

# STATE OF SABAH

## SYARIAH COURTS ENACTMENT 2004

(Sabah No. 6 of 2004)

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**LIST OF AMENDMENTS**

<i>Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
6/2010	9 (1), 10	29-08-2010
2/2017	30 (1)	01-07-2017
2/2019	32	20-05-2019
7/2022	Addition of new section 28A	15-07-2022

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**SYARIAH COURTS ENACTMENT 2004**  
**(Sabah No. 6 of 2004)**

An Enactment to provide new provisions relating to the establishment, organization, jurisdiction and powers of the Syariah Courts and for matters relating, thereto.

ENACTED by the Legislature of the State of Sabah as follows:

PART I  
PRELIMINARY

**Short title and commencement**

1. (1) This Enactment may be cited as the Syariah Courts Enactment 2004.
- (2) This Enactment shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint. [01.06.2005]

**Interpretation**

2. (1) In this Enactment, unless the context otherwise requires –
  - "Chief *Syar'ie* Prosecutor" or "*Syar'ie* Prosecutor" means the Chief *Syar'ie* Prosecutor or *Syar'ie* Prosecutor appointed under subsection 30(1) and (4);
  - "Civil Court" means any court established under Article 121 of The Federal Constitution;
  - "Court" or "Syariah Court" means the Syariah Appeal Court, Syariah High Court or the Syariah Subordinate Court, as the case may be, established under section 4;
  - "Islamic Law" means Islamic Law according to *Mazhab Syafie* or any one of *Mazhab Maliki, Hanafi* or *Hanbali*;
  - "Judge" or "*Syar'ie* Judge" means a Judge of the Syariah Appeal Court, the High Court or the Syariah Subordinate Court, as the case may be, appointed under subsection 6(1), 7(1) or 9(1);

"Majlis" means the Majlis Ugama Islam Sabah established under section 4(1) Majlis Ugama Islam Negeri Sabah Enactment 2004;

"Minister" means the Minister charged with the responsibility for the administration of Islamic affairs in the State of Sabah;

"Registrar" means the Chief Registrar or Registrar or Deputy Registrars or Assistant Registrars appointed under section 10;

"Religious Enforcement Officer" means Religious Enforcement Officers appointed under section 31(1) and includes the Chief Religious Enforcement Officer;

"Repealed Enactment" means the Syariah Courts Enactment 1992;

"State" includes the Federal Territories Kuala Lumpur, Labuan and Putrajaya;

"State Chief *Syar'ie* Judge" means the Sabah State Chief *Syar'ie* Judge appointed under subsection 5(1);

"*Syar'ie* Lawyer" means a person who has been admitted as a *Syar'ie* Lawyer under section 32.

(2) All words and expressions used in this Enactment and not defined therein but defined in the Interpretation and General Clauses Enactment 1963 shall have the same meanings assigned thereto respectively to the extent that they are not inconsistent with Islamic Law.

### **Saving of prerogative**

3. Save as expressly provided in this Enactment, nothing contained in this Enactment shall derogate from or affect the prerogative rights and powers of the Yang di-Pertuan Agong as the Head of the Religion of Islam in the State of Sabah as declared and set forth in the Constitution of the State of Sabah.

PART II  
SYARIAH COURTS  
*Constitution and jurisdiction*

**Establishment of Syariah Courts**

4. (1) The Yang di-Pertua Negeri may, on the recommendation of the State Chief *Syar'ie* Judge, by notification in the *Gazette*, constitute Syariah Subordinate Courts at such places as he considers fit and may prescribe the local limits of jurisdiction of such courts.

(2) The Yang di-Pertua Negeri may, on the recommendation of the State Chief *Syar'ie* Judge, by notification in the *Gazette*, constitute a Syariah High Court for the State of Sabah which have jurisdiction throughout the State of Sabah and may prescribe the divisions limit of jurisdiction in the State of Sabah.

(3) The Yang di-Pertua Negeri may, on the recommendation of the State Chief *Syar'ie* Judge, by notification in the *Gazette*, constitute a Syariah Appeal Court for the State which have jurisdiction throughout the State of Sabah.

**Appointment of State Chief *Syar'ie* Judge**

5. (1) The Yang di-Pertua Negeri may, on the recommendation of the Majlis, appoint a State Chief *Syar'ie* Judge.

(2) A person is qualified for appointment under subsection (1) if he -

(a) is a citizen; and

(b) before his appointment, has for a period of not less than ten years including a period of not less than one year has been a Judge of the Syariah Appeal Court or the Syariah High Court, been a Syariah Subordinate Court Judge or a Registrar or a *Syar'ie* Prosecutor of a State or sometimes one and sometimes another.

(3) A person who, immediately before the commencement of this Enactment, was holding the post of State Chief *Syar'ie* Judge under the Repealed Enactment and was performing judicial functions shall, on the commencement of this Enactment, continue to hold office as the State Chief *Syar'ie* Judge as if he had been appointed under subsection (1).

- (4) The appointment under subsection (1) shall be published in the *Gazette*.

#### **Appointment of Syariah Appeal Court Judges**

6. (1) The Yang di-Pertua Negeri may, on the recommendation of the Majlis and State Chief *Syar'ie* Judge, appoint Syariah Appeal Court Judges.
- (2) A person is qualified for appointment under subsection (1) if he –
- (a) is a citizen; and
- (b) before his appointment, has for a period of not less than ten years been a *Syar'ie* Judge or a Registrar or a Syariah Prosecutor or *Kadhi* of a State or sometimes one and sometimes another.
- (3) Every appointment under subsection (1) shall be published in the *Gazette*.

#### **Appointment of Syariah High Court Judges**

7. (1) The Yang di-Pertua Negeri may, on the recommendation of the Majlis and the State Chief *Syar'ie* Judge, appoint Syariah High Court Judges.
- (2) A person is qualified for appointment under subsection (1) if he –
- (a) is a citizen; and
- (b) before his appointment, he has for a period of not less than ten years including a period of not less than one year has been a Syariah Subordinate Court Judge, been a Registrar or a *Syar'ie* Prosecutor of a State or sometimes one and sometimes another.
- (3) A person who, immediately before the commencement of this Enactment, was holding the post of Syariah High Court Judge under the Repealed Enactment and was performing judicial functions shall, on the commencement of this Enactment, continue to hold office as a Syariah High Court Judge as if he had been appointed under subsection (1).
- (4) Every appointment under subsection (1) shall be published in the *Gazette*.

### Tenure of Office of Syariah Court Judges

8. (1) Subject to the provisions of subsection (2) to (6), a State Chief *Syar'ie* Judge appointed under subsection 5(1), a *Syar'ie* Appeal Judge appointed under subsection 6(1), and a *Syar'ie* High Court Judge appointed under subsection 7(1) shall hold office until the age of sixty-five years or until such later time as may be approved by the Yang di-Pertua Negeri.

(2) A State Chief *Syar'ie* Judge or a *Syar'ie* Appeal Judge or a *Syar'ie* High Court Judge may, at any time, resign from his office by sending to the Yang di-Pertua Negeri a letter of resignation under his hand but he may not be removed from office except in accordance with the following provisions under this section.

(3) Where the State Chief *Syar'ie* Judge refers a representation to the Yang di-Pertua Negeri that a *Syar'ie* Judge should be removed on grounds of –

- (a) any breach to any of the *Syar'ie* Judge code of ethic which is prescribed under this Enactment or rules; or
- (b) disability, due to mental or bodily weakness or other causes, to properly perform the function of his duty,

the Yang di-Pertua Negeri shall appoint a tribunal in accordance with subsection (4) and refer the representation to it, and may, on the recommendation of the said tribunal, remove the *Syar'ie* Judge from his office.

(4) There shall be a tribunal consist of not less than five Muslims who are or have been a State Chief *Syar'ie* Judge or *Syar'ie* Judge or The Judge of Federal Court, Appeal Court Judge or High Court Judge of Malaysia, and the tribunal shall be presided by a member in accordance with the following order; State Chief *Syar'ie* Judge, Judge of the Syariah Appeal Court according to their own order of appointment, and other members according to their dates of appointment as a member of the tribunal.

(5) Pending any references and report under subsection (3), the Yang di-Pertua Negeri may, on the recommendation of the State Chief *Syar'ie* Judge, suspend the said *Syar'ie* Judge from performing his duties.

(6) Subject to the provision of this section, the Yang di-Pertua Negeri may make regulations providing for conditions of service, resignation, suspension and removal from the office of State Chief *Syar'ie* Judge.



(7) Notwithstanding the provisions of subsection (1), the validity of any thing done by a State Chief *Syar'ie* Judge or *Syar'ie* Judge shall not be questioned on ground that the *Syar'ie* Judge has reached a retiring age limit.

#### **Appointment of Syariah Subordinate Court Judges**

9. (1) The Yang di-Pertua Negeri may, on the recommendation of the State Chief *Syar'ie* Judge, appoint from amongst members of the Federal public service or the State public service, Syariah Subordinate Court Judges.

(2) Every appointment under subsection (1) shall be published in the *Gazette*.

(3) A person who, immediately before the commencement of this Enactment, was holding the post of Syariah Subordinate Court Judge under the Repealed Enactment and was performing judicial functions shall, on the commencement of this Enactment, continue to hold office as a Syariah Subordinate Court Judge as if he had been appointed under subsection (1).

#### **Appointment of Chief Registrar, Registrar and Deputy Registrars and Assistant Registrars**

10. The Yang di-Pertua Negeri may, on the recommendation of State Chief *Syar'ie* Judge, appoint from amongst members of the Federal public service or the State public service a Chief Registrar of the Syariah Appeal Court, a Registrar and Deputy Registrars of the Syariah High Court, and Assistant Registrars of the Syariah Subordinate Courts.

#### **Jurisdiction of Syariah High Court**

11. (1) A Syariah High Court shall have jurisdiction throughout the State of Sabah and shall be presided over by a Syariah High Court Judge.

(2) Notwithstanding subsection (1), the State Chief *Syar'ie* Judge may sit as a Syariah High Court Judge and preside over such Court.

(3) The Syariah High Court shall –

- (a) in its criminal jurisdiction, try any offence committed by a Muslim and punishable under the Majlis Ugama Islam Negeri Sabah Enactment 2004, Islamic Family Law Enactment 2004, Syariah Criminal

Enactment 1995 or under any other written law for the time being in force which confers jurisdiction on the Syariah High Court to try any offence, and may impose any punishment provided therein; and

- (b) in its civil jurisdiction, hear and decide all actions and proceedings if all the parties to the actions or proceedings are Muslims and the actions or proceedings relate to -
- (i) betrothal, marriage, *ruju'*, divorce, annulment of marriage (*fasakh*), *nusyuz*, or judicial separation (*faraq*) or any other matter relating to the relationship between husband and wife;
  - (ii) any disposition of or claim to property arising out of any of the matters set out in subparagraph (i);
  - (iii) the maintenance of dependants, legitimacy, or guardianship or custody (*hadhanah*) of infants;
  - (iv) the division of, or claims to, *harta sepencarian*;
  - (v) wills or gifts made while in a state of *marad-al-maut* of a Muslim deceased;
  - (vi) gifts inter vivos (*hibah*), or settlements made without adequate consideration in money or money's worth by a Muslim;
  - (vii) *wakaf* or *nazr* or matters relating thereto;
  - (viii) division and inheritance of testate or intestate property or appointment of *Wasi* and for matters relating thereto;
  - (ix) the determination of the persons entitled to share in the estate of a deceased Muslim or the shares to which such persons are respectively entitled and for matters relating thereto;
  - (x) a declaration that a deceased person was a Muslim or otherwise at the time of his death;
  - (xi) registration and adoption of child and for matters relating thereto; and

- (xii) other matters in respect of which jurisdiction is conferred by any written law.

### **Jurisdiction of Syariah Subordinate Court**

12. (1) A Syariah Subordinate Court shall have jurisdiction throughout the Division or District where it is constituted and shall be presided over by a Judge of the Syariah Subordinate Court.

(2) The Syariah Subordinate Court shall –

- (a) in its criminal jurisdiction, try any offence committed by a Muslim under the Majlis Ugama Islam Negeri Sabah Enactment 2004, Islamic Family Law Enactment 2004, Syariah Criminal Enactment 1995 or any other written law which prescribes offences where the maximum punishment provided by such Enactments or any other written law does not exceed three thousand ringgit, or imprisonment for a term not exceeding one year or both, and may impose any punishment provided for such offences; and
- (b) in its civil jurisdiction, hear and decide all such actions and proceedings as a Syariah High Court is authorised to hear and decide, if the amount or value of the subject-matter in dispute does not exceed one hundred thousand ringgit or is not capable of estimation in terms of moneys (not including claims of *hadhanah* or *harta sepencarian*).

(3) The Yang di-Pertua Negeri may, on the recommendation of State Chief *Syar'ie* Judge from time to time by notification in the *Gazette* extend the jurisdiction of the Syariah Subordinate Court.

### **Appeal to Syariah High Court**

13. (1) An appeal shall lie to the Syariah High Court from any decision of a Syariah Subordinate Court –

- (a) in its criminal jurisdiction, by the prosecutor or by the person convicted, and such appeal may be against an acquittal, a conviction or a sentence or any of them;

- (b) in its civil jurisdiction -
  - (i) by any person aggrieved by the decision, if the amount claimed is not less than one thousand ringgit;
  - (ii) in all cases involving any decision as to personal status, by any person aggrieved by the decision;
  - (iii) in all cases relating to maintenance of dependants, by any person aggrieved by the decision;

Provided that no such appeal shall lie against a decision made by consent; and

- (c) in any other case, if the Syariah High Court gives leave to appeal.
- (2) In any appeal, the Syariah High Court may –
- (a) in a criminal matter, dismiss the appeal, convict and sentence the appellant, order the trial Court to call for the defence or make further inquiry, enhance or alter the nature of the sentence, order a retrial, or alter or reverse any order of the trial Court: and
  - (b) in a civil matter, confirm, reverse or vary the decision of the trial Court, exercise any such powers as the trial Court could have exercised, make such order as the trial Court ought to have made, or order a retrial.

#### **Application for leave to appeal**

14. (1) An appeal or application for leave to appeal under paragraph 13(1)(c) shall be made to the Syariah High Court in such manner as may be prescribed, but in any event within fourteen days from the date of the judgement, order or decision in respect of which the application was made or, in the event that the applicant was not on that date aware thereof and could not by the exercise of reasonable diligence have become so aware, within fourteen days from the date such judgement, order, or decision came to his knowledge.

(2) The Syariah High Court, on hearing any application for leave to appeal, may on special ground extend the time for appealing, notwithstanding that it may have expired.

#### **Certification of inheritance**

15. If in the course of any proceedings relating to the administration or distribution of the estate of the deceased Muslim, any Court or authority, other than the Syariah High Court or a Syariah Subordinate Court, is under a duty to determine –

- (a) the persons entitled to share in the estate; or
- (b) the shares to which such persons are respectively entitled,

the Syariah Court may, on the application by such court or the authority or any person who claims to be a beneficiary or his representative, and on payment of the prescribed fee, certify the facts found by it and its opinion as to the persons who are entitled and as to the shares.

#### **Supervisory and revisionary jurisdiction of Syariah High Court**

16. (1) The Syariah High Court shall have supervisory and revisionary jurisdiction over all Syariah Subordinate Courts and may, either of its own motion or at the instance of any party or person interested, at any stage in any matter or proceeding, whether civil or criminal, in any Syariah Subordinate Court, call for and examine any records thereof and may give such directions as justice may require.

(2) Whenever the Syariah High Court calls for the records under subsection (1), all proceedings in the Syariah Subordinate Court on the matter or proceeding in question shall be suspended pending further order of the Syariah High Court.

#### **Jurisdiction of Syariah Appeal Court**

17. (1) The Syariah Appeal Court shall have jurisdiction to hear and determine any appeal against any decision made by the Syariah High Court in the exercise of its original jurisdiction.

(2) When an appeal from a decision of a Syariah Subordinate Court has been determined by the Syariah High Court, the Syariah Appeal Court may on the application of any party grant leave for the determination by itself of any question of law of public

interest which has arisen in the course of the appeal and the determination of which by the Syariah High Court has affected the result of the appeal.

(3) When leave has been granted by the Syariah Appeal Court, it shall hear and determine the question allowed to be referred for its determination and make such order as the Syariah High Court might have made, and as it considers just for the disposal of the appeal.

### **Supervisory and revisionary jurisdiction of Syariah Appeal Court**

**18.** (1) The Syariah Appeal Court shall have supervisory and revisionary jurisdiction over the Syariah High Court and may, either on its own motion or at instance of any party or person interested, at any stage in any matter or proceeding, whether civil or criminal, in the Syariah High Court, call for and examine any records of such matter or proceeding and may give such directions as justice may require.

(2) Whenever the Syariah Appeal Court calls for the records of any matter or proceeding under subsection (1), all proceedings in the Syariah High Court on the matter or proceeding shall be suspended pending the further order of the Syariah Appeal Court.

### **Composition of Syariah Appeal Court**

**19.** (1) An appeal in the Syariah Appeal Court shall be heard and disposed of by a chairman and two other Judges of the Syariah Appeal Court appointed under subsection 6(1) as determined by the State Chief *Syar'ie* Judge.

(2) Notwithstanding section 6, the State Chief *Syar'ie* Judge may appoint any Judge of the Syariah High Court to be a member of the Syariah Appeal Court for any particular proceeding if the State Chief *Syar'ie* Judge considers it desirable to do so, provided that shall not include the *Syar'ie* Judge who tried or made decision on the case appealed against.

(3) The State Chief *Syar'ie* Judge shall be the Chairman for every proceeding of the Syariah Appeal Court, except -

- (a) if the appeal before the Syariah Appeal Court is against the decision of the State Chief *Syar'ie* Judge who sat as a Judge of the Syariah High Court; or

- (b) if the State Chief *Syar'ie* Judge is unable to be the chairman for any other reason,

the State Chief *Syar'ie* Judge shall appoint the most senior of the Syariah Appeal Court Judges or the Syariah High Court Judges to be chairman.

**Decision by the majority**

20. The appeal shall be decided in accordance with the majority opinion of the Syariah Appeal Court.

**Continuation of proceedings in Syariah Appeal Court notwithstanding absence of Judge**

21. (1) If in the course of any proceeding in an appeal or in a reserved judgement or at any time before the judgement is delivered, any panel or any Syariah Appeal Court Judge hearing the proceeding is unable, through illness or any other cause, to attend and complete the proceeding or otherwise exercise his function as a Judge of that Court, then, if both parties consent, the hearing shall continue and judgement or reserved judgement, as the case may be shall be, given by the remaining two Judges of the Syariah Appeal Court, and for the purposes of the appeal the Syariah Appeal Court shall be deemed to have been properly constituted.

(2) In any such case as is mentioned in subsection (1), if there is no unanimous decision by both of the remaining Judges, the appeal shall be re-heard.

(3) If under subsection (1) both parties do not give their consent, or more than one Judge are unable, through illness of any other cause, to attend and complete the proceeding or otherwise exercise their functions as Judges of that Court, the appeal shall be re-heard.

**Open Court**

22. (1) All trials in the Syariah Court shall, subject to any other written law and subsection (2), be open to the public.

(2) Notwithstanding subsection (1), a Court may order that the whole or any part of any proceeding before it be held *in camera* if it is satisfied that such order would be in the interest of justice, peace, security and propriety.

### **Court Seal**

23. Every Syariah Court shall have and use, where necessary, a seal of such form and format as may be determined by the Yang di-Pertua Negeri, by notification in the *Gazette*.

### **Language**

24. (1) The Malay language shall be the language for all the Syariah Court proceedings but the Syariah Court may in the interest of justice allow the use of any other language.

(2) All documents and notes of proceedings may be in the *Rumi* or *Jawi* Script.

### **Record and Account**

25. (1) Syariah Court shall keep and maintain full and proper record relating to all actions or proceedings before it in accordance with the method provided for in this Enactment.

(2) Syariah Court shall keep and maintain full and proper accounts relating to all financial matters of the Syariah Court and shall account for all moneys received in accordance with the method provided for in this Enactment.

### **Jurisdiction does not extend to non-Muslims**

26. No decision of the Syariah Appeal Court, Syariah High Court or any of the Syariah Subordinate Court shall involve the right or the property of a non-Muslim.

### **Reciprocal action**

27. (1) If a Syariah Court in any State in Malaysia issues a warrant or summons or notice, either *mal* or criminal, as the case may be, relating a matter in its jurisdiction under the provisions of any law in force in that State, to be executed or served on any person who is or believed to be in the State of Sabah, a State Chief *Syar'ie* Judge or *Syar'ie* Judge may endorse the warrant or summons or notice with his signature and the warrant or summons or notice may be executed or served on such persons as if the warrant or summons or notice had been issued by a Syariah Court in the State of Sabah according to the provisions of this Enactment.



(2) If a Syariah Court in the State of Sabah issues a warrant authorising the arrest of any person, or summons or notice calling any person to appear in a Syariah Court, and such person is or is believed to be in other State in Malaysia and such warrant or summons or notice are executed or served on such person in accordance with any law in force in that State, the warrant or summons or notice shall, for the purpose of this Enactment, be deemed to have been duly executed or served as if the execution or service had been effected in the State of Sabah.

(3) If a Syariah Court in any State in Malaysia makes an order or a judgement under the provisions of any law in force in that State against a person and such person is or is believed to be in the State of Sabah, a State Chief *Syar'ie* Judge or *Syar'ie* Judge, if satisfied that the order or judgement was duly issued by a competent Syariah Court in any State in Malaysia, may endorse the order or judgement and such order or judgement may be executed or served, as the case may be, as if it had been an order or a judgement lawfully made by any Syariah Court in the State of Sabah according to the provisions of this Enactment.

(4) Warrant, summons, notice, order or any other court process issued or made by the Syariah Court under this section, shall contains the court seal and the signature of the State Chief *Syar'ie* Judge, *Syar'ie* Judge or an officer which is given such power by the Court.

**Protection of State Chief *Syar'ie* Judge, *Syar'ie* judge, Court officials, etc.**

**28.** (1) No State Chief *Syar'ie* Judge or *Syar'ie* Judge shall be liable to be sued in any Syariah or Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, nor shall any order for cost be made against him, provided that at the time he in good faith believed himself to have jurisdiction to do or order the act complained of.

(2) No officer of any Syariah Court or other person bound to execute the lawful warrant or order or other process issued by the State Chief *Syar'ie* Judge or a *Syar'ie* Judge shall be liable to be sued in any Syariah or Civil Court for the execution of such warrant or order or other process in that Court.

**Power of the State Chief *Syar'ie* Judge to issue direction**

**28A.** The State Chief *Syar'ie* Judge may, from time to time, issue direction or practice direction to the administration, conduct or procedure of the Syariah Court as he deems necessary.

### **Rules Committee of the Syariah Courts**

29. (1) There shall be a Rules Committee of the Syariah Court for the making of rules on the procedure of the Syariah Court of Appeal, Syariah High Court and Syariah Subordinate Court or other rules for carrying into effect the provisions of this Enactment.

(2) The Rules Committee of the Syariah Courts shall consists of -

(a) The State Chief *Syar'ie* Judge, as Chairman;

(b) the State Attorney General or his representative; and

(c) the following persons appointed by the State Chief *Syar'ie* Judge:

(i) a Syariah Appeal Court Judge;

(ii) a Syariah High Court Judge;

(iii) a Syariah Subordinate Court Judge;

(iv) a *Syar'ie* Lawyer; and

(v) a legal officer serving with the Legal Aid Bureau established under the Legal Aid Act 1971 [Act 26].

(3) The Chief Registrar of the Syariah Appeal Court shall be the Secretary to the Rules Committee of the Syariah Court and shall be responsible to carry out the decisions of the Committee.

(4) The Rules Committee of the Syariah Courts may determine its procedure.

(5) All rules made by the Rules Committee of the Syariah Courts shall be published in the *Gazette*.

### **PART III**

#### **PROSECUTION AND REPRESENTATION**

#### **Appointment of Chief *Syar'ie* Prosecutor and *Syar'ie* Prosecutors**

30. (1) The Yang di-Pertua Negeri may, on the recommendation of the Majlis, appoint a fit and proper person amongst the members of the State of Sabah public service as the Chief *Syar'ie* Prosecutor.

(2) The Chief *Syar'ie* Prosecutor shall have power exercisable at his discretion to institute, conduct or discontinue any proceeding for an offence before any Syariah Court.

(3) The Majlis, on the recommendation of Chief *Syar'ie* Prosecutor, may appoint fit and proper persons from amongst the members of the State of Sabah public service to be *Syar'ie* Prosecutors.

(4) *Syar'ie* Prosecutors shall act under the general control and direction of the Chief *Syar'ie* Prosecutor and may exercise all or any of the rights and powers vested in or exercisable by the Chief *Syar'ie* Prosecutor, except rights and powers expressed to be exercisable by the Chief *Syar'ie* Prosecutor personally.

(5) A person who, immediately before the commencement of this Enactment, was holding the post of Chief *Syar'ie* Prosecutor or *Syar'ie* Prosecutor under the Repealed Enactment shall, on the commencement of this Enactment, continue to hold office as a Chief *Syar'ie* Prosecutor or *Syar'ie* Prosecutor as if he had been appointed under subsection (1).

#### **Appointment Chief Religious Enforcement Officers and Religious Enforcement Officers**

**31.** (1) The Majlis may appoint from amongst the members of the State public service a Chief Religious Enforcement Officer and Religious Enforcement Officers to carry out the investigation of offences under Syariah Criminal Offences Enactment 1995, or under any other written law which prescribes offences within the jurisdiction of the Syariah Court.

(2) A person who, immediately before the commencement of this Enactment, was holding the post of Chief Religious Enforcement Officer or Religious Enforcement Officer under the Repealed Enactment shall, on the commencement of this Enactment, continue to hold office as a Chief Religious Enforcement Officer or Religious Enforcement Officer as if he had been appointed under subsection (1).

#### ***Syar'ie* Lawyer**

**32.** (1) Subject to subsections (2) and (3), the State Chief *Syar'ie* Judge may, on payment of a prescribed fee, admit any person having sufficient knowledge of Islamic

Law and Enactments in force in the State relating to Islamic affair, to be *Syar'ie* Lawyer to represent parties in any proceeding before a Syariah Court.

- (2) The State Chief *Syar'ie* Judge may make regulations to –
  - (a) provide for the procedure, qualification and fees for the admission of *Syar'ie* Lawyer; and
  - (b) regulate, control and supervise the conduct of *Syar'ie* Lawyer.
- (3) Notwithstanding subsection (1) –
  - (a) any member of the Judicial and Legal Service;
  - (b) any officer of the State Attorney - General's Chambers;
  - (c) any person appointed under section 3 of the Legal Aid Act 1971 [Act 26];
  - (d) any Majlis officer as determined by the Majlis; or
  - (e) any person deemed eligible by the State Chief *Syar'ie* Judge,

may act as *Syar'ie* Lawyer representing any party in the Syariah Courts if the party could have been represented by him in the Civil Court by virtue of the Legal Profession Act 1976 [Act 166] or the Advocates Ordinance [Cap. 2] or the Sarawak Advocates Ordinance [Cap. 110] without such member or person having admitted as an advocate and solicitor under that Act or Ordinance.

(4) Notwithstanding anything contained in this section, the State Chief *Syar'ie* Judge may, upon application by or on behalf of any *Syar'ie* Lawyer of other states in Malaysia, grant permission to such person to practise in any case subject to any conditions as specified in the rules made under this Enactment and on the payment of the prescribed fee.

(5) A person who, immediately before the commencement of this Enactment, was admitted as a *Syar'ie* Lawyer under the Repealed Enactment shall, subject to this Enactment and any rules relating to *Syar'ie* Lawyer made under this Enactment, be deemed to have been admitted to be a *Syar'ie* Lawyer and shall be entitled to appear in any Syariah Court on behalf of any party to any proceedings before the Syariah Court.

(6) Notwithstanding anything contained in any other written law, no person, other than a *Syar'ie* Lawyer or a person mentioned in subsection (3), shall be entitled to appear in any Syariah Court on behalf of any party to any proceedings before it.

(7) Any person who contravenes subsections (4) and (6) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

### **Syar'ie judge and Syar'ie Prosecutor Code of Ethics**

33. The Yang di-Pertua Negeri may, on the recommendation of the State Chief Syar'ie Judge, prescribe a code of ethics which must be observed by all Syar'ie Judges and Syar'ie Prosecutors.

## PART IV

### REPEAL AND TRANSITIONAL PROVISION

#### **Repeal and transitional provision**

34. (1) The Syariah Court Enactment 1992 is hereby repealed.

(2) On the commencement of this Enactment, every power of the Syariah Court constituted under the Repealed Enactment shall be taken over or exercised by the Syariah Court established under this Enactment and any expression in any written law or any other relating to the Syariah Court constituted under the Repealed Enactment, shall be deemed to be the expression which refer to the Syariah Court constituted under this Enactment.

(3) Any proceeding, action, claim or liability made, originated, filed, exercised or carried out in or before the Syariah Court established under the Repealed Enactment before the date of commencement of this Enactment, shall be deemed to have been resumed or carried out as if the Syariah Court had been properly constituted under this Enactment.

(4) All court rules and other subsidiary legislation made under, and any action exercised or carried out lawfully under or in accordance with the power of the Repealed Enactment, to the extent that the court rules or the subsidiary legislation are not inconsistent to this Enactment, be deemed have been done under or in accordance to the power of this Enactment, and shall continue to be in force until the same is amended, repealed, resolved, revoked or replaced under or in accordance with the power of this Enactment.