

LAWS OF BRUNEI

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LAWS OF BRUNEI

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CHAPTER 132

LEGAL PROFESSION

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SOCIETY OF BRUNEI DARUSSALAM

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LEGAL PROFESSION ACT

An Act to repeal and re-enact the law relating to the legal profession and to authorise the constitution of a Law Society in Brunei Darussalam

*Commencement: 1st October 1986**

[S 18/1986]

*1st January 1987**

[S 18/1986]

*1st July 1990***

[S 6/1990]

*1st August 2003****

[S 41/2003]

PART 1

PRELIMINARY

Citation

1. This Act may be cited as the Legal Profession Act.

Interpretation

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

“advocate and solicitor” means an advocate and solicitor of the Supreme Court;

“Chief Registrar” means the Chief Registrar of the Supreme Court, a Registrar and a Deputy Registrar;

“client” includes —

(a) in relation to contentious business, any person who as principal or on behalf of another person retains or employs, or is about to retain or employ, an advocate and solicitor, and any person who is or may be liable to pay an advocate and solicitor’s costs;

* Please refer to N 1

** Please refer to N 2

*** Please refer to N 3

(b) in relation to non-contentious business, any person who, as a principal or on behalf of another, or as a trustee, executor or administrator, or in any other capacity, has power, express or implied, to retain or employ, and retains and employs or is about to retain or employ, an advocate and solicitor, and any person for the time being liable to pay any costs to an advocate and solicitor for his services;

“contentious business” means business done as an advocate and solicitor in or for the purposes of proceedings begun before a court of justice or before an arbitrator;

“contentious business agreement” means an agreement made in pursuance of section 44;

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

“Council” means the Council of the Society referred to in paragraph 10 of Schedule 1;

“Judge” means a Judge of the Supreme Court;

“legal officer” means a qualified person in the judicial or legal service of Brunei Darussalam or any qualified person who has been retained by or who appears in any case (as defined in section 7(6)) on the instructions of the Government;

“non-contentious business” means any business done as an advocate and solicitor which is not contentious business as defined by this section;

“practising certificate” means a certificate issued by the Chief Registrar under section 13;

“register of practitioners” means the annual register kept by the Chief Registrar under section 15;

“roll” means the roll of advocates and solicitors kept under section 10;

“Society” means the Law Society of Brunei Darussalam established by His Majesty the Sultan and Yang Di-Pertuan in Council by an order made under section 62(1)(a).

PART 2

ADMISSION OF ADVOCATES AND SOLICITORS

*Qualifications and procedure for admission***Qualified persons**

3. (1) A person shall be a qualified person for the purposes of this Act if, subject to the provisions of subsection (3), he —

(a) is a barrister-at-law of England or Northern Ireland or a member of the Faculty of Advocates of Scotland;

(b) is a solicitor in England or Northern Ireland or a Writer to the Signet, law agent or solicitor in Scotland;

(c) has been in active practice as an advocate and solicitor in Singapore or in any part of Malaysia; or

(d) is a barrister, solicitor or who is a barrister and solicitor of a Supreme Court of any Australian State or Territory.

(2) A person who is —

(a) a citizen of Brunei Darussalam; or

(b) a permanent resident,

on the date of his petition for admission shall, notwithstanding subsection (1), be a qualified person for the purposes of this Act if he has obtained such alternative qualification as may be prescribed.

(3) A person who is not, on the date of his petition for admission, either a citizen of Brunei Darussalam or a permanent resident, shall only apply for admission if, in addition to satisfying the requirements of subsection (1), he has been in active practice in any part of the United Kingdom, in Singapore, in any part of Malaysia, in any Australian State or Territory or in any other country or territory or part of a country or territory in the Commonwealth designated by the Attorney General by notice in the *Gazette* for at least 7 years immediately preceding such application.

Admission of advocates and solicitors

4. The Chief Justice may at his discretion, and subject to the provisions of this Act, admit as an advocate and solicitor any qualified person who —

(a) has attained the age of 21 years;

(b) is of good character; and

(c) has, to the extent that he is not exempt therefrom, served satisfactorily such manner and period of pupillage as may be prescribed for qualified persons.

Petitions for admission under section 4

5. (1) An application for admission under section 4 by a qualified person shall be by petition to the Chief Justice verified by affidavit.

(2) The petitioner shall file his petition in the Chief Registrar's office accompanied by a notice intimating that he has so applied, which notice shall be posted at the Supreme Court for one month before the petitioner is admitted as an advocate and solicitor.

(3) A petitioner shall, not less than one month before his petition is to be heard, file an affidavit exhibiting thereto —

(a) documentary evidence showing that he is a qualified person;

(b) documentary evidence in the case of a petitioner who is practising or has practised law outside Brunei Darussalam, that at the date thereof no disciplinary proceedings were pending or contemplated against him and that his professional conduct was not under investigation;

(c) two recent certificates as to his good character; and

(d) where he is required to serve a period of pupillage, a certificate of diligence from each master with whom the petitioner served his pupillage or, in the absence of such certificate, such other evidence as the court may require that he has served his pupillage with diligence.

(4) The petition and certificates referred to in this section shall be in the prescribed forms.

Service of documents and objections

6. (1) A copy each of every petition and affidavit required to be filed under the provisions of section 5 together with true copies of each document exhibited thereto shall, within 5 days of the documents being filed in the Chief Registrar's office, be served on the Attorney General, Society and upon such other persons as may be prescribed.

[S 1/2013]

(2) If the Attorney General, Society or any other person served with the application intends to object to any petition there shall be served on the petitioner, not less than 3 clear days before the day fixed for the hearing of the petition, or such shorter period as the Chief Justice may allow, a notice of objection in which shall be set out in brief terms the grounds of objection.

[S 1/2013]

(3) Any such notice of objection shall be filed in the Chief Registrar's office at any time before the day fixed for the hearing of the petition.

(4) It shall not be necessary for the Attorney General, Society or any other person served with the application to be represented at the hearing of any petition unless the Attorney General, Society or such other person intends to object to that petition.

[S 1/2013]

Ad hoc admission

7. (1) Notwithstanding anything to the contrary contained in this Act, a Judge may, in his discretion, admit to practice for the purpose of any one case any person who satisfies the requirements either of paragraph (a) or (b), that is to say —

(a) a person who holds Her Britannic Majesty's Patent as Queen's Counsel; and who —

(i) does not ordinarily reside in Brunei Darussalam but has come, or intends to come, to Brunei Darussalam for the purpose of appearing in the case on instructions of an advocate and solicitor; and

(ii) possesses special skill and qualifications for the purpose of the case whether or not such special skill and qualifications are available in Brunei Darussalam;

(b) a person who is entitled to practise before the High Court in Malaysia, Singapore or Hong Kong or in such other Commonwealth country as the Chief Justice may specify; and who —

(i) does not ordinarily reside in Brunei Darussalam but has come, or intends to come, to Brunei Darussalam for the purpose of appearing in the case on instructions of an advocate and solicitor; and

(ii) has not been admitted under this section in respect of more than two other cases in the current calendar year; and

(iii) possesses special skill and qualifications for the purpose of the case which are not otherwise available in Brunei Darussalam.

(2) Any person applying to be admitted under the provisions of this section shall do so by originating motion verified by an affidavit of the applicant or of the advocate and solicitor instructing him stating the names of the parties and brief particulars of the case in which the applicant intends to appear. The originating motion and affidavit shall, within 3 clear days of the documents being filed in the Chief Registrar's office, be served on the Attorney General, Society, the other parties to the case and such other persons as may be prescribed. At the time of such service the applicant shall pay a fee of \$100 to the Chief Registrar.

[S 1/2013]

(2A) If the Attorney General, Society or any other person served with the application intends to object to any originating motion, there shall be served on the applicant, not less than 3 clear days before the day fixed for the hearing of the originating motion, or such shorter period as the Judge may allow, a notice of objection in which shall be set out in brief terms the grounds of objection.

[S 1/2013]

(2B) Any such notice of objection shall be filed in the Chief Registrar's office at any time before the day fixed for the hearing of the originating motion.

[S 1/2013]

(2C) It shall not be necessary for the Attorney General, Society or any other person served with the application to be represented at the hearing of any originating motion unless the Attorney General, Society or such other person intends to object to that originating motion.

[S 1/2013]

(3) Before admitting a person under the provisions of this section, the Judge shall have regard to the views of each of the persons served with the application.

(4) The Chief Registrar shall, on payment of the prescribed fee, issue to any person admitted under the provisions of this section a certificate to practise specifying in it the case in which the person is permitted to appear. Any person to whom a certificate to practise has been issued under this subsection shall, for the purpose of his employment in that case, be deemed to be a person whose name is on the roll and to whom a practising certificate has been issued under section 13 and who maintains a place of business in accordance with section 18(1)(c).

(5) The Chief Registrar shall not enter upon the roll the names of persons admitted under this section but shall keep a separate roll for such persons.

(6) In this section, the word “case” includes any interlocutory or appeal proceedings connected with a case.

Provisional admission

8. (1) Where a qualified person has applied to be admitted as an advocate and solicitor under section 4 and has filed and served his petition and verifying affidavit with exhibits in accordance with sections 5 and 6, the Chief Justice may, at his absolute discretion at any time before the hearing of such application, admit such qualified person provisionally to practise as an advocate and solicitor subject to the provisions of this section and subject to such terms and conditions as the Chief Justice may think fit to impose.

(2) An application by a qualified person for provisional admission as an advocate and solicitor under subsection (1) may be made *ex parte* by letter addressed to the Chief Justice at the Chief Registrar’s office.

[S 1/2013]

(3) The Chief Registrar shall, on payment of the prescribed fee, issue to every person admitted provisionally under subsection (1) a provisional licence to practise specifying in it any terms and conditions imposed by the Chief Justice.

(4) The holder of a provisional licence to practise shall be entitled, subject to subsection (5), section 18(1)(c), and to any terms and conditions specified in such certificate, to practise as an advocate and solicitor as if his name were on the roll and as if a practising certificate has been issued to him.

(5) A provisional licence to practise issued to a qualified person under subsection (3) may be revoked at any time by the Chief Justice at his absolute discretion and, if not previously revoked by the Chief Justice under this subsection, shall expire on the date of the final determination or withdrawal of the petition for admission of such qualified person.

(6) The Chief Registrar shall not enter upon the roll the names of persons admitted provisionally under this section but shall keep a separate roll for such persons.

Hearing and right of appeal

Hearing and right of appeal

9. (1) Petitions under section 5 and originating motions under section 7 for admission as an advocate and solicitor shall if objected to by the Attorney General, Society or by any other person served with the application be heard in open court.

[S 1/2013]

(2) An appeal shall lie to the Court of Appeal from any judgment or order of the court on any petition under section 5 or any originating motion under section 7.

(3) An appeal under subsection (2) shall lie at the instance of a petitioner under section 5 or an applicant by originating motion under section 7, as the case may be, and in either case at the instance of the Attorney General, Society or of any party or other person who has been served with the proceedings pursuant to section 6(1) or 7(2) and has objected at the hearing to any petition or to the making of any order on an originating motion.

[S 1/2013]

(4) An appeal under this section shall be made within the time and in the form and shall be heard in the manner of a civil appeal from the High Court.

(5) The Court of Appeal shall have power to make such order on an appeal under this section as they may think fit.

Declaration, enrolment and misrepresentation

Declaration and enrolment

10. (1) A person admitted as an advocate and solicitor shall, upon such admission, make an oral declaration before the Chief Justice in the form set out in subsection (2).

(2) Subject to any necessary modification to conform to the religious beliefs of the petitioner, the declaration shall be in the following form —

“I, A.B., do solemnly and sincerely declare (and swear) that I will truly and honestly conduct myself in the practice of an advocate and solicitor according to the best of my knowledge and ability and according to the law”.

(3) The Chief Registrar shall keep a roll of advocates and solicitors with the dates of their respective admissions.

(4) The name, with the date of admission, of every person admitted shall be entered upon the roll in order of admission.

(5) Every person admitted as an advocate and solicitor shall pay the prescribed fee; and the Chief Registrar shall deliver to him an instrument of admission signed by the Chief Justice.

(6) The Chief Registrar shall at least once in every year publish in the Government *Gazette* the names of all persons on the roll.

(7) The provisions of this section do not apply to persons admitted under the provisions of section 7 or to persons provisionally admitted under section 8.

Misrepresentation

11. (1) If at any time after the admission and enrolment of any petitioner as an advocate and solicitor it is shown to the satisfaction of a Judge that any petition, affidavit, certificate or other document filed by a petitioner contains any statement which is false or misleading in substance or a suppression of any material fact the Judge may order the Chief Registrar to remove the name of such petitioner from the roll.

(2) Where the name of an advocate and solicitor has been removed from the roll under subsection (1), the Chief Registrar shall upon any further petition for admission made by the same person bring this fact to the notice of a Judge who shall, in the absence of special circumstances, refuse to grant such further petition.

Declaration by Chief Justice that there are sufficient advocates in Brunei Darussalam

12. (1) Notwithstanding anything contained in this Act, if the Chief Justice shall be of the opinion that the number of advocates practising in Brunei Darussalam is sufficiently adequate to serve the needs of the community he shall by notice in the Government *Gazette* so declare.

(2) At any time after a declaration under subsection (1) has been made and until such declaration is revoked —

(a) no person other than a national of Brunei Darussalam shall be entitled to be admitted as an advocate or to obtain a provisional licence under section 8;

(b) His Majesty the Sultan and Yang Di-Pertuan in Council may direct that the name of any advocate on the roll who is not at the expiration of the period of 6 months next following the publication of such declaration or at any time thereafter ordinarily resident in Brunei Darussalam shall be deleted from the roll.

(3) A direction under subsection (2) shall be sufficient authority for the Chief Registrar to cancel any certificate issued to such advocate under section 13 and to refuse to issue to him further certificate thereunder and shall preclude such advocate from practising in Brunei Darussalam except under the provisions of section 7 or except upon readmission subsequent to the revocation of a declaration under subsection (1).

(4) An advocate whose name has been deleted from the roll under this section shall not be entitled to refund of any prescribed fee.

PART 3

PRACTISING CERTIFICATES

Practising certificates

13. (1) Every advocate and solicitor shall in every year before he does any act in the capacity of an advocate and solicitor, deliver or cause to be delivered to the Chief Registrar an application for a practising certificate in such form or forms as may be prescribed by and in accordance with rules made under subsection (5).

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

(a) a declaration in writing by the applicant stating —

- (i) his full name;
- (ii) the name under which he practises or the name of the advocate and solicitor or firm of advocates and solicitors employing him;
- (iii) the address of the principal and every other place of business at which he practises in Brunei Darussalam;
- (iv) any other particulars that may be required by any rule made under subsection (5);
- (v) if he is not a citizen of Brunei Darussalam or a permanent resident applying for the renewal of his practising certificate, that during the period in respect of which his immediately preceding practising certificate was issued he had been in active practice in Brunei Darussalam —
 - (A) if it was issued after 31st March 1999 and was his first practising certificate, for at least 3 months in the aggregate;
 - (B) in any other case, for at least 9 months in the aggregate;

(b) an accountant's report pursuant to section 24 or a declaration by such advocate and solicitor that, owing to circumstances of his case specified in such declaration, such a report is unnecessary;

(c) the prescribed fee; and

(d) any other document that may be required by any rule made under subsection (5),

and the Chief Registrar shall, on being satisfied that the name of the applicant is on the roll and that all the documents accompanying the application are in order, issue to the applicant a practising certificate authorising him to practise as an advocate and solicitor in Brunei Darussalam.

(3) Every practising certificate issued in January in any year shall bear the date of the 1st January in that year and every other practising certificate shall bear the date of the day on which it is issued.

(4) Every practising certificate shall be signed by the Chief Registrar and shall have effect from the beginning of the day of which it bears the date and shall expire at the end of the 31st December next after it is issued:

Provided that —

(a) where the name of an advocate and solicitor is removed from or struck off the roll his practising certificate, if any, for the time being in force shall expire forthwith and the date of such expiration shall be entered by the Chief Registrar on the register of practitioners;

(b) where an advocate and solicitor is adjudicated bankrupt or a receiving order is made against him, his practising certificate, if any, shall be suspended forthwith, until the consent of the Chief Justice for its reinstatement is obtained.

(5) Subject to the provisions of this Act, the Chief Justice, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may make rules regulating the issue of practising certificates.

Disqualification for practising certificate

14. (1) No advocate and solicitor shall apply for a practising certificate —

(a) unless he is practising or intends to practise in Brunei Darussalam either on his own account or in partnership; or

(b) unless he is or is about to be employed in his or their practice in Brunei Darussalam by an advocate and solicitor or a firm of advocates or solicitors in practice in Brunei Darussalam; and

(c) unless he is or is about to be ordinarily resident in Brunei Darussalam:

Provided that in the case of an advocate and solicitor who is not a citizen of Brunei Darussalam or a permanent resident, this subsection shall not entitle him to apply for the renewal of his practising certificate unless, during the period in respect of which his immediately preceding practising certificate was issued, he had been in active practice in Brunei Darussalam —

(i) if it was issued after 31st March 1999 and was his first practising certificate, for at least 3 months in the aggregate;

(ii) in any other case, for at least 9 months in the aggregate.

(2) For the purpose only of this section, an advocate and solicitor is deemed to be practising in Brunei Darussalam on his own account and entitled on payment of the prescribed fee to a practising certificate, if he is employed or works in Brunei Darussalam in his professional capacity as an advocate and solicitor in —

(a) the Government; or

(b) an approved legal department.

(3) In this section, “an approved legal department” means a legal department of a company incorporated in Brunei Darussalam under the Companies Act (Chapter 39) which is designated by the Attorney General as an approved legal department by a written notice to the Chief Registrar. The written notice may contain such terms and conditions as the

Attorney General thinks fit to impose, and the written notice shall be valid for such period as the Attorney General thinks fit and states therein, and may be renewed from time to time.

(4) A practising certificate issued to an advocate and solicitor shall cease to have effect when he ceases to practise or to be employed or to work as provided in this section.

Register of practitioners

15. (1) Upon the issue of a practising certificate the Chief Registrar shall cause to be entered in an annual register, kept for that purpose and in this Act called the “register of practitioners”, the particulars as contained in the declaration delivered under section 13(2)(a). Any person may inspect the register of practitioners during office hours without payment.

(2) If there is any change with respect to any advocate and solicitor in the particulars referred to in subsection (1) he shall within one week thereafter notify the Chief Registrar, who shall thereupon cause the entry in respect of that advocate and solicitor in the register of practitioners to be amended.

Cancellation of practising certificates

16. (1) Without prejudice to section 29(2)(a), if it appears to the Attorney General that a practising certificate has been issued to an advocate and solicitor contrary to the provisions of this Act, or that the accountant’s report submitted by an advocate and solicitor does not comply with the provisions of section 24 (as saved by section 6(2) of the Legal Profession Act (Amendment) Order, 2003) (S 40/2003), the Attorney General may apply to a Judge by originating summons for an order directing the Chief Registrar to cancel the certificate.

(2) Such an application shall be served on the advocate and solicitor concerned. Upon the hearing thereof the Judge may make such order for the payment of costs, as he thinks fit.

PART 4

PRIVILEGES OF ADVOCATES AND SOLICITORS

Privileges of advocates and solicitors

17. (1) Subject to the provisions of any written law, advocates and solicitors shall have the exclusive right to appear and plead in all courts of justice in Brunei Darussalam.

(2) Notwithstanding anything contained in this Act, the following persons are deemed to be advocates and solicitors —

(a) any person who holds the office of Attorney General, Solicitor General, Deputy Public Prosecutor or any other office which His Majesty the Sultan and Yang Di-Pertuan has by notice in the Government *Gazette* declared to be an office to which this subsection applies, for so long as he continues to hold such office; and

(b) any qualified person who has been retained by or who appears in any case (as defined in section 7(6)) on the instructions of the Government.

(3) The Attorney General and the Solicitor General appearing personally shall have such priority as is customarily accorded to the holders of those offices in England.

Qualifications to practise

18. (1) Subject as hereinafter provided, no person shall practise as an advocate and solicitor or do any act as an advocate and solicitor unless —

(a) his name is on the roll;

(b) he has a valid practising certificate; and

(c) he or the firm of advocates and solicitors of which he is a member or the advocate and solicitor or firm of advocates and solicitors by which he is employed maintains a place of business in Brunei Darussalam suitable for the carrying on of the practice of an advocate and solicitor or a firm of advocates and solicitors, as the case may be,

and a person who is not so qualified is in this Act referred to as an “unauthorised person”.

(2) The Government or an approved legal department, as that expression is defined in section 14, shall for the purpose of this section be deemed to be a place of business in Brunei Darussalam suitable for the carrying on of the practice of an advocate and solicitor.

(3) Nothing in this section shall be construed so as to prevent a legal officer from performing any of his duties without holding a practising certificate or to make a legal officer who has no valid practising certificate an unauthorised person.

No unauthorised person to act as advocate and solicitor

19. (1) Any unauthorised person who —

(a) acts as an advocate and solicitor or an agent for any party to proceedings or who, as such advocate and solicitor or agent or in any other capacity (other than as a party to an action in which he is himself a party), issues out any writ, summons or process, or commences, carries on, solicits or defends any action, suit or other proceeding in the name of any other person or in his own name in any of the courts in Brunei Darussalam or draws or prepares any instrument relating to any proceeding in the courts in Brunei Darussalam; 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 authorised to act as an advocate and solicitor, or that he is recognised by law as so qualified or authorised,

is guilty of an offence and liable on conviction to a fine of \$1,000 and to imprisonment for a term of 6 months.

(2) Without prejudice to the generality of subsection (1), any unauthorised person who either directly or indirectly —

(a) draws or prepares any document or instrument relating to any immovable or movable property or to any legal proceeding; or

(b) takes instructions for or draws or prepares any document or instrument on which to found or oppose a grant of probate or letters of administration; or

(c) draws or prepares any document or instrument relating to the incorporation or formation of a limited company; or

(d) 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 an advocate and solicitor for legal proceedings; or

(e) solicits the right to negotiate, or negotiates in any way for the settlement of, or settles, any claim arising out of personal injury or death founded upon a legal right 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.

(3) Any unauthorised person who offers, or agrees to place at the disposal of any other person, the services of an advocate and solicitor shall be guilty of an offence under this subsection:

Provided that this subsection does not apply to any person who offers or agrees to place at the disposal of any other person the services of an advocate and solicitor pursuant to a lawful contract of indemnity or insurance.

(4) Every person who is convicted of an offence under subsection (2) or (3) shall be liable for a first offence to a fine of \$500, or in default of payment to imprisonment for a term of 3 months, and for a second or subsequent offence to a fine of \$1,000 and to imprisonment for a term of 6 months.

(5) Any act done by a body corporate which in the case of a person would be an offence under subsection (1), (2) or (3) or is of such a nature or is done in such a manner as to be calculated to imply that the body corporate is qualified or recognised by law as qualified to act as an advocate and solicitor shall be an offence under this section and the body corporate shall be liable on conviction for a first offence to a fine of \$1,000 and for a second or subsequent offence to a fine of \$3,000. Where such act is done by a director, officer or servant of the body corporate such director, officer or

servant shall, without prejudice to the liability of the body corporate, be liable to the punishment provided in subsection (4).

(6) Where any firm does an act which in the case of a person would be an offence under the provisions of subsection (1), (2) or (3) every member of the firm is deemed to have committed such offence unless he proves that he was unaware of the commission of the act.

(7) Any person who does any act in relation to a contemplated or instituted proceeding in the Supreme Court which is an offence under this section is also guilty of a contempt of the court in which the proceeding is contemplated or instituted and may be punished accordingly, irrespective of whether he is prosecuted for the offence or not.

Exceptions to section 19

20. (1) The provisions of section 19 do not extend to —

(a) the Attorney General or the Solicitor General or any other person acting under the authority of either of them;

(b) any other public officer drawing or preparing instruments in the course of his duty;

(c) any person acting personally for himself only in any matter or proceeding to which he is a party;

(d) any *bona fide* and full-time employee of an insurance company negotiating for the settlement of or settling a claim made or contemplated against any person or body corporate in cases where the claim, arising out of personal injury or death, relates to a risk insured by that insurance company;

(e) *(deleted by S 59/2016)*;

(f) any accountant drawing or preparing documents in the exercise of his profession;

(g) any proceeding before any religious court constituted under the Religious Council and Kadis Courts Act (Chapter 77);

(h) any person merely employed to engross any instrument or proceeding;

(i) any approved company auditor drawing or preparing any instrument which he is empowered to do under any law for the time being in force relating to companies;

(j) any agent duly authorised to the satisfaction of the Registrar of Trade Marks drawing or preparing documents in any matter relating to trade marks; or

(k) any full-time employee of an advocate and solicitor drawing or preparing any document or instrument under the authority of a practising advocate and solicitor and for the purposes of his employer.

(2) In section 19, “document” and “instrument” do not include —

(a) a will or other testamentary document; or

(b) a transfer of stock containing no limitation thereof.

Sections 18 and 19 not to extend to arbitration proceedings [S 59/2016]

20A. (1) Sections 18 and 19 do not extend to —

(a) any arbitrator or umpire lawfully acting in any arbitration proceedings;

(b) any person representing any party in arbitration proceedings; or

(c) the giving of advice, preparation of documents and any other assistance in relation to or arising out of arbitration proceedings except for the right of audience in court proceedings.

(2) In this section, “arbitration proceedings” means proceedings in an arbitration which —

(a) is governed by the Arbitration Order, 2009 (S 34/2009) or the International Arbitration Order, 2009 (S 35/2009); or

(b) would have been governed by either the Arbitration Order, 2009 (S 34/2009) or the International Arbitration Order, 2009 (S 35/2009) had the place of arbitration been Brunei Darussalam.

Endorsement of documents and instruments

21. (1) Every person, other than a person referred to in section 20(1)(a), (b) or (c), who draws or prepares any document or instrument to which section 19 applies shall endorse or cause to be endorsed thereon his name and address or the name and address of his firm or the firm employing him.

(2) Any such person who omits to endorse such a document or instrument or to cause it to be endorsed in accordance with subsection (1) or who falsely endorsed such a document or instrument or causes it to be falsely endorsed is guilty of an offence and liable on conviction to a fine of \$1,000.

No costs recoverable by unauthorised person

22. (1) No costs in respect of anything done by an unauthorised person as an advocate and solicitor or in respect of any act which is an offence under section 19 or is done in such a manner as to constitute an offence under section 21 shall be recoverable by any person in any action, suit or matter.

(2) Any payment to an unauthorised person for anything done by that unauthorised person which is an offence under section 19 or is done by that unauthorised person in such a manner as to constitute an offence under section 21 may be recovered in a court of competent jurisdiction by the person who paid the money.

PART 5

23. — 24. (*Repealed with saving*).

25. — 28. (*Repealed*).

Qualification to use title of consultant

28A. (1) No advocate and solicitor shall take or use the title of consultant unless he has, for a period of not less than 10 years in the aggregate, been either an advocate and solicitor in practice, a legal officer or both.

(2) Any advocate and solicitor who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Solicitors who are commissioners for oaths or notaries public

28B. No advocate and solicitor who is a commissioner for oaths or a notary public shall do any act as such commissioner or notary public, as the case may be, unless he has in force a practising certificate.

Solicitor not to act as agent for unauthorised persons

28C. (1) No advocate and solicitor shall —

(a) wilfully and knowingly act as agent for any unauthorised person in any legal proceedings of whatsoever kind or in any matter which under this Act can be done only by an advocate and solicitor who has in force a practising certificate;

(b) permit his name to be made use of in any such proceedings or matter upon the account or for the profit of any unauthorised person; or

(c) send any process to any unauthorised person, or do any other act enabling any unauthorised person to appear, act or practise or purport to practise in any respect as an advocate and solicitor in any such proceedings or matter.

(2) No advocate and solicitor shall authorise any unauthorised person to operate any bank account in the name of the advocate and solicitor or his firm and maintained by the advocate and solicitor or his firm in connection with his practice as an advocate and solicitor.

(3) Disciplinary proceedings may be taken against any advocate and solicitor who acts in contravention of subsection (1) or (2).

(4) Any unauthorised person who was enabled by an advocate and solicitor to act or practise or purport to practise as an advocate and solicitor is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months.

(5) In this section, “unauthorised person” has the meaning assigned to it in section 18(1).

Account by advocate and solicitor

28D. (1) Where the relationship of advocate and solicitor and client exists, or has existed, a summons may be issued by the client or his representative for the delivery of a cash account, the payment or moneys or for the delivery of securities.

(2) A Judge may order the respondent to deliver to the applicant a list of the moneys or securities which has in his custody or control on behalf of the applicant, or to bring the whole or any part of it into court, within such time as the Judge orders.

(3) In the event of the respondent alleging that he has a claim for costs, the Judge may make such provision for the payment or security thereof or for the protection of the respondent's *lien*, if any, as he thinks fit.

Power of Council to inspect files of proceedings in bankruptcy of advocate and solicitor

28E. Notwithstanding the provisions of any other written law, the Council may, without payment of any fee, inspect the files of proceedings in bankruptcy relating to any advocate and solicitor against whom proceedings in bankruptcy have been taken, and shall be entitled to be supplied with office or certified copies of those proceedings on payment of the usual charges for those copies.

PART 6

29. (*Repealed with saving*).

30. — 39. (*Repealed*).

PART 7

REMUNERATION OF ADVOCATES AND SOLICITORS

*Prohibitions***Prohibition of certain transactions**

40. (1) No advocate and solicitor shall —

(a) purchase or agree to purchase the interest or any part of the interest of his client or of any party in any suit, action or other contentious proceedings brought or to be brought or maintained; or

(b) enter into any agreement, other than any agreement for the taking of contingency fees made in accordance with rules made under section 65, by which he is retained or employed to prosecute any suit or action or other contentious proceeding which stipulates for or contemplates payment only in the event of success in that suit, action or proceeding.

(2) Nothing in this Act shall be construed to give validity to any purchase or agreement prohibited by subsection (1) or to any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is void or invalid against —

(a) a trustee under the law relating to bankruptcy;

(b) a liquidator or receiver under the law relating to the winding up of companies; or

(c) a creditor in any composition.

Non-contentious business

Rules as to remuneration for non-contentious business

41. (1) The Chief Justice may make rules prescribing and regulating in such manner as he may think fit the remuneration of advocates and solicitors in respect of non-contentious business.

(2) Rules made under this section may prescribe the mode of remuneration of advocates and solicitors in respect of non-contentious business by providing that they shall be remunerated —

(a) according to a scale of rates of commission or a scale of percentages, varying or not in different classes of business; or

(b) by a gross sum; or

(c) by a fixed sum for each document prepared or perused, without regard to length; or

(d) in any other mode; or

(e) partly in one mode and partly in another.

(3) Rules made under this section may authorise and regulate the amount of such remuneration with reference to all or any of the following among other, considerations, that is to say —

(a) the position of the party for whom the advocate and solicitor is concerned in the business, that is, whether he is vendor or purchaser, lessor or lessee, mortgagor or mortgagee, or the like;

(b) the place where, and the circumstances which, the business or any part of it is transacted;

(c) the amount of the capital money or rent to which the business relates;

(d) the skill, labour and responsibility on the part of the advocate and solicitor which the business involves;

(e) the number and importance of the documents prepared or perused, without regard to length.

(4) Rules made under this section may authorise and regulate —

(a) the taking by an advocate and solicitor from his client of security for payment of any remuneration, to be ascertained by taxation or otherwise, which may become due to him under any such rules; and

(b) the allowance of interest.

(5) So long as rules made under this section are in operation and taxation of bills of costs of advocates and solicitors in respect of non-contentious business shall, subject to the provisions of section 42, be regulated by such rules.

Non-contentious business agreements

42. (1) Whether or not any rules are in force under section 41, an advocate and solicitor and his client may, before or after or in the course of the transaction of any non-contentious business by the advocate and solicitor,

make an agreement as to the remuneration of the advocate and solicitor in respect of that business.

(2) The agreement may provide for the remuneration of the advocate and solicitor by a gross sum, or by a commission or percentage, or by a salary, or otherwise, and it may be made on the terms that the amount of the remuneration stipulated for shall or shall not include all or any disbursements made by the advocate and solicitor in respect of searches, plans, travelling, stamps, fees or other matters.

(3) The agreement shall be in writing and signed by the person to be bound by it or his agent in that behalf.

(4) Where the agreement is relied on by the advocate and solicitor and objected to by the client as unfair or unreasonable, the Chief Registrar may enquire into the facts and certify them to the High Court, and if from that certificate it appears just to the court that the agreement should be set aside, or the amount payable under it reduced, the court may so order and may give such consequential directions as it thinks fit.

Remuneration of advocate and solicitor who is mortgagee

43. (1) Where a mortgage is made to an advocate and solicitor, either alone or jointly with any other person, he, or the firm of which he is a member, shall be entitled to recover from the mortgagor in respect of business transacted and acts done by him or them in negotiating the loan, deducting and investigating the title to the property, and preparing and completing the mortgage, such usual costs as he or they would have been entitled to receive if the mortgage has been made to a person who was not an advocate and solicitor and that person had retained and employed him or them to transact that business and do those acts.

(2) Where a mortgage has been made to, or has become vested by transfer or transmission in, an advocate and solicitor, either alone or jointly with any other person, and any business is transacted or acts are done by that advocate and solicitor, or by the firm of which he is a member, in relation to that mortgage or the security thereby created or the property thereby charged, then he or they shall be entitled to recover from the person on whose behalf the business was transacted or the acts were done, and to charge against the security, such usual costs as he or they would have been entitled to receive if the mortgage has been made to and had remained vested in a person who was not an advocate and solicitor and that person had retained and employed him or them to transact that business and do those acts.

(3) In this section, “mortgage” includes any charge on any property for securing money or money’s worth.

Contentious business

Contentious business agreements

44. (1) Subject to the provisions of any other written law, an advocate and solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of his costs in respect of contentious business done or to be done by him (in this Act referred to as a contentious business agreement) providing that he shall be remunerated by a gross sum, or by a salary, or otherwise, and whether at a higher or lower rate than that at which he would otherwise be entitled to be remunerated.

(2) Every contentious business agreement shall be signed by the client and shall be subject to the provisions and conditions contained in this Part.

Effect of contentious business agreements

45. (1) Subject to the provisions of this Part, the costs of an advocate and solicitor in any case where a contentious business agreement has been made shall not be subject to taxation or to the provisions of section 54.

(2) Subject to subsection (3), a contentious business agreement shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the advocate and solicitor, and that person may, unless he has otherwise agreed, require any such costs to be taxed.

(3) A client shall not be entitled to recover from any other person under an order for the payment of any costs to which a contentious business agreement relates more than the amount payable by him to his advocate and solicitor in respect of those costs under the agreement.

(4) A contentious business agreement is deemed to exclude any claim by the advocate and solicitor in respect of the business to which it relates other than —

(a) a claim for the agreed costs; or

(b) a claim for such costs as are expressly excepted from the agreement.

(5) A provision in a contentious business agreement that the advocate and solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as an advocate and solicitor, shall be void.

Enforcement of contentious business agreements

46. (1) No action shall be brought on any contentious business agreement, but on the application by summons, motion or petition of any person who —

(a) is a party to the agreement or the representative of such a party; or

(b) is or is alleged to be liable to pay, or is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates,

the court may enforce or set aside the agreement and determine every question as to its validity or effect.

(2) On any summons, motion or petition under subsection (1) the court —

(a) if it is of the opinion that the agreement is in all respects fair and reasonable, may enforce it;

(b) if it is of the opinion that the agreement is in any respect unfair or unreasonable, may set it aside and order the costs covered by it to be taxed as if it had never been made;

(c) in the case, may make such order as to the costs of the application as it thinks fit.

(3) If the business covered by a contentious business agreement (not being an agreement to which section 47 applies) is business done, or to be done, in any action, a client who is a party to the agreement may make application to a taxing officer of the court for the agreement to be examined.

(4) A taxing officer before whom an agreement is laid under subsection (3) shall examine it and may either allow it, or, if he is of the opinion that the agreement is unfair or unreasonable, require the opinion of the court to be taken on it, and the court may allow the agreement or reduce the amount payable under it, or set it aside and order the costs covered by it to be taxed as if it had never been made.

(5) Where the amount agreed under any contentious business agreement is paid by or on behalf of the client or by a person entitled to do so, the person making the payment may at any time within 12 months from the date of payment, or within such further time as appears to the court to be reasonable, apply to the court, and, if it appears to the court that the special circumstances of the case require it to be re-opened, the court may, on such terms as may be just, re-open it and order the costs covered by the agreement to be taxed and the whole or any part of the amount received by the advocate and solicitor to be repaid by him.

(6) In this section and in sections 47 and 48, “the court” means —

(a) the High Court, in relation to an agreement under which any business has been done in the Supreme Court, or in relation to an agreement under which no business has been done in any court;

(b) the Court of a Magistrate, in relation to an agreement under which any business has been done in the court.

(7) In this Part, “taxing officer” means —

(a) the Chief Registrar, in relation to the High Court;

(b) the Registrar of the Subordinate Courts, in relation to a Court of a Magistrate.

Contentious business agreements by certain representatives

47. (1) Where the client who makes a contentious business agreement makes it as a representative of a person whose property will be chargeable with the whole or part of the amount payable under the agreement, the agreement shall be laid before a taxing officer of the court before payment.

(2) A taxing officer before whom an agreement is laid under subsection (1) shall examine it and may either allow it, or, if he is of the opinion that it is unfair or unreasonable, require the opinion of the court to be taken on it, and the court may allow the agreement or reduce the amount payable under it, or set it aside and order the costs covered by it to be taxed as if it had never been made.

(3) A client who makes a contentious business agreement as mentioned in subsection (1) and pays the whole or any part of the amount payable under the agreement without it being allowed by the officer or by the court shall be liable at any time to account to the person whose property is charged with the whole or any part of the amount so paid for the sum so charged, and the advocate and solicitor who accepts the payment may be ordered by the court to refund the amount received by him.

(4) A client makes a contentious business agreement as the representative of another person if he makes it —

(a) as his guardian;

(b) as a trustee for him under a deed or will; or

(c) as a person authorised under any written law relating to mental health to act on his behalf.

Effect on contentious business agreement of death, incapability or change of advocate and solicitor

48. (1) If, after some business has been done under a contentious business agreement but before the advocate and solicitor has wholly performed it —

(a) the advocate and solicitor dies, or becomes incapable of acting; or

(b) the client changes his advocate and solicitor (as, notwithstanding the agreement, he shall be entitled to do),

any party to, or the representative of any party to, the agreement may apply to the court, and the court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as the court would have had if the advocate and solicitor had not died or become incapable of acting, or the client had not changed his advocate and solicitor.

(2) The court, notwithstanding, that it is of the opinion that the agreement is in all respects fair and reasonable, may order the amount due in respect of business under the agreement to be ascertained by taxation, and in that case —

(a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and

(b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been completely performed.

(3) If in such a case as is mentioned in subsection (1)(b) an order is made for the taxation of the amount due to the advocate and solicitor in respect of the business done under the agreement, the court shall direct the taxing officer to have regard to the circumstances under which the change of advocate and solicitor has taken place. The taxing officer, unless he is of the opinion that there has been no default, negligence, improper delay or other conduct on the part of the advocate and solicitor affording the client reasonable ground for changing his advocate and solicitor, shall not allow to the advocate and solicitor the full amount of the remuneration agreed to be paid to him.

Form of bill of costs for contentious business

49. (1) Where the remuneration of an advocate and solicitor in respect of contentious business done by him is not the subject of a contentious business agreement, then, subject to subsections (2) to (4), the advocate and solicitor's bill of costs may at the option of the advocate and solicitor be either a bill containing detailed items or a gross sum bill.

(2) The party chargeable with a gross sum bill may at any time —

(a) before he is served with a writ or other originating process for the recovery of costs included in the bill; and

(b) before the expiration of 3 months from the date on which the bill was delivered to him,

require the advocate and solicitor to deliver, *in lieu* of that bill, a bill containing detailed items. On such a requirement being made the gross sum shall be of no effect.

(3) Where an action is commenced on a gross sum bill, the court shall, if so requested by the party chargeable with the bill before the expiration of one month from the service on that party of the writ or other originating process, order that the bill be taxed.

(4) If a gross sum bill is taxed, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation. The advocate and solicitor shall furnish the taxing officer with such details of any of the costs covered by the bill as the taxing officer may require.

Security for costs and termination of retainer

50. (1) An advocate and solicitor may take security from his client for his costs, to be ascertained by taxation or otherwise, in respect of any contentious business to be done by him.

(2) If an advocate and solicitor who has been retained by a client to conduct contentious business requests the client to make a payment of a sum of money, being a reasonable sum on account of the costs incurred or to be incurred in the conduct of that business and the client refuses or fails within a reasonable time to make that payment, the refusal or failure is deemed to be a good cause whereby the advocate and solicitor may, upon giving reasonable notice to the client, withdraw from the retainer.

Taxation with respect to contentious business

51. Subject to the provisions of any rules of court, on every taxation of costs in respect of any contentious business, the taxing officer may —

(a) allow interest at such rate and from such time as he thinks just on money disbursed by the advocate and solicitor for the client, and on money of the client in the hands of, and improperly retained by, the advocate and solicitor; and

(b) in determining the remuneration of the advocate and solicitor, having regard to the skill, labour and responsibility involved in the business done by him.

*Remuneration — general***Inclusion of disbursements in bill of costs**

52. An advocate and solicitor's bill of costs may include costs payable in discharge of a liability properly incurred by him on behalf of the party to be charged with the bill notwithstanding that those costs have not been paid before the delivery of the bill to that party; but those costs —

(a) shall be described in the bill as not then paid; and

(b) if the bill is taxed, shall not be allowed by the taxing officer unless they are paid before the taxation is completed.

Power of court to order advocate and solicitor to deliver bill etc.

53. (1) The High Court shall have the like jurisdiction as the inherent jurisdiction of the High Court in England (in relation to a solicitor) to make an order for the delivery by an advocate and solicitor of a bill of costs and for the delivery up, or otherwise in relation to, any documents in his possession, and for the taxation of the bill when delivered. The jurisdiction hereby conferred on the High Court shall also extend to cases in which no business has been done by the advocate and solicitor in the High Court.

(2) A Court of a Magistrate shall have the same jurisdiction as the High Court to make orders making such provision as is mentioned in subsection (1) in cases where the bill of costs or the documents relate wholly or partly to contentious business done by the advocate and solicitor in the Court of a Magistrate.

(3) In this section and in sections 54 and 56, "advocate and solicitor" includes the executors, administrators and assignees of an advocate and solicitor.

Action to recover advocate and solicitor's costs

54. (1) Subject to the provisions of this Act, no action shall be brought to recover any costs due to an advocate and solicitor before the expiration of one month from the date on which a bill of those costs is delivered in accordance with the requirements mentioned in subsection (2); but if there is probable cause for believing that the party chargeable with the costs —

(a) is about to quit Brunei Darussalam, to become bankrupt or to compound with his creditors, or

(b) is about to do any other act which would tend to prevent or delay the advocate and solicitor obtaining payment,

the High Court may, notwithstanding that one month has not expired from the delivery of the bill, order that the advocate and solicitor be at liberty to commence an action to recover his costs and may order that those costs be taxed.

(2) The requirements referred to in subsection (1) are that the bill shall —

(a) be signed by the advocate and solicitor or, if the costs are due to a firm, by one of the partners of that firm, either in his own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and

(b) be delivered to the party to be charged with the bill, either personally or by being sent to him by post to, or left for him at, his place of business, dwelling-house, or last known place of abode,

and, where a bill is proved to have been delivered in compliance with those requirements, it shall not be necessary in the first instance for the advocate and solicitor to prove the contents of the bill and it shall be presumed until the contrary is shown, to be a bill *bona fide* complying with this Act.

(3) Where a bill of costs relates wholly or partly to contentious business done in the Court of a Magistrate and the amount of the bill does not exceed \$500 the powers and duties of the court under this section and sections 55 and 56 in relation to that bill may be exercised and performed by any Court of a Magistrate in which any of the business was done.

Taxation on application of party chargeable or advocate and solicitor

55. (1) Where before the expiration of one month from the delivery of an advocate and solicitor's bill an application is made by summons, motion or petition by the party chargeable with the bill, the High Court shall, without requiring any sum to be paid into court, order that the bill be taxed and that no action be commenced on the bill until the taxation is completed.

(2) Where no such application is made before the expiration of the period mentioned in subsection (1), then, on an application being made by the advocate and solicitor or, subject to subsections (3) and (4), by the party

chargeable with the bill, the court may on such terms, if any, as it thinks fit (not being terms as to the costs of the taxation), order —

(a) that the bill be taxed; and

(b) that no action be commenced on the bill, and that any action already commenced be stayed until the taxation is completed.

(3) Where an application under subsection (2) is made by the party chargeable with the bill —

(a) after the expiration of 12 months from the delivery of the bill; or

(b) after a judgment has been obtained for the recovery of costs covered by the bill; or

(c) after the bill has been paid, but before the expiration of 12 months from the payment of the bill,

no order shall be made except in special circumstances and, if an order is made it may contain such terms as regards the costs of the taxation as the court may think fit.

(4) The power to order taxation conferred by subsection (2) shall not be exercisable on an application made by the party chargeable with the bill after the expiration of 12 months from the payment of the bill.

(5) Every order for the taxation of a bill shall require the taxing officer to tax not only the bill but also the costs of the taxation and to certify what is due or by the advocate and solicitor in respect of the costs of the taxation.

(6) If after due notice or any taxation either party to it fails to attend, the officer may proceed with the taxation *ex parte*.

(7) Unless —

(a) the order for taxation was made on the application of the advocate and solicitor and the party chargeable does not attend the taxation; or

(b) the order for taxation or an order under subsection (8) otherwise provides,

the costs of a taxation shall be paid according to the event of the taxation, that is to say, if one-fifth of the amount of the bill is taxed off, the advocate and solicitor shall pay the costs, but otherwise the party chargeable shall pay the costs.

(8) The taxing officer may certify any special circumstances relating to a bill or to the taxation of a bill, to the High Court which may make such order as respects the costs of the taxation as it may think fit.

Taxation on application of third parties

56. (1) Where a person other than the party chargeable with the bill for the purposes of section 55 has paid, or is or was liable to pay, a bill either to the advocate and solicitor or to the party chargeable with the bill, that person or his executors, administrators or assignees may apply by summons, motion or petition for an order for the taxation of the bill as if he were the party chargeable with it to the High Court which may make the same order (if any) as it might have made if the application had been made by the party chargeable with the bill.

(2) Where the court has no power to make an order by virtue of subsection (1) except in special circumstances it may, in considering whether there are special circumstances sufficient to justify the making of an order, take into account circumstances which affect the applicant but do not affect the party chargeable with the bill.

(3) Where a trustee, executor or administrator has become liable to pay a bill of an advocate and solicitor, then, on the application by summons, motion or petition of any person interested in any property out of which the trustee, executor or administrator has paid, or is entitled to pay, the bill the High Court may order —

(a) that the bill be taxed on such terms, if any, as it thinks fit; and

(b) that such payments, in respect of the amount found to be due to or by the advocate and solicitor and in respect of the costs of the taxation, be made to or by the applicant, to or by the advocate and solicitor, or to or by the executor, administrator or trustee, as it thinks fit.

(4) In considering any application under subsection (3), the court shall have regard —

(a) to the provisions of section 55 as to applications by the party chargeable for the taxation of an advocate and solicitor's bill so far as they are capable of being applied to an application made under that subsection;

(b) to the extent and nature of the interest of the applicant.

(5) If an applicant under subsection (3) pays any moneys to the advocate and solicitor, he shall have the same right to be paid that money by the trustee, executor or administrator chargeable with the bill as the advocate and solicitor had.

(6) Except in special circumstances, no order shall be made on an application under this section for the taxation of a bill which has already been taxed.

(7) If the court on an application under this section orders a bill to be taxed, it may order the advocate and solicitor to deliver to the applicant a copy of the bill on payment of the costs of that copy.

Supplementary provisions as to taxations

57. (1) Every application for an order for the taxation of an advocate and solicitor's bill or for the delivery of his bill and for the delivery up by him of any documents in his possession, custody or power shall be made in the matter of that advocate and solicitor.

(2) The certificate of the taxing officer 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 the costs covered by it. The court may make such order in relation to the certificate as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

Charging orders

58. (1) Subject to subsection (2), any court in which an advocate and solicitor has been employed to prosecute or defend any suit, matter or proceeding may at any time —

(a) declare the advocate and solicitor entitled to a charge on any property recovered or preserved through his instrumentality for his taxed costs in relation to that suit, matter or proceedings; and

(b) make such orders for the taxation of those costs and for raising money to pay or for paying them out of the property recovered or preserved as the court thinks fit,

and all conveyances 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 and solicitor.

(2) No order shall be made under subsection (1) if the right to recover the costs is barred by any written law relating to limitations.

Special provisions as to contentious business done in Courts of Magistrates

59. (1) The remuneration of an advocate and solicitor in respect of contentious business done by him in a Court of a Magistrate shall be regulated in accordance with sections 44 to 58, and for that purpose those sections shall have effect subject to the following provisions of this section.

(2) The Registrar of the Subordinate Courts shall be the taxing officer of a Court of a Magistrate but any taxation of costs by him be reviewed by a Magistrate on the application of any party to the taxation.

(3) The amount which may be allowed on the taxation of any costs or bill of costs in respect of any item relating to proceedings in a Court of a Magistrate shall not, except in so far as rules of court may otherwise provide, exceed the amount which could have been allowed in respect of that item as between party and party in those proceedings.

(4) For the purposes of this section, the amount which may be allowed on the taxation of any costs or bill of costs in respect of an item as between party and party in relation to proceedings in a Court of a Magistrate shall, subject to rules of court, be such amount as the taxing officer, or, in the

case of a review under subsection (2), a Magistrate, shall determine to be reasonable having regard to the nature of the proceedings and the amount of the claim and any counterclaim.

Costs of Government

60. Nothing in the Act shall affect the right, which is hereby declared, of the Government when represented by any of such persons as are mentioned in section 20(1)(a) to recover costs awarded to it in or respecting any cause or matter. 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 the taxation of the fees and costs of advocates and solicitors as if an advocate and solicitor of the Supreme Court who is not in the service of the Government had appeared on behalf of the Government.

Saving for certain other written law

61. Nothing in this Part shall affect any other written law not expressly repealed by this Act which authorises the making of subsidiary legislation or the giving of directions with respect to costs, or which provides that any such subsidiary legislation or direction made or given under any previous written law shall continue in force.

PART 8

MISCELLANEOUS AND GENERAL

The Law Society of Brunei Darussalam

Authority to establish Law Society

62. (1) His Majesty the Sultan and Yang Di-Pertuan in Council may by order —

(a) establish a body representative of the legal profession in Brunei Darussalam to be called the Law Society of Brunei Darussalam;

(b) define and limit the constitution and powers of the Society;
and

(c) amend this Act to the extent deemed expedient by His Majesty the Sultan and Yang Di-Pertuan in Council to make provision for or facilitate any disciplinary or other function of the Society (or of any body or officer thereof) as the representative body of the legal profession in Brunei Darussalam.

(2) Without prejudice to the generality of subsection (1), an order made under that subsection may —

(a) make provision for any of the matters specified in Schedule 1;

(b) provide for the establishment, maintenance, administration and application by the Society, from the resources of its members, of a fund to serve as a compensation fund for any person who may sustain loss in consequence of dishonesty on the part of any advocate and solicitor or any clerk or servant of his in connection with his practice in Brunei Darussalam or in connection with any trust in Brunei Darussalam of which such advocate and solicitor is a trustee;

(c) amend any written law so as to provide such exemptions from any provisions of the Stamp Act (Chapter 34) or the Income Tax Act (Chapter 35) as His Majesty the Sultan and Yang Di-Pertuan in Council deem expedient in relation to the property of the Society or to any property of any person which is the subject of a gift or bequest to the Society; and

(d) require that no advocate and solicitor shall practise as such unless he is a member of the Society.

Law Society to be corporate body etc.

63. The Law Society of Brunei Darussalam shall be a body corporate with perpetual succession and a common seal and with power, subject to the provisions of this Act and of any order under section 62(1), to sue and be sued in its corporate name and to acquire and dispose of property, both movable and immovable and to do and to perform such other acts as bodies corporate may by law perform.

*Bank accounts kept by advocates and solicitors***Bank accounts**

64. Where an advocate and solicitor keeps an account with a bank in pursuance of rules under section 23 (as saved by section 5(2) of the Legal Profession Act (Amendment) Order, 2003) (S 40/2003) or in pursuance of rules made by the Society with the approval of the Chief Justice under the powers conferred on it by Schedule 1 —

(a) the bank shall not incur any liability, or be under any obligation to make any inquiry, or be deemed to have any knowledge of any right of any person to any money paid or credited to the account, which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it; and

(b) the bank shall not have any recourse or right against money standing to the credit of the account, in respect of any liability of the advocate and solicitor to the bank, other than a liability in connection with the account.

*Supplementary***Rules**

65. (1) Without prejudice to any other power to make rules, the Chief Justice with the approval of His Majesty the Sultan and Yang Di-Pertuan may make such rules not inconsistent with the provisions of this Act as he may consider necessary or expedient for the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), rules made under that subsection may —

(a) *(deleted)*;

(aa) prescribe the manner in which contingency fees, as defined in such rules, may be taken by advocates and solicitors and the proceedings in which and conditions on which these shall be payable;

(b) prescribe alternative qualifications for the purposes of section 3(2);

(c) prescribe the requirements and conditions of service of the period of pupillage for qualified persons all the conditions for any exemption from all or any part of such service; and

(d) prescribe any fee or other thing authorised or required to be prescribed under any provision of this Act.

Consequential amendments, repeal and transitional provisions

66. (1) References in any other written law or in any instrument to an advocate shall be construed as references to an advocate and solicitor.

(2) The Advocates Enactment, 1957 (No. 22 of 1957) is hereby repealed.

(3) The transitional provisions contained in Schedule 2 shall have effect.

(4) Nothing in this Act shall be taken as prejudicing the operation of section 10 of the Interpretation and General Clauses Act (Chapter 4) (which relates to the effect of repeals generally).

SCHEDULE 1

(section 62(2)(a))

CONSTITUTION AND POWERS OF LAW SOCIETY OF
BRUNEI DARUSSALAM

MATTERS IN RESPECT OF WHICH PROVISION MAY BE MADE
BY ORDER UNDER SECTION 62

1. Purposes and powers of the Society, including the conferring of power on the Society subject to the provisions of this Act, to make rules with the approval of the Chief Justice for giving effect to any order made under section 62.
2. Visitors for the Society and their powers and privileges.
3. Classes, qualifications and methods of admission of members and honorary members of the Society.
4. Privileges of members or different classes of members of the Society.
5. Expulsion and suspension of rights and privileges of members of the Society.
6. Termination of membership of members of the Society.
7. Designation of officers of the Society, the procedure for their election or appointment and the definition of their functions.
8. Meetings of the Society, including the conferring of power upon the Society to regulate the convening of any meetings and the voting and procedure thereat by rules made, with the approval of the Chief Justice, by the Society.
9. Representation of the Society in the courts.
10. The composition of the governing body of the Society to be called "The Council" which may include such numbers of appointed and elected members as may be specified in the order, including a requirement that such proportion thereof as may be specified shall be nationals of Brunei Darussalam.
11. Procedure for nomination and election of elected members of the Council.
12. Vacation of office of members of the Council.
13. Filling of casual vacancies in the Council.

SCHEDULE 1 — *(continued)*

14. Designation of officers of the Council, the procedure for their election or appointment and the definition of their functions.
15. Function and powers of the Council in relation to the Society and generally.
16. Appointment of committees of the Council (which may include members of the Society who are not members of the Council) and delegation to them of functions and powers of the Council.
17. Fixing by the Council of annual subscriptions and of levies for the purposes of the Society including conferring power upon the Council to require that different amounts shall be paid by different classes of members and for different periods.
18. Acceptance, registration and administration by the Council on behalf of the Society of any grant, gift, testamentary or other disposition of property.
19. Meetings of the Council, including conferring power upon the Society to regulate the convening of any such meeting and the voting and procedure thereat by rules made, with the approval of the Chief Justice, by the Society.
20. Reimbursement of members of the Council from the funds of the Society for disbursements incurred by them in relation to the affairs of the Society.
21. With the approval of the Chief Justice, provision for the Society to make rules for the regulation of professional practice, etiquette, conduct and discipline of advocates and solicitors.
22. With the approval of the Chief Justice, provision for the Society to make rules for the opening and closing and keeping by advocates and solicitors of accounts at banks for clients money.
23. With the approval of the Chief Justice, provision for the Society to make rules for an accountant's report to be delivered with every application for a practising certificate.
24. With the approval of the Chief Justice, provision for the Society to make rules concerning indemnity against loss arising from claims against an advocate and solicitor in respect of civil liability.
25. Circumstances in which the Society can exercise powers in respect of inadequate professional services by an advocate and solicitor.
26. Power to limit professional experience before practising on own account or in partnership.

SCHEDULE 1 — *(continued)*

27. Regulation of the employment and remuneration of employees.
28. Circumstances in which the Society has power to intervene in an advocate and solicitor's practice.

SCHEDULE 2

(section 66(3))

TRANSITIONAL PROVISIONS

1. In this Schedule —

“former roll” means the roll of advocates kept under section 3 of the repealed Enactment;

“repealed Enactment” means the Advocates Enactment, 1957 (No. 22 of 1957).

2. (1) The Chief Registrar shall transfer to the roll the names of all persons on the former roll with the date of their respective admissions in order.

(2) In so transferring names the Chief Registrar may omit the name of any person known or believed by the Chief Registrar to be —

(a) deceased; or

(b) a person who immediately before the coming into operation of this Act —

(i) was not ordinarily resident in Brunei Darussalam; and

(ii) did not hold a valid certificate to practise under section 9 of the repealed Enactment; and

(iii) did not maintain, or was not a member or employee of a firm of advocates who maintain a place of business in Brunei Darussalam suitable for the carrying on of the practice of an advocate or a firm of advocates, as the case may be.

3. Any person whose name is omitted under sub-paragraph (2) may apply to the Chief Registrar, who may forthwith enter the applicant’s name upon the roll if satisfied that it was removed therefrom in error.

4. Every person whose name has been entered on the roll under the provisions of this Schedule shall be deemed to have been duly admitted under the provisions of this Act.