner as any other order for costs made in proceedings in the Court.”.

Amendment of section 105

19. Paragraph 105(5)(b) of the principal Act is amended in the English language text by deleting the words “or investigation”.

Amendment of section 107

20. Section 107 of the principal Act is amended—

(a) by deleting subsection (4); and

(b) by substituting for subsection (5) the following subsection:

“(5) Any appeal against the decision of the High Court shall lie to the Court of Appeal and thereafter to the Federal Court.”.

Saving and transitional provisions

21. (1) The Chairman and members of the Disciplinary Board appointed immediately before the commencement of this Act shall, upon the commencement of this Act, continue in their appointment until the expiry of the term of their appointment or 5 July 2013, whichever is the earlier.

(2) The previous term or terms of appointment of the Chairman and members of the Disciplinary Board appointed before the commencement of this Act shall not be taken into account for the purposes of computation of limitation of term of appointment under this Act.

(3) Where on the date of coming into operation of this Act appeals under section 103E were pending before the High Court, the Court of Appeal or the Federal Court, as the case may be, the proceedings shall be continued under and in conformity with the provisions of section 103E as amended by this Act; but where on the coming into operation of this Act any appeal was in the course of being heard but no order or decision had been made on the appeal, the proceedings shall continue under the provisions of the principal Act applicable to those proceedings immediately before the date of coming into operation of this Act.

(4) Where on the date of coming into operation of this Act, disciplinary proceedings were pending before the Disciplinary Board, the proceedings shall continue under the provisions of the principal Act applicable to those proceedings immediately before the date of coming into operation of this Act and the Disciplinary Board may make such order or decision as it could have made under the authority vested in it under the principal Act immediately before the date of coming into operation of this Act.

(5) Any written application or complaint concerning the conduct of any advocate and solicitor or of any pupil referred to the Disciplinary Board before the date of coming into operation of this Act shall be dealt with under the provisions of the principal Act applicable to disciplinary proceedings immediately before the date of coming into operation of this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Legal Profession Act 1976 (“Act 166”).

2. *Clause 1* provides for the short title and commencement of the proposed Act.

3. *Clause 2* seeks to delete subsection 13(5) of Act 166 as it is no longer relevant. This is because the period an officer must serve in the Judicial and Legal Service in order to qualify for an exemption from serving any period of pupillage for purposes of his admission as an advocate and solicitor has been shortened to at least one year.

4. *Clause 3* seeks to amend section 37 of the Act to make it clear to foreign lawyers what they can or cannot do. Generally, the proposed amendment seeks to provide for the offence for a foreign lawyer who does not purport to practise in an international partnership, qualified foreign law firm or Malaysian law firm but who may be flying in and out of the country and either directly or indirectly, does or solicits the right to do any act which is customarily within the function or responsibility of an advocate and solicitor, including but not limited to advising on law (whether Malaysian or otherwise).

5. *Clause 4* seeks to insert a new Part IVA to liberalise the legal profession in Malaysia. Generally, the aim of this liberalisation is to develop Malaysia into an international Islamic financial hub and to expand the work, expertise and specialisation of the legal profession in Malaysia. The amendment to Act 166 by inserting this new Part IVA will allow foreign law firms to practise in Malaysia in the permitted practice areas through an international partnership or qualified foreign law firm licence. Local law firms will also be able to employ foreign lawyers subject to certain conditions.

6. *Clause 5* seeks to amend section 76 of Act 166 primarily to replace the word “secrecy” with “confidentiality”. The word “secrecy” may not be apt in keeping with current emphasis on transparency. Confidentiality that is required to be maintained in this section is confined to deliberations before the Legal Profession Qualifying Board, the Bar Council, *etc.*, which explains the reason for the substitution of the words “proceedings or matters” in subsections (2) and (3).

7. *Clause 6* seeks to amend subsection 80(8A) of the Act to enable interests, dividends and other accretions of capital arising from the Compensation Fund to be channelled to a fund established for the purpose of providing legal aid.

8. *Clause 7* seeks to insert a new section 92A into the Act. The proposed new section 92A will subject a registered foreign lawyer to the control of the Disciplinary Board for the purposes of all disciplinary actions under Part VII of the Act.

9. *Clause 8* seeks to amend section 93 of Act 166. The current provision enables the Chairman of the Disciplinary Board to be appointed from amongst serving or retired judges who shall serve for an indefinite period. The proposed amendment to subsection (3) seeks to disallow the appointment of the Chairman from amongst serving judges. The duration of his office is proposed to be limited to a maximum of three terms or six years. Consequent upon the proposal that the appointment of Chairman should be made amongst the retired judges only, subsection (3A) is proposed to be deleted.

The tenure of office of other members of the Board is also limited to a maximum of two terms or four years only. Apart from that, to be consistent with the threshold requirement for the appointment of the Chairman, it is proposed that the requirement of not less than fifteen years' standing for other members of the Disciplinary Board be reduced to ten years.

The amendment proposed to subsection (4A) will only allow the President of the Malaysian Bar to preside at any meeting of the Disciplinary Board and excludes his representative. Sections (4B) and (4C) are redrafted for purposes of clarity.

10. *Clause 9* seeks to amend section 94 of Act 166. The proposed amendment to subsection (2) is necessary to be consistent with the proposed amendment to subsection 100(7) which allows the Disciplinary Board to impose one or more of the penalties or punishments mentioned therein. The proposed new subsection (4A) provides that a foreign lawyer registered under section 40J shall *mutatis mutandis* be subject to the same control by the Disciplinary Board as is by virtue of section 94 exercised over an advocate and solicitor and any foreign lawyer who has been guilty of any misconduct shall be liable for suspension, for any period not exceeding five years, or revocation of his registration or reprimanded or censured or ordered to pay a fine, as the case may be. The proposed amendment to subsection (5) will prohibit a pupil who is subject to any disciplinary proceeding from proceeding with his petition for admission for a period of time. The proposed new subsection (6) will include a person who has completed the prescribed period of pupillage but has yet to be admitted as an advocate and solicitor.

11. *Clause 10* seeks to amend section 99 of Act 166. It is proposed through the new subsection (3A) that the lodging of any complaint against an advocate and solicitor should be subject to a limitation period of six years from the date of the accrual of the right of action to lodge the complaint, except for cases involving fraud. In such instances, the limitation period shall not run until the complainant has discovered the fraud or could with reasonable diligence have discovered it. The proposed new subsection (6) provides that for the purpose of section 99, "legal firm" includes an international partnership or qualified foreign law licensed under Part IVA.

12. *Clause 11* seeks to substitute section 100 of Act 166. The present provisions relating to summary disposal of complaints by the Disciplinary Board have been modified, redrafted, rearranged and renumbered in this substituted section for purposes of clarity and consistency. Concurrence of the advocate and solicitor is a prerequisite before such procedure is adopted.

Fine to be imposed under the summary procedure is proposed to be spelt out and the award not to exceed five thousand ringgit as proposed in paragraph (7)(b). It is also proposed that the Disciplinary Board's power to order restitution be confined to the limited circumstances as provided for in subsection (8).

13. *Clause 12* seeks to amend section 103 of Act 166 to grant the Disciplinary Board the discretion to extend the time for payment of fine or the sum to be restituted. Payment must be made to the Malaysian Bar instead of the Disciplinary Board.

14. *Clauses 13 and 14* seek to amend sections 103A and 103B of Act 166 respectively. Basically, the proposed amendments are for purposes of clarity, consistency and to improve the provisions relating to Disciplinary Committee and inquiry conducted by it.

15. *Clause 15* seeks to amend section 103c of Act 166, also aimed at improving the provisions relating to the findings and recommendations of the Disciplinary Committee.

16. *Clause 16* seeks to amend section 103D of Act 166. The proposed amendments also seek to improve the existing provision and to be in line with other provisions of the proposed Act. It is proposed that the Disciplinary Board shall record the reason for rejecting the finding or recommendation of the Disciplinary Committee. As the existing provision only empowers the Disciplinary Board to impose a greater penalty than that recommended by the Disciplinary Committee, it is proposed that the Disciplinary Board is also granted the power to impose a lesser penalty.

17. *Clause 17* seeks to amend section 103E of Act 166 relating to appeals. Right to appeal, which is still restricted to final orders or decisions of the Disciplinary Board, is proposed to be extended to any order made under subsection 94(4). By the proposed deletion of subsection (2), the prohibition on judicial review against any decision or order of the Disciplinary Board is removed. Subsection (3) is proposed to be deleted since hearing before the High Court is before a single Judge. Subsection (8) which relates to the Disciplinary Board's right to appear in and address the High Court and the appellate Courts in any appeal is also proposed to be deleted as it does not seem appropriate for an adjudicating body to be embroiled into litigation over its own decision.

18. *Clause 18* seeks to introduce new sections 103EA and 103EB into Act 166. Common challenges to disciplinary proceedings in the form of interlocutory applications during the course of an inquiry have the tendency of compromising the complainant's right to a legal redress. The preservation of the fundamental right to judicial review through the deletion of subsection 103E(2) in *clause 17* needs to be balanced against the interest of the complainant and the public at large. There is a deep concern that the process of judicial review may be abused, purely to delay the inquiry or to stop the inquiry from commencing at all. The new section 103EA is introduced to deal specifically with provisions relating to domestic challenge procedures. A mechanism is created to balance the two competing factors in order to ensure the expeditious completion of an inquiry by the Disciplinary Committee and the Disciplinary Board. It outlines the various steps to be observed when an objection is raised at any stage of an inquiry before the two entities. An aggrieved party shall have access to judicial review over any objection raised only when the Disciplinary Board made its final order or decision over a complaint.

The new section 103EB makes provisions for cost that could be ordered by the Court if the application or complaint was found to be frivolous and vexatious by the Disciplinary Board when dismissing the application or the complaint. This is to deter any party from lodging any baseless or unjustified complaint, thus causing the members of the legal profession unnecessary hardship and embarrassment.

19. *Clause 20* seeks to amend section 107 of Act 166 to provide that hearing before the High Court shall be before a single Judge, and to amend subsection (5) to make it consistent with the wordings in subsection 103E(5).

20. *Clause 21* contains the saving and transitional provisions as to the period of office of the Chairman and the members of the Disciplinary Board who were appointed before the coming into force of the proposed Act. This *clause* also provides for transitional provisions of disciplinary proceedings pending before the Disciplinary Board and the disciplinary appeals pursuant to section 103E before the commencement of the proposed Act.

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

FINANCIAL IMPLICATIONS

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

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