

A BILL

intituled

An Act to amend the Advocates Ordinance of Sabah (Cap. 2)

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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 2019.

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

Amendment of section 1(3) of the Advocates Ordinance (Sabah) (Amendment) Act 2017

2. Subsection 1(3) of the Advocates Ordinance (Sabah) (Amendment) Act 2017 is amended by substituting a colon for the full-stop at the end thereof and, thereafter by inserting the following proviso:

“Provided that different dates may be appointed for the coming into operation in the State of Sabah and Federal Territory of Labuan.”

Amendment of subsection 7C (1)

3 Sub-section 7C (1) of the Ordinance is amended by inserting the words “or, in the case of admission of a person as an advocate, after such admission” immediately after the words “in the preceding year”.

Amendment of subsection 12A (5)

4. Subsection 12A (5) of the Ordinance is amended by deleting the words, “with a member each from paragraph (a), (b) and (c)”.

Amendment of subsection 12A (6)

5. Subsection 12A (6) of the Ordinance is amended by inserting the words “or his alternate” immediately after the words “the President of the Law Society”.

Amendment of subsection 12A (7)

6. Subsection 12A (7) of the Ordinance is amended by inserting the words “or his alternate” immediately after the words “the President of Law Society”.

Amendment of subsection 12A (9)

7. Subsection 12A (9) of the Ordinance is amended by deleting the word “full-time” immediately before the word “employee”.

New subsections 12A (9A) and (9B)

8. Section 12A of the Ordinance is amended by inserting immediately after subsection (9) the following subsections (9A) and (9B):

“(9A). Wherever it is deemed necessary and expedient, the Disciplinary Board may sit in two or more panels consisting of members who shall be nominated by the Chairman from amongst the members of the Disciplinary Board: Provided that each panel shall have sufficient quorum.

(9B). The decision of the panel shall be deemed to be the decision of the Disciplinary Board.”.

Amendment of subsection 12C (1)

9. Subsection 12C (1) of the Ordinance is amended by substituting for the words “such rules as may from time to time be made under this Ordinance the words “section 12D”.

Amendment of subsection 12D (1)

10. Subsection 12D (1) is amended by substituting therefor the following:

“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 subparagraph 12G (1) (c) (i)

- 11 Subparagraph 12G (1) (c) (i) is amended by substituting therefor the words “having costs awarded against him;”.

New subsection 12G (3)

12. Section 12G of the Ordinance is amended by inserting immediately after subsection 12G (2) the following new 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 or to the Disciplinary Board as it may deem fit.”.

Amendment of subsection 12H (5)

13. Subsection 12 (H) (5) of the Ordinance is amended by substituting for the word “motion” appearing after the word “originating” the word “summons”.

Amendment of paragraph 13D (2) (g)

14. Paragraph 13D (2) (g) of the Ordinance is amended by substituting for the word “six” the word “eight”.

Amendment of subsection 13D (7)

15. Subsection 13D (7) of the Ordinance is amended by inserting immediately after the

words “the annual general meeting of the members” the word “biennially”.

New subsections 13D (7A) and 13D (7B)

16. Section 13D of the Ordinance is amended by inserting immediately after subsection (7) the following new 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 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 published in the Sabah Government *Gazette*.”

Amendment of section 13E

17. Section 13 E is amended by deleting subsection (2).

Amendment of paragraph 13K (1) (c)

18. Paragraph 13K (1) (c) of the Ordinance is amended by inserting at the end thereof the word “biennially”.

Amendment of subsection 15 (1)

19. Subsection 15 (1) of the Ordinance is amended by inserting immediately after the words “he has in force” the words “a valid Annual Certificate and”.

Amendment of subsection 16B (1)

20. Subsection 16B (1) of the Ordinance is amended-
- (i) by deleting the word “or” at the end of paragraph (c);
 - (ii) by inserting the word “or” at the end of paragraph (d); and
 - (iii) by inserting, thereafter, the following paragraph:
“(e) is incapacitated due to illness or any other cause.”.

New Part VIIA

21. The Ordinance is amended by inserting immediately after Part VII the following new Part VII A:

“PART VIIA RECOVERY AND TAXATION OF COSTS

Advocate defined

14P. In this Part the expression “advocate” includes the executors, the administrators and assignees of the advocate in question.

Advocate entitled to charge on property for costs

14Q. Any court in which an advocate has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the advocate entitled to a charge on the property recovered or preserved in such suit, matter or proceeding for such advocate’s taxed costs in reference to the suit, matter or proceeding, and may make such orders for the taxation of the costs and for raising money to pay, or for paying, the costs out of the property as it thinks fair and reasonable, and all conveyance and acts done to defeat, or operating to defeat, that charge shall, except in the case of a

conveyance to a *bona fide* purchaser for value without notice, be void as against the advocate.

Provided that no order shall be made if the right to recover the costs is barred by the Limitation Ordinance (Cap. 72).

No Advocate to sue for costs until delivery of bill of costs

14R. Except as authorised by this Ordinance, no advocate shall without the leave of the court commence or maintain any action for recovery of any costs due for any business done by him until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of abode, a bill of costs, which bill shall be signed either by the advocate, or in the case of a partnership, by any of the partners, either with his own name or with the name and style of the partnership, or by another advocate employed by the first-mentioned advocate or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill.

Power of court to authorise advocate to commence action

14S. The court may authorise and advocate to commence an action for the recovery of his costs and also refer his bill of costs for taxation by the Registrar, although one month has not expired from the delivery of the bill, upon proof to its satisfaction that any party chargeable therewith is about to quit Sabah, or have a receiving order made against him, or to compound with his creditors or to take any other steps or to do any other act which in its opinion would tend to defeat or delay the advocate in obtaining payment.

An order for taxation of costs to be made within 6 months from delivery of bills of costs

14T. (1) An order for the taxation of a bill of costs delivered by any advocate may be obtained by petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate, at any time within six months from the delivery of the bill, or, by the advocate after the expiration of one calendar month, and within a year from, the delivery.

(2) The order shall contain such directions and conditions as the court thinks proper, and any party aggrieved by the any order of the Court may apply by summons in chambers that the same may be amended or varied or set aside.

(3) In any case where the advocate and his client consent to the taxation of a solicitor's bill the Registrar may proceed to tax the bill notwithstanding that there is no order therefor.

The costs of obtaining an order for taxation

14U. The costs of obtaining an order of taxation of costs, including the petition order and service of the order, other than any court fees payable thereon or disbursements, if the order is obtained by consent by the advocate of either party shall be the sum of twenty-five ringgit:

Provided that if one of the parties does not consent to taxation the costs of obtaining an order of the court shall be the sum of one hundred and fifty ringgit.

Order for taxation of advocate's bill on notice given

14V (1) After the expiration of six months from the delivery of a bill of costs, or after payment of the bill of costs, no order shall be made for taxation of an advocate's bill of costs, except upon notice to the advocate and under special circumstances to be proved to the satisfaction of the Court.

(2) No such order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs.

Petition by party liable for the bill of costs

14W. All petitions by a party chargeable with or liable for a bill of costs shall, unless the same has been already paid, contain a submission by the party to pay the amount of the bill of costs to the advocate when taxed.

Order for delivery of advocate's bill of costs by way of petition

14X. (1) An order for the delivery of an advocate's bill of costs, and for delivery of any deeds, documents or other papers in the possession of the advocate may, subject to the lien which such advocate may have, and for the taxation of the bill when delivered, be obtained on a petition of course.

(2) Upon petition being filed, the Registrar shall mark the order thereon forthwith, and draw up the order if necessary.

(3) Subject to this section, the Court shall have the like jurisdiction as the High Court in England to make an order under subsection (1).

Court may order advocate to deliver copy of the bill to applicant

14Y. When application is made by a party other than the party chargeable, the Court may order the advocate to deliver the party making the application a copy of the bill, upon payment of the cost making the copy.

Bill of costs to follow Rules of Court

14Z. Bills of costs for taxation as between advocate and client shall be drawn in the manner provided by the Rules of Courts 2012, and taxation shall be governed by the Rules.

Registrar may allow interest on money disbursed by advocate

14ZA. The Registrar may allow interest at any rate from any time as he thinks fair and reasonable on moneys disbursed by an advocate for his client, and on moneys of the client in the hands of the advocate and improperly retained by him.

Costs of order of taxation payable by advocate

14ZB (1) In case of any order for taxation is made upon the application of the party chargeable or liable, or of the advocate, the costs of the order and taxation, except when the order has been made after the expiration of one year, shall be paid according to the event of such taxation-

- (a) if the bill when taxed is less by a sixth part than the bill delivered, then the advocate shall pay the costs;
- (b) if the bill when taxed is not less by a sixth part, then the party chargeable or liable, if the application is made by him, or if he attends the taxation, shall pay the costs.

(2) Every order for any reference under section 14S shall direct the Registrar to tax the costs of reference, and to certify what, upon the reference, is found to be due to or from the advocate in respect of the bill, and of the costs of the reference, if payable.

(3) The Registrar shall certify any special circumstances relating to the bill of taxation.

(4) The court may thereupon make any order as it considers fair and reasonable respecting the payment of the costs of such taxation.

(5) Where any such reference is made, but it is otherwise not authorised except under special circumstances, the Court may give special directions relative to the costs of the reference.

Certificate of taxing officer final

14ZC. The certificate of the Registrar by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of costs covered by the certificate, and the Court may make any order in relation to the certificate it considers fair and reasonable, including, in case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

Right of Government to costs unaffected

14ZD. Nothing in this Ordinance shall affect the right, which is hereby declared, of the Government when represented by any of the persons mentioned in section 16 (3)(a) to recover costs awarded to it in or respecting any cause or matter, and in any such cause or matter the costs of the Government shall be taxed in accordance with any rules in force for the time being for taxation of the fees and costs of advocate as if an advocate of the High Court who is not in the service of the Government had appeared on behalf of the Government.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Advocates Ordinance of Sabah (“the Ordinance”)

2. Clause 1 contains the short title and the provision on the commencement of the proposed Act.

3. Clause 2 seeks to amend subsection 1(3) of the Advocates Ordinance (Sabah) (Amendment) Act 2017 to provide that different dates may be appointed for the coming into operation of the Act in State of Sabah and Federal Territory of Labuan.

4. Clause 3 seeks to amend subsection 7C (1) of the Ordinance by inserting the words “or, in the case of admission of a person as an advocate, after such admission” immediately after the words “in the preceding year” so as to cater for the issuance of Annual Certificate by the Law Society to any newly admitted advocate.

5. Clause 4 seeks to amend subsection 12A(5) of the Ordinance to remove the compulsory presence of both the Chairman and of the President of the Law Society to form a quorum as

this is sometimes too difficult to achieve.

6. Clauses 5 and 6 seek to amend subsections 12A (6) and 12A (7) of the Ordinance respectively by inserting the words immediately after the words “the Law Society” the words “or his alternate” to make it clear that the alternate of the President of Law Society shall have the same right to chair meeting of the Disciplinary Board in the absence of the Chairman and may similarly be disqualified under subsection 12 A (8) of the Ordinance.

7. Clause 7 seeks to amend subsection 12A (9) of the Ordinance to remove the requirement that the Secretary of the Disciplinary Boards shall be full-time employee of the Law Society.

8. Clause 8 seeks to amend the Ordinance by inserting subsections 12A (9A) and 12A (9B) to empower the Disciplinary Board to sit in two or more panels provided that each panel shall have sufficient quorum so as to speed up disposal of complaints and to provide that the decision of each such panel shall be deemed to be decision of the Disciplinary Board.

9. Clause 9 seeks to amend subsection 12C (1) of the Ordinance by deleting the words “and such rules as may from time to time be made under this Ordinance” to allow any complaint to be dealt with under the amended section 12D of the Ordinance.

10. Clause 10 seeks to substitute for the provisions of the existing subsection 12D (1) of the Ordinance new provisions which empower the Disciplinary Board to dismiss summarily any complaint which has no merit or is frivolous or vexatious and to provide that if the complaint has merit the Disciplinary Board shall proceed to hear the complaint in accordance with rules made under the Ordinance from time to time.

11. Clause 11 seeks to amend paragraph (c) of subsection 12G (1) by deleting item (i) for it is a repetition of the punishment provided in paragraph 12G(1)(b) and by substituting therefor the punishment of “having costs awarded against him” so as to make it consistent with subsection 12B (2) of the Ordinance.

12. Clause 12 seeks to amend the Ordinance by inserting subsection 13G(3) to empower the Disciplinary Board to award costs to be paid by the complainant or by the advocate concerned in such manner as the Disciplinary Board may deem fit.

13. Clause 13 seeks to amend subsection 12(H) (5) of the Ordinance by substituting “originating summons” for “originating motion” to be in line with the new Rules of Court 2012.

14. Clause 14 seeks to amend paragraph 13D (2) (g) of the Ordinance to increase the number of committee members of the Executive Committee of the Law Society from six to eight.

15. Clauses 15 and 18 seek to amend subsection 13D (7) and paragraph 13K (1) (c) of the Ordinance respectively to provide for election of members of Executive Committee of the Law Society to be held biennially.

16. Clause 16 seeks to amend section 13D of the Ordinance by introducing new subsections (7A) and (7B) to provide the method of voting for the election of members of Executive

Committee of the Law Society, to empower the Law Society to make rules to provide for and to regulate voting by postal ballot in certain cases as the Law Society may deem fit and to require such rules to be published in the Sabah Government *Gazette* before they come into operation.

17. Clause 17 seeks to amend section 13E of the Ordinance by deleting subsection (2) to remove the requirement that rules made under paragraph 13E (1) (b) shall only come into operation after they have been adopted by the general meeting as this requirement is too cumbersome and would have the effect of rendering rule-making power of the Law Society nugatory.

18. Clause 19 seeks to amend subsection 15(1) of the Ordinance to require an advocate to have in force a valid Annual Certificate in addition to a valid certificate to practise to authorize him to practise or do any act as an advocate.

19. Clause 20 seeks to amend subsection 16B (1) of the Ordinance to extend the application of Second Schedule of the Ordinance dealing with the taking possession and control of property and documents in the advocate's possession by the Law Society in certain cases to an advocate who is a sole proprietor and who is incapacitated due to illness or any other cause.

20. Clause 21 seeks to introduce a new Part VIIA dealing with recovery and taxation of costs.

- (i) The new section 14P defines the word "advocate" used in this Part;
- (ii) The new section 14Q provides for the power of any court to declare the advocate entitled to a charge on the property recovered or preserved in such suit, matter or proceeding for such advocate's taxed costs;
- (iii) The new section 14R provides that except with the leave of the court, an advocate shall not commence action for costs due to him until the expiry of one month after he has delivered to the party to be charged a bill of costs.
- (iv) The new section 14S authorises the court to authorise an advocate to commence action for the recovery of costs before the expiry of one month from the delivery of the bill of costs to person chargeable with costs under certain circumstances.
- (v) The new section 14T provides that an order for the taxation of a bill of costs delivered by any advocate may be obtained by petition by the party chargeable therewith as matter of cause at any time within the six months from the delivery of the bill, or, by the advocate after the expiry of one calendar month, and within a year from, the delivery.
- (vi) The new section 14U provides for the costs of obtaining an order for taxation.
- (vii) The new section 14V provides that no order of taxation of a advocate's bill shall be made after the expiry of six months from the delivery of a bill of costs or after the payment of the bill of costs except upon notice to the advocate or under special circumstances proved to the satisfaction of the Court and no order shall be made in any case after the expiry of one year from the delivery of the bill of costs.
- (viii) The new section 14W provides that the petitions by a party chargeable with costs or liable for a bill of costs shall contain a submission by the party to pay the amount of bill of costs to the advocate when taxed.
- (ix) The new section 14X provides for the obtaining of an order for the delivery of

an advocate's bill of costs and for the delivery of any deeds, documents or other papers in the possession of the advocate by petition of course.

- (x) The new section 14Y provides that the Court may order a copy of the bill of costs to be delivered by an advocate on the application of a party other than the party chargeable with costs upon payment of cost on making the copy.
- (xi) The new section 14Z provides that bills of taxation of costs between advocate and client shall be drawn up in the manner provided by the Rules of Court 2012 and taxation shall be governed by the Rules.
- (xii) The new section 14ZA provides that the Registrar may allow interest on moneys disbursed by an advocate for his client and on moneys of his client improperly retained by him.
- (xiii) The new section 14ZB provides for circumstances under which the advocate or the party chargeable or liable shall pay the costs of taxation.
- (xiv) The new section 14ZC provides that the certificate of taxation issued by the Registrar by whom the bill of costs has been taxed is final as to the amount costs covered by the certificate unless otherwise set aside or altered by the Court.
- (xv) The new section 14ZD provides that right of Government's entitlement to costs when represented by any of the persons mentioned in section 16 (3) (a) of the Ordinance to recover costs awarded to it in or respecting any cause or matter is unaffected.

FINANCIAL IMPLICATIONS

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