

CHAPTER 5 – THE LEGAL PROFESSION

Legal Qualifications

A person that would qualify for admission to practise as an advocate and solicitor in Brunei Darussalam must possess one of the following requirements¹:

- i) He is a barrister-at-law of England, Northern Ireland or he must be a member of the Faculty of Advocates of Scotland; or
- ii) He is a solicitor in England, Northern Ireland or a Writer to the Signet, law agent or solicitor in Scotland; or
- iii) He has been in active practice as an advocate and solicitor in Singapore or in any part of Malaysia; or
- iv) He possesses the Certificate of Legal Practice issued by the Qualifying Board pursuant to section 5 of the Legal Profession Act 1976 of Malaysia; or
- v) He possesses a degree in law conferred by the Universiti Islam Antarabangsa in Malaysia.

Furthermore, he must also be either a Brunei national or a person to whom a residence permit has been granted under regulations made under the Immigration Act.² If a person is not a Brunei national or no residence permit has been granted to him, he can only apply for admission if (along with having the academic requirements mentioned above) he has been in active practice in any part of the United Kingdom, Singapore, Malaysia, or in any other country or territory of the Commonwealth designated by the Attorney General for at least 7 years immediately preceding his application.

Admission is at the Chief Justice's discretion and he shall further take into consideration the following criteria³:

- i) if the applicant has attained the age of 21 years;
- ii) if he is of good character;
- iii) if he has served satisfactorily his required period of pupillage as prescribed by the Pupillage Rules.⁴

¹ Section 3(1), Legal Profession Act (CAP 132)/Alternative Qualifications Rules 1999

² See Part III, Immigration Act (CAP 17)

³ Section 4, Legal Profession Act

⁴ Under the Pupillage Rules 2000, a pupil shall serve a period of pupillage with a qualified person who has been practicing for not less than 7 years for a period of 9 months. A qualified person can be exempted by the Chief Justice from any part of his pupillage (not more than 6 months) looking at special circumstances, if he has been a pupil of a master who is a barrister at law in England and Northern Ireland or a member of the Faculty of Advocates of Scotland or of an advocate and solicitor in Singapore or Malaysia practicing for not less than 7 years. He can also be exempted if he is or has been a solicitor in England and Northern Ireland, or a Writer of the Signet, law agent or solicitor in Scotland or he has been engaged in legal practice for not less than 6 months in any Commonwealth country or territory.

Practitioners

All advocates and solicitors that have been admitted to practise have the exclusive right to appeal and plead in all the courts of justice in Brunei Darussalam.⁵

The application process

All application for admission to become an advocate and solicitor shall be made by petition to the Chief Justice and shall be verified by affidavit.⁶ The petitioner shall first file his petition at the Chief Registrar's office, accompanied by a notice intimating that he has applied. A notice shall be posted at the Supreme Court for one month before the petitioner is heard to be admitted.

A month before the petitioner is heard, he shall file an affidavit exhibiting documentary evidence which he states that he is qualified, if he has been practising law outside Brunei, evidence that there has been no disciplinary proceedings pending or contemplated against him and that his professional conduct was not under investigation. He would also need to show 2 recent certificates as to his good character and a certificate of diligence from each Master with whom he served his pupillage. The court may also request for other information or evidence as it may require.

These documents would then be filed by the Chief Registrar and within 5 days after, they shall be served on the Attorney General and upon any other relevant persons.⁷

After the application is heard and once the petitioner is admitted, his name would be entered into the roll. The Chief Registrar keeps a roll of advocates and solicitors' names with the dates of their respective admission. The name with the date of admission of every person admitted shall be entered upon the roll in order of admission.

Every advocate and solicitor is responsible for deliver to the Chief Registrar an application for a Practising Certificate every year before he does any act in the capacity of an advocate and solicitor⁸. The application shall be accompanied by a declaration in writing by the applicant stating his full name, the name under which he practices or the name of the advocate and solicitor or the firm of advocates and solicitors employing him at which he practice in Brunei Darussalam.

If he is not a Brunei Darussalam national or does not have a residence permit, he must also state that during the period in respect of which his immediately preceding practising certificate was issued, he had been in active practice in Brunei Darussalam for at least 3 months in aggregate if it was his first Practising Certificate or at least 9 months in the aggregate in any other case. All applicants are also required to pay a prescribed fee to obtain the Practising Certificate.

⁵ Section 17, Legal Profession Act

⁶ Section 4, Legal Profession Act

⁷ Section 6, Legal Profession Act

⁸ See Part III, Legal Profession Act

Once the Chief Registrar is certain that the applicant's name is on the roll, and is satisfied with all the accompanying documents the applicant has provided, he shall issue to the applicant the practising certificate which will authorize him to practise as an advocate and solicitor in Brunei Darussalam. 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 next 31st December. The Practising Certificate can however also expire once the name of the advocate and solicitor is struck off the roll or where he is adjudicated as bankrupt. In such a case, his Practising Certificate will be suspended until the Chief Justice consents to it being reinstated.

Ad- hoc admission

A judge has the discretion to admit into practice for the purpose of one case only any person who is not an ordinary resident of Brunei Darussalam but intends to come to Brunei Darussalam to appear in a case on the instructions of an Advocate and Solicitor.⁹ In such cases, he must be Her Britannic Majesty's Patent as Queen's Counsel and also must possess such special skill and qualifications for the purpose of the case whether or not such special skill and qualifications are available in Brunei Darussalam.

A judge can also admit at his discretion for similar purposes, a person who is entitled to practise before the High Court in Malaysia, Singapore or Hong Kong or in any other Commonwealth country the Chief Justice may specify providing that he has not been admitted under this circumstance in respect of more than two other cases in the current calendar year.

Any person applying to be admitted on an ad hoc basis shall do so by originating motion verified by an affidavit stating the names of the parties and the brief particulars of the case he intends to appear in. The originating motion and the affidavit shall be served on the Attorney General and to the other parties to the case. The Judge prior to deciding to admit or not would usually first seek the views of each of the persons served with the application (originating motion).

The Chief Registrar shall then issue to any person admitted on an ad hoc basis a certificate to practise which would specify the case the person is to appear in. This person is deemed to be a person whose name is on the roll and to whom a practising certificate has been given to. However, his name would not be entered in the roll of names but will enter into a separate roll for such persons who are admitted on an ad-hoc basis.

Provisional admission

Advocates and solicitors can also be admitted provisionally prior to their application being heard.¹⁰ The Chief Justice may after the petitioner has served his petition, verifying affidavit and accompanying exhibits, provisionally admit him to practise as an advocate and solicitor subject to any conditions that the Chief Justice may impose.

⁹ Section 7, Legal Profession Act

¹⁰ Section 8, Legal Profession Act

Upon receiving payment of the prescribed fee, the Chief Justice will issue to every person admitted provisionally a provisional licence to practise specifying in it any terms and conditions he has imposed. Such persons shall be entitled to practise as an advocate and solicitor as if their names were on the roll and as if a practising certificate has been issued to them. However, the Chief Justice has the discretion to revoke a provisional licence at any time. Otherwise, a provisional licence expires on the date of the final determination of admission or when a petition has been withdrawn for such person. Similar to ad-hoc cases, provisional persons' names shall be kept on a separate roll.

Other qualified practitioners

A person employed in his professional capacity as an advocate and solicitor with the Government or an approved legal department of a company incorporated in Brunei Darussalam under the Companies Act which has been designated by the Attorney General can also qualify to be practising in Brunei Darussalam providing he pays for the prescribed fee to a practising certificate.¹¹

Furthermore, any person who holds the office of Attorney General, Solicitor General or Deputy Public Prosecutor also shares the rights of a qualified advocate and solicitor for as long as they continue to hold such office.¹²

To qualify to use the title of “consultant”, one needs to have been either an advocate or solicitor in continuous practice for a period of not less than 10 years.¹³

Hearing and the right of appeal

All petitions and originating motions are held in open court.¹⁴ Any appeals from any judgment or court order on any petition or originating motion lie to the Court of Appeal. The appeal can either be initiated by the petitioner himself or it could be initiated by the Attorney General or any other person that has been served with the petition or originating motion.

Miscellaneous

If the Chief Justice holds the opinion that the number of advocates practising in Brunei Darussalam is sufficient to serve the community, he shall make such a declaration to that effect in the *Government Gazette*¹⁵. During the period after the Declaration was made and before it is revoked, no person other than a national of Brunei shall be entitled to be admitted as an advocate or even issued a provisional licence to. His Majesty in Council can also direct at 6 months after the Declaration was made, that the name of any advocate who at that time is not an ordinary resident of Brunei Darussalam to be deleted.

It is an offence for an person who is not considered a qualified person to practise law in Brunei Darussalam, to act as an advocate and solicitor and upon conviction shall be liable

¹¹ Section 18, Legal Profession Act

¹² Section 17(2), Legal Profession Act

¹³ Section 28A, Legal Profession Act

¹⁴ Section 9, Legal Profession Act

¹⁵ Section 12, Legal Profession Act

to a fine of \$1,000 and to imprisonment for a term of 6 months. However, if they commit such acts which includes preparing a document involving a grant of probate or letters of administration or he acts on behalf of claimant that alleges to have a legal claim and as a result writes, publishes or sends a letter or notice threatening legal proceedings etc shall only be guilty of an offence if he can prove that the act was not done for or in expectation of any fee, gain or reward.¹⁶

The Law Society

The Law Society of Brunei Darussalam was established in 2003 in accordance with the Legal Profession (Law Society of Brunei Darussalam) Order of 2003, which is a subsidiary legislation to the Legal Profession Act.

Amongst its objectives are to maintain and improve the standards of professional conduct and learning within the legal profession, to facilitate the acquisition of legal knowledge by members of the legal profession, to assist the Government and the Courts in all matters relating to the law and to establish a library housing law books and reports to help facilitate knowledge building among the profession.¹⁷

Membership

The Law Society consists of all advocates and solicitors who possess a valid practising certificate and they will remain as members for as long as they hold one. The society also admit as members non-practitioners and these are advocates and solicitors who does not have a valid practising certificate but non-practitioner members are not eligible to vote and they themselves cannot be elected to the Council. Honorary members are also occasionally admitted as members to the Society as they think fit and this membership could be either for life or for such a period the Council thinks appropriate.¹⁸

As mentioned briefly, only practitioner members are eligible to attend and vote at any general meeting of the Society but only practitioner members who are Brunei Darussalam nationals are eligible to be elected to the Council. A practitioner member can also by resolution exclude all other members from a general meeting of the society.¹⁹

Any member of the society other than an honorary member may, after being given a reasonable opportunity to answer all allegations made against him, be expelled from membership or be deprived from any of the rights and privileges of the membership. A practitioner member however cannot be expelled so long as he has in force a practising certificate.²⁰

¹⁶ Section 19, Legal Profession Act

¹⁷ See Section 4, Law Society Order

¹⁸ Sections 5-8, Law Society Order

¹⁹ Section 9, Law Society Order

²⁰ Section 10, Law Society Order

The Council

The Council of the Society is responsible for the proper management of the Society's affairs and also for the proper performance of its purposes and powers. The Council consists of statutory members and elected members.²¹

Statutory members are automatic members to the Council each time it is constituted. They comprise of the immediate past President of the Society, advocates and solicitors nominated by the Attorney General and advocates and solicitors appointed by the Council as soon as practicable after it is constituted. Elected members are members that need to be elected by the Society and they comprise of 4 practising members who have been in practice for not less than 10 years and who were elected by practicing members who have been in practice for more than 10 years, 3 practising members who have been in practice not less than 7 years and who were elected by practising members who have been in practice not less than 7 years and 3 practising members who have been in practice for not less than 5 years and who were elected by practising members who have been in practice for not less than 5 years. Every elected member holds office in the Council for two years.

It is compulsory for all members of the Society to vote.²² If they fail to do so, they will be disqualified from applying for a practicing certificate unless they can satisfy the Chief Registrar with a reasonable excuse for not voting. He has to prove either he was not in Brunei Darussalam at the time of the election or he has a good and sufficient reason for not voting. To avoid disqualification, he can also pay a penalty of \$500 which will go into the Compensation Fund.

Elections are held bi-annually in the month of September²³ and usually take place within 21 days after the annual General Meeting of the Society. Every Council constituted after an election shall take office on the next 1st January after the election and shall hold office for 2 years until the 31st December of the following year. The officers of Council are comprised of the President, Vice President, Secretary and Treasurer.²⁴

Powers of the Council

The Council is mainly responsible for the management of the Society and its funds. Amongst its other powers include²⁵, making rules that are not already expressed by the Chief Justice, answering questions affecting the practice and etiquette of the profession, take cognizance of anything affecting the Society or the professional conduct of its members and to bring before any General Meeting, any material to the Society that would be in the profession's interests and make recommendations in relation to it. The Council may also propose legislation or report on any current legislation that has been submitted to them, create prizes and opportunity for scholarships for law students, communicate with other similar bodies and members of the profession in other places or countries to

²¹ Section 13, Law Society Order

²² Section 16, Law Society Order

²³ Section 17(1), Law Society Order

²⁴ Section 22(1) of the LP (Law Society) Order 2003

²⁵ Section 25, Law Society Order 2003

enable exchange of information that may be beneficial to the members of the Society. The full list of powers can be found under section 27 of the Law Society Order.

Legal Qualifications for Syariah Lawyers

Section 25 of the Syariah Courts Act (Chapter 184) has specified who may be appointed as Syar'ie Prosecutor. His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis Ugama Islam and after consultation with the Majlis, appoint a person who is qualified to become Syariah High Court Judge, to be the Chief Syar'ie Prosecutor²⁶. The Chief Syar'ie Prosecutor shall have powers exercisable at his discretion to commence and carry out any proceedings for an offence before a Syariah Court²⁷; and he shall not be subject to the direction or control of any other person or authority²⁸.

His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Chief Syar'ie Prosecutor, appoint a fit and suitable persons from members of the public service to be Syar'ie Prosecutors who shall act under the supervision and direction of the Chief Syar'ie Prosecutor and may exercise all or any right and power vested in or exercisable by the Chief Syar'ie Prosecutor himself²⁹.

Whereas for Syar'ie Lawyers, section 27(1) of the Syariah Courts Act (Chapter 184) says that the Chief Syar'ie Judge may, on payment of the prescribed fee, admit a person who possesses sufficient knowledge about *Hukum Syara'* and suitable to become a Syar'ie Lawyer to represent the parties in any proceedings before any Syariah Court. Subsection (2) of section 27 also states that no person other than a Syar'ie Lawyer shall have the right to appear as a *bil-khusumah* representative in any Syariah Court on behalf of any party to any proceeding before it.

Section 28 of the Syariah Courts Act (Chapter 184), the Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make Rules of Court to provide for the procedure, qualifications and fees for admission of Syar'ie Lawyers as well as regulate, control and supervise the conduct of Syar'ie Lawyers. By virtue of that section, the Syariah Courts (Syar'ie Lawyers) Rules, 2002 has been enacted which commences on the same date as the Syariah Courts Act (Chapter 184). Part II of this Rules talks about the Establishment of Syar'ie Lawyers Committee, Part III talks about Syar'ie Lawyers, Part IV on discipline, Part V on miscellaneous provisions; whereas fees and forms under this Rules can be found in the First and Second Schedule respectively.

Rule 9 talks about admission of Syar'ie Lawyers, which shall be made by the Chief Syar'ie Judge. Rule 10 stated that a person may be admitted to be Syar'ie Lawyers if he –

- (a) (i) is a Muslim and has passed the final examination which leads to a bachelor's degree in Syariah from any university or any Islamic

²⁶ Section 25(1) of the Syariah Courts Act (Chapter 184).

²⁷ Section 25(2) Ibid.

²⁸ Section 25(3) Ibid.

²⁹ Section 25(4) Ibid.

educational institution recognized by the Government of Brunei Darussalam;

- (ii) is a Muslim advocate or solicitor enrolled under the Legal Profession Act (Chapter 132) who has passed the Syar'ie Lawyer Certificate examination;
 - (iii) has served as a Syar'ie Judge, Kadi or Syar'ie Prosecutor for a period of not less than 3 years; or
 - (iv) is a Muslim who has received professional training in Islamic judicial matters which is recognized by the Government of Brunei Darussalam or who specializes in *Hukum Syara'*;
- (b) has attained the age of 21 years;
- (c) is of good behavior and –
- (i) has never been convicted in Brunei Darussalam or in any other place of any criminal offence which makes him unfit to become a Syar'ie Lawyer;
 - (ii) has never been adjudged a bankrupt; and
 - (iii) has never been disbarred, struck off or suspended in his capacity as a legal practitioner by whatever name called in any other country.

Legal Education

Presently, there is no law faculty at the University of Brunei Darussalam. Most of the lawyers practicing in Brunei are either qualified in England or Malaysia.

As stated earlier in Rule 10 of the Syariah Courts (Syar'ie Lawyers) Rules, 2002, a person may be admitted as Syar'ie Lawyers if he fulfills all the necessary requirements. Therefore, in its effort to produce qualified Islamic lawyers and legal practitioners in the Syariah Court, the University of Brunei Darussalam has offered a course in Diploma In Islamic Law and Legal Practice³⁰, which started its first session in 2000/2001. This course stresses upon the practical aspect especially in practicality, legal administration and their executions.

Objectives of this course are, among others, to give wider opportunity for law degree holders and legal practitioners in Brunei Darussalam, in Syariah or Civil to undertake a formal program in Islamic law; to give more exposure to law graduates in Islamic law and Administration; to produce qualified Islamic lawyers; and to minimizing government expenditure on sending students abroad by providing the course locally.

Subjects offered in the program includes the Islamic Legal System, Islamic Family Law, Syariah Political Science, Islamic Judiciary and Practice, Brunei Legal System, Islamic Law and Evidence, Islamic Criminal law, Islamic Law of Contract and Trade, Procedures in Criminal and Civil and Commercial Law.

³⁰ Diploma Perundangan Islam dan Guaman Syarie.