



LAWS OF SARAWAK

ONLINE VERSION

Chapter 110
(1958 Edition)

ADVOCATES ORDINANCE

Incorporating all amendments up to 1st January, 2018

Prepared and Compiled by

STATE ATTORNEY-GENERAL'S CHAMBERS
SARAWAK

ADVOCATES ORDINANCE

CHAPTER 110
(1958 Edition)

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SCHEDULE

ADVOCATES ORDINANCE

CHAPTER 110
(1958 Edition)

An Ordinance to regulate the admission of persons as advocates and to make provision for matters relating thereto.

[23rd May, 1953]

Short title

1. This Ordinance may be cited as the Advocates Ordinance.

Interpretation

- 2.—(1) In this Ordinance—

“practise in Sarawak” means to perform in Sarawak—

(a) any of the functions which in England may be performed by a member of the Bar as such; or

(b) any of the functions which in England may be performed by a Solicitor of the Supreme Court of Judicature as such;

“Registrar” means the Registrar of the High Court stationed in Kuching and includes a Deputy Registrar;

[Mod. F.L.N. 435/65.]

“roll” means the roll of advocates kept in accordance with section 3.

- (2) A person shall be deemed to have Sarawak connections for the purposes of this Ordinance if, and only if, he

(a) has been born in Sarawak;

(b) has been ordinarily resident in Sarawak for a continuous period of five years or more; or

(c) satisfies the Chief Judge that he is, at the time when the question whether he has Sarawak connections is relevant, domiciled in Sarawak.

[Am. Act A885.]

Duties of Registrar

3. The Registrar shall in accordance with the provisions of this Ordinance be responsible for keeping a roll of advocates and for the issue of certificates to practise.

Qualifications for admission of advocate

4.—(1) No person shall be admitted as an advocate unless—

(a) he is a member of the Bar of England, Scotland, Northern Ireland or the Republic of Ireland;

(b) *[Deleted by Act A1186].*

(c) he is a solicitor of the Supreme Court in England, Northern Ireland or the Republic of Ireland or a Solicitor in Scotland;

(ca) he has been conferred any of the degrees specified in the Schedule;

(cb) he has been awarded a Certificate of Legal Practice by the Qualifying Board established under the Legal Profession Act 1976 *[Act 166]*; or

[Am. Ord. No. 3/60; Am. Act A1186.]

(d) he has been admitted to practise as a legal practitioner (by whatever name called) by a Supreme Court or High Court exercising jurisdiction in any place within any territory within the Commonwealth.

[Mod. F.L.N. 435/65.]

(1A) Subject to subsection (1B), no person having any of the qualifications mentioned in subsection (1) shall be admitted as an advocate unless he has been a Magistrate of the First Class in the State of Sarawak for a period of not less than twelve months or he has been a pupil, or read in the chambers, of the State Attorney General, or of an advocate who has been lawfully practising in some part of Malaysia for a period of not less than five years immediately prior to the person becoming his pupil or commencing to read in his chambers, for a period—

(a) of not less than twelve months; or

(b) if he has obtained a certificate from the University of Malaya or the National University of Singapore that he has satisfactorily completed a post-graduate course of instruction in law organized by the University, of not less than six months.

[Am. Act A733.]

(1B) The Chief Judge may, in his sole discretion, exempt a person from the whole or part of any period of pupillage or reading in chambers, upon application made to him supported by satisfactory evidence that—

(a) there are special circumstances justifying the exemption;

(b) the applicant has for a period of not less than six months been a pupil, or read in the chambers, of a legal practitioner in active private practice, in any territory within the Commonwealth, of not less than five years' standing; or

(c) the applicant has satisfactorily completed a post-graduate course of instruction in law organized by any institution that would render him eligible to be admitted to practise as a legal practitioner (by whatever name called) in any territory within the Commonwealth.

[Am. Act A733; Am. Act A885.]

(2) A person having any of the qualifications mentioned in subsections (1) and (1A) shall be eligible to be admitted as an advocate if he satisfies the Chief Judge—

(a) that at the date of his application he is not disbarred, struck off (other than on his own application), suspended or in any other manner disentitled to practise as an advocate or legal practitioner, by whatsoever name and style designated, in any territory within the Commonwealth and is not subject to any present or pending disciplinary proceedings in connection with his practice as an advocate or legal practitioner and has not been convicted in and is not subject to any pending or present criminal proceedings involving dishonesty in any territory within the Commonwealth;

(b) that he is not an undischarged bankrupt or the subject of any bankruptcy proceedings within the Commonwealth; and

(c) that he has Sarawak connections.

[Am. Act A733; Am. Act A885.]

Application to be admitted to be an advocate

5.—(1) Any person eligible to be admitted to be an advocate may apply to the Chief Judge to be so admitted, and shall annex to such application—

(a) proof of his qualifications and of his eligibility under section 4(2); and

- (b) two recent testimonials as to his good character.

[Am. Ord. No. 3/60; Am Act A885.]

(2) A copy of the application and of the documents in support thereof shall be delivered to the State Attorney General who, and the Advocates' Association of Sarawak which, shall be entitled to be heard on any such application.

[Mod. F.L.N. 435/65; Am. Act A733; Am. Act A885.]

Admission as advocate

6. If the Chief Judge is satisfied that an applicant under section 5 is—

- (a) eligible under section 4 to be admitted as an advocate;
and

- (b) in all respects a fit and proper person to be so admitted,

he shall by order direct that upon payment of the prescribed fee the Registrar shall cause the name of the applicant to be entered on the roll.

[Am. Ord. No. 3/60; Am. Act A885.]

Enrolment

7.—(1) Upon the making of an order under section 6 and upon the payment by the applicant of the prescribed fee the Registrar shall cause to be entered on the roll the name of the applicant and the date of his enrolment and the applicant shall thereupon become and be styled an advocate and shall continue to be an advocate so long as his name remains on the roll.

[Sub. Ord. No. 3/60.]

(2) The Registrar shall from time to time and at least once in every year publish in the *Gazette* the names of all persons on the roll.

Right to practise in Sarawak

8.—(1) Subject to subsection (2) and to section 9, advocates shall have the exclusive right to practise in Sarawak and to appear and plead in the Federal Court in Sarawak and the High Court, and in all courts in Sarawak subordinate thereto in which advocates may appear, and, as between themselves, shall have the same rights and privileges without differentiation:

Provided that—

(a) the Attorney General of the Federation and the State Attorney General shall be entitled to the same rights and privileges as are enjoyed by the Attorney General in the Courts in England; and

(b) no advocate, other than the State Attorney-General, who has the rank of Queen's Counsel shall perform any of the functions which, in England, are performed by a solicitor and are not performed by a barrister; but any advocate who has the rank of Queen's Counsel shall not be precluded by virtue of anything contained in this Ordinance from continuing to engage in partnership with another advocate by reason only that such last mentioned advocate performs any functions as aforesaid.

[Mod. F.L.N. 435/65; Am. Act A885.]

(2) Notwithstanding subsection (1), a person who is an advocate in Sabah or an advocate and solicitor in the States of Malaya may appear and plead before the Federal Court when sitting in Sarawak—

*[Mod. F.L.N. 435/65; Am. Reprint Commissioner;
Am. Act A885.]*

(a) when the Federal Court is exercising its original jurisdiction—

(i) if he is representing the Government of the Malaysia or of any State thereof;

(ii) if he is an advocate in Sabah and is representing a person who is normally resident in Sabah;

(iii) *[Deleted]*.

(iv) if he is an advocate and solicitor in the States of Malaya and is representing a person who is normally resident in the States of Malaya; or

(b) when the Federal Court is exercising its appellate jurisdiction, if the cause of action, the subject-matter of the appeal, was tried—

(i) in Sabah, the advocate appearing is a Sabah advocate;

(ii) *[Deleted]*.

(iii) in the States of Malaya, the advocate appearing is a States of Malaya advocate and solicitor.

[Am. Act A885.]

Certificate to practise in Sarawak

9. No advocate shall in any calendar year be entitled to practise in Sarawak unless and until he has received from the Registrar a certificate to practise in respect of that year upon payment of the fee, if any, prescribed:

Provided that—

(a) upon the admission of any person as an advocate, the Registrar shall grant him free of charge a certificate to practise up to and including the 31st day of December next following the date of his admission.

(b) *[Deleted]*.

Exceptions

10. Notwithstanding anything in this Ordinance contained—

(a) *[Deleted]*.

(b) any person who possesses any of the qualifications mentioned in section 4(1) may, in the discretion of the Chief Judge and upon payment of the prescribed fee, be granted a temporary licence to practise notwithstanding that he does not fulfill any of the conditions mentioned in section 4(2)(c) if the Chief Judge is satisfied that such person intends to reside in Sarawak and practise in the place of any advocate whose name is on the roll and who has been practising in Sarawak for a period of not less than twelve months: a temporary licence shall not be granted for any period in excess of six months nor shall the period of its validity be expended beyond six months;

(c) the Chief Judge or in his absence from Sarawak a Judge may in his absolute discretion upon application by or on behalf of any person who possesses any of the qualifications mentioned in section 4(1) grant permission to such person to practise in any one case or matter subject to any conditions he may think fit and to the payment of the prescribed fee if—

(i) such person has been instructed by a local advocate; and

(ii) having regard to all the relevant circumstances he is of opinion that it is in the interest of justice so to do.

[Mod. F.L.N. 435/65; Am. Act A733; Am. Act A885.]

Precedence

11. Advocates shall take precedence as between themselves according to the date on which their names are inscribed upon the roll of advocates:

Provided that the Attorney General of the Malaysia, the Federal Solicitor General and the State Attorneys General shall in that order take precedence over all other advocates.

[Mod. F.L.N. 435/65.]

Striking off, etc., advocates and persons entitled to practise in Sarawak

12. Any advocate may have his name struck off the roll of advocates, be suspended from practising in Sarawak, be fined not exceeding five thousand ringgit, be censured or be awarded costs to or against him, and any person entitled to appear and plead before the Federal Court by virtue of section 8(2) and any person referred to in section 10(b) may be suspended from practising in Sarawak, or his right to practise in Sarawak withdrawn, by order of a Judge for any of the following causes:

[Am. Ord. No. 3/60; Mod. F.L.N. 435/65; Am. Act A733; Am. Act A885.]

(a) if he takes instructions in any case, except from the party on whose behalf he is retained, or some person who is the recognised agent of such party, or some servant, relation or friend authorized by the party to give such instructions;

(b) if he is guilty of fraudulent or improper conduct in the discharge of his professional duty or knowingly misleads or allows the court to be misled;

[Sub. Ord. No. 3/60.]

(c) if he tenders, gives, or, out of any fee paid or payable to him for his services, consents to the retention of, any gratification for procuring or having procured the employment in any legal business of himself or any other advocate;

(d) if he directly or indirectly procures, or attempts to procure, the employment of himself as advocate through or by intervention of any person to whom any remuneration for obtaining such employment has been given by him;

(e) if he has been convicted of a criminal offence implying a defect of character which unfits him for his profession;

(f) if he has ceased to be a person entitled to be admitted to be an advocate as a result of disciplinary proceedings taken against him in the country in which he qualified, or in any country in which he has practised as a legal practitioner, by whatever name called;

(g) if he does any act which, if done in England, would render him liable to be disbarred or struck off the roll of the court, or suspended from practice, if a barrister or solicitor in England;

(h) if he has procured his admission as an advocate by any mis-statement, fraud or misrepresentation;

(i) if, being an advocate, he has practised in Sarawak without being in possession of a valid certificate to practise;

(j) if he practises in Sarawak when not entitled to under section 14(1);

(k) if he has been guilty of a breach of any rules made under section 17 (a), (b) or (c):

Provided that no such order shall be made until the advocate or person has had an opportunity of showing cause against such order.

[Am. Act A692; Am. Act A733.]

Striking off and suspension of advocate if he is struck off or suspended in other places in Malaysia

12A. Notwithstanding section 13, the High Court may, at its discretion, upon an application, supported by satisfactory evidence in writing, made to it by the Inquiry Committee established pursuant to section 17, strike the name of an advocate off the roll of advocates or suspend an advocate from practising in Sarawak if it is satisfied on the evidence given that the advocate who is also an advocate and solicitor in West Malaysia or an advocate in Sabah has been struck off the roll or suspended for improper conduct or practice in his capacity as an advocate and solicitor or an advocate in any of those places and has not been restored to the roll.

[Am. Act A692.]

Procedure

13.—(1) Proceedings to strike an advocate off the roll of advocates, suspend, fine, censure or award costs referred to in section 12 shall be commenced by an application to a Judge in Chambers for a rule to issue to the advocate to show cause why he should not be struck off the roll of advocates, suspended, fined, censured or awarded costs, as the case may be.

[Am. Act A733.]

(2) Proceedings to suspend, or withdraw from, any person entitled to appear and plead before the Federal Court by virtue of section 8(2) and any person referred to in section 10(b) the right to practise in Sarawak shall be commenced by an application to a Judge in Chambers for a rule to issue to the person to show cause why his right to practise in Sarawak should not be suspended or withdrawn, as the case may be.

[Am. Ord. No. 3/60; Mod. F.L.N. 435/65; Am. Act A855.]

(3) An application under subsection (1) or (2) may be made by the Inquiry Committee established pursuant to section 17, or by any person aggrieved by any action of the advocate or person complained against.

[Mod. F.L.N. 435/65; Am. Act A693; Am Act A885.]

(4) In the event of a rule being granted, further proceedings thereunder shall be in open court.

Appeals

14.—(1) In the event of any advocate being struck off the roll, suspended, fined, censured or awarded costs, or of any person entitled to appear and plead before the Federal Court by virtue of section 8(2) and any person referred to in section 10(b) having his right to practise in Sarawak suspended or withdrawn, he shall be at liberty to appeal against the order of striking off, suspension, fine, censure, award of costs or withdrawal to the Federal Court but, pending the hearing of his appeal, he shall not be entitled to practise in Sarawak, except where a period of suspension lapses before the hearing of the appeal, in which event he shall be at liberty to resume his practice after the period of suspension has expired.

[Am. Ord. No. 3/60; Am. Act 7/64; Mod. F.L.N. 435/65; Am. Act A733; Am. Act A885.]

(2) Nothing in this section shall be construed so as to deprive an advocate of any right to appeal which he may have to the Yang di-Pertuan Agong.

[Sub. Ord. No. 3/60; Mod. F.L.N. 435/65.]

Agreements by advocates

15.—(1) No agreement entered into by any advocate (which terms shall in this section include a person entitled to appear and plead before the Federal Court by virtue of section 8(2) and any person referred to in section 10(b) or (c) with any person retaining or employing him, respecting the amount and manner of payment for the whole, or any part of, any past or future services, fees, charges, or disbursements in respect of business done, or to be done, by such advocate, shall be valid unless it is made in writing signed by such person.

[Am. Ord. No. 3/60; Mod. F.L.N. 435/65; Am. Act A855.]

(2) When a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the court may reduce the amount payable thereunder, or order it to be cancelled and the costs, fees, charges and disbursement, in respect of the business done, to be ascertained in the same manner as if no such agreement had been made.

(3) Such an agreement shall exclude any further claim of the advocate, beyond the terms of the agreement, with respect to any services, fees, charges or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges or disbursements, if any, as are expressly excepted by the agreement.

(4) A provision in any such agreement that the advocate shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such advocate, shall be wholly void.

Offences

16.—(1) Any person, not being entitled to practise in Sarawak under this Ordinance, who—

(a) acts as an advocate or agent for suitors, or who as such advocate sues out any writ 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 of Sarawak, or draws or prepares any instrument relating to any proceedings in any of the courts of Sarawak;

(b) wilfully and falsely pretends to be, or takes or uses any name, title, addition or description implying that he is, duly qualified to act as an advocate, or that he is recognised by law as so qualified; or

(c) either directly or indirectly for, or in expectation of, any fee, gain or reward, draws or prepares any instrument relating to immovable or movable property,

shall be liable to a fine of one thousand ringgit.

[Am. Ord. No. 16/57; Am. Act A855.]

(2) Nothing in section 8 or subsection (1) shall prevent any litigant in person, or any person having the right to appear under any rules of court or any other written law for the time being in force, from attending pleading and doing any act with regard to any proceeding in which he is a litigant in person, or in which he has a right to appear.

[Am. Ord. No. 2/57.]

(3) This section shall not apply to—

(a) the Attorney General of the Malaysia, any State Attorney General, State Advocate General or Legal Adviser of a State, or any person acting under the authority of any of them;

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

- (c) any person employed merely to engross any instrument or proceeding;
- (d) any person who draws or prepares—
 - (i) a will or other testamentary instrument;
 - (ii) an agreement under hand only;
 - (iii) a letter or power of attorney;
 - (iv) a transfer of stock containing no trust or limitation thereof;
- (e) any person who on behalf of an illiterate—
 - (i) writes a petition or letter addressed to, or intended to come to the notice of, any public officer or court; or
 - (ii) completes any document or form prescribed by any written law.

Rules

17. The Chief Judge with the concurrence of the State Attorney General may make rules generally for carrying out the provisions of this Ordinance and, in particular, such rules may provide for—

- (a) regulating the practice and etiquette of the profession in Sarawak;
- (b) regulating the method by which accounts shall be kept relating to any moneys received from, or on behalf of, clients and the audit of such accounts;
- (c) fixing or taxing costs to be charged as between advocate and client;

(cc) regulating disciplinary proceedings against any advocate who fails to comply with any rules made under this section;

(ccc) establishing an Inquiry Committee and to make rules for regulating the hearing and investigation of matters before or by an Inquiry Committee; and

[Am. Act A692; Mod. F.L.N. 435/65; Am. Act A885.]

*(d) prescribing any forms, fees or any other matter authorized or required by this Ordinance to be prescribed.

Power to amend Schedule

18. The Yang di-Pertua Negeri may, after consultation with the State Attorney General, by order published in the *Gazette*, amend the Schedule.

[Ins. Act A1186.]

SCHEDULE

(Section 4(1)(ca))

DEGREES CONFERRED

Bachelor of Laws from the University of Malaya

Bachelor of Laws (Honours) from the Universiti Kebangsaan Malaysia

Advanced Diploma in Law from the Institut Teknologi MARA, Malaysia

Bachelor of Laws (Honours) from the Institut Teknologi MARA, Malaysia

Bachelor of Laws (Honours) from the Universiti Teknologi MARA, Malaysia

Bachelor of Laws from the International Islamic University, Malaysia

Bachelor of Laws from the National University of Singapore

Degree of Bachelor of Laws (Honours) from University Utara Malaysia

Degree of Bachelor of Laws (Honours) from Multimedia University

Degree of Bachelor of Laws (Honours) from University Sultan Zainal Abidin

[Ins. Act A1186, Swk. L.N. 151/2012, Swk. L.N. (F) 1/2018.]

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- See Advocates (Fees) Rules, Vol. VIII, p.353.

SARAWAK LAWNET



DICETAK OLEH PERCETAKAN NASIONAL MALAYSIA BERHAD, KUCHING, SARAWAK
BAGI PIHAK DAN DENGAN KUASA PERINTAH KERAJAAN