

ADMINISTRATION OF THE RELIGION OF ISLAM
(FEDERAL TERRITORIES) BILL 2013

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A BILL

i n t i t u l e d

An Act to make new provisions on the administration of the religion of Islam, the establishment and jurisdiction of the Syariah Courts, the establishment and functions of the Majlis Agama Islam Wilayah Persekutuan and other matters related thereto.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title, application and commencement

1. (1) This Act may be cited as the Administration of the Religion of Islam (Federal Territories) Act 2013.

(2) This Act applies only to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya.

(3) This Act comes into operation on a date to be appointed by the Yang di-Pertuan Agong by notification in the *Gazette*; and the Yang di-Pertuan Agong may appoint different dates for the coming into operation of different provisions of this Act.

Interpretation

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

“previous Act” means the Administration of Islamic Law (Federal Territories) Act 1993 [Act 505];

“*anak kariah*” means a person who permanently lives or habitually resides in a *kariah masjid*;

“*Baitulmal*” means the fund established under section 71;

“Judge” or “Syariah Judge” means a Judge of the Syariah High Court or the Syariah Subordinate Court, as the case may be, appointed under subsection 47(1) or 48(1);

“Judge of the Syariah Appeal Court” means a Judge of the Syariah Appeal Court appointed under subsection 46(1);

“*Hukum Syarak*” means *Hukum Syarak* according to *Mazhab Shafie*, or any one of *Mazhab Hanafi*, *Maliki*, or *Hanbali*;

“*Fatwa* Committee” means the *Fatwa* Committee established under section 35;

“National *Fatwa* Committee” means the National *Fatwa* Committee established by the Conference of Rulers under regulation 11 of the Regulations of the National Council for Islamic Religious Affairs Malaysia;

“*Jawatankuasa Kariah*” means a *Jawatankuasa Kariah* established by regulations made under section 95;

“*kariah masjid*”, in relation to a mosque, means the area in which a mosque is situated;

“Chief Syariah Judge” means the Chief Syariah Judge appointed under subsection 45(1);

“Chief Executive Officer” means the Chief Executive Officer of the Majlis appointed under subsection 28(1);

“Chief Religious Enforcement Officer” means the officer appointed as Chief Religious Enforcement Officer under subsection 69(1);

“Chief Syariah Prosecutor” means the officer appointed as Chief Syariah Prosecutor under subsection 68(1);

“Court” means the Syariah Subordinate Court or the Syariah High Court, as the case may be, constituted under subsection 44(1) or (2);

“Syariah Appeal Court” means the Syariah Appeal Court constituted under subsection 44(3);

“Civil Court” means any court established under Article 121 of the Federal Constitution;

“Syariah Court” means the Syariah Subordinate Court or the Syariah High Court, as the case may be, constituted under subsection 44(1) or (2);

“Majlis” means the Majlis Agama Islam Wilayah Persekutuan established under subsection 4(1);

“previous Majlis” means the Majlis Agama Islam Wilayah Persekutuan established under the previous Act;

“mosque” means a building–

(a) used for Friday prayers and other prayers and activities which are enjoined, recommended or approved by the religion of Islam; and

(b) the use of which as such is permitted by the Majlis under section 89,

and includes any *surau*, *madrasah* or other building prescribed by the Majlis as a mosque under that section;

“Minister” means the Minister responsible for the administration of the religion of Islam in the Federal Territories;

“*mualaf*” means a person who has converted to the religion of Islam referred to in section 98;

“Mufti” means a person who is appointed to be the Mufti for the Federal Territories under subsection 33(1), and includes the Deputy Mufti;

“*nazar*” means an expressed vow to do an act for any purpose permitted by *Hukum Syarak*;

“*nazar am*” means a *nazar* intended wholly or in part for the benefit of the Muslim community generally or any section of the Muslim community, and not for individual or individuals;

“State” includes the Federal Territories of Kuala Lumpur, Labuan and Putrajaya;

“Muslim” means a person who professes the religion of Islam and includes—

- (a) a person either or both of whose parents were, at the time of the person’s birth, Muslims;
- (b) a person whose upbringing was conducted on the basis that he was a Muslim;
- (c) a person who has converted to Islam in accordance with the requirements of section 97;
- (d) a person who is commonly reputed to be a Muslim; or
- (e) a person who is shown to have stated, in circumstances in which he was bound by law to state the truth, that he was a Muslim, whether the statement be oral or written;

“*Pegawai Masjid*” means the *Imam, Imam Ratib, Bilal, Pembantu Bilal* or any person who holds a post with any name, style or title as may be given from time to time by the Majlis relating to the administration of a mosque;

“Religious Enforcement Officer” means the officer appointed as a Religious Enforcement Officer under subsection 69(1);

“*Peguan Syarie*” means a person who has been admitted as a *Peguan Syarie* under section 70;

“Syariah Prosecutor” means an officer appointed under subsection 68(3);

“Chairman” means the Chairman of the Majlis appointed under section 10;

“Secretary” means the Secretary of the Majlis referred to in subsection 15(1);

“*wakaf*” means —

- (a) an endowment of title to any property from which any benefit, profit or interest may be enjoyed;
- (b) an endowment of any benefit, profit or interest which may be enjoyed from any property; or
- (c) the provision of expertise and services from which any benefit, profit or interest may be enjoyed,

whether as *wakaf am* or *wakaf khas* in accordance with *Hukum Syarak* but does not include a trust as defined under the Trustee Act 1949 [Act 208];

“*wakaf am*” means any *wakaf* which is created for general welfare and charitable purpose in accordance with *Hukum Syarak*;

“*wakaf khas*” means any *wakaf* which is created for a specific purpose whether determined by the *waqif* or the Majlis and shall be in accordance with *Hukum Syarak*;

“*waqif*” means a person who creates a *wakaf*.

(2) All words and expressions used in this Act and not defined in this Act but defined in Part I of the Interpretation Acts 1948 and 1967 [Act 388] shall have the meanings assigned to them respectively in that Part to the extent that such meanings do not conflict with *Hukum Syarak*.

(3) For the avoidance of doubt as to the identity or interpretation of the words and expressions used in this Act that are listed in the Schedule, reference may be made to the Arabic script for those words and expressions as shown against them in the Schedule.

Saving of prerogative

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

PART II

THE MAJLIS AGAMA ISLAM WILAYAH PERSEKUTUAN

Establishment of the Majlis

4. (1) A body known as the “Majlis Agama Islam Wilayah Persekutuan” is established to aid and advise the Yang di-Pertuan Agong in matters relating to the religion of Islam.

(2) The Majlis Agama Islam Wilayah Persekutuan established by virtue of the previous Act immediately before the commencement of this section shall, on the commencement of this section, be deemed to be the Majlis established under subsection (1).

Legal identity and general powers of the Majlis

5. (1) The Majlis shall be a body corporate having perpetual succession and a common seal which shall bear such device as the Majlis shall approve and the seal may, from time to time, be broken, changed, altered or made anew as the Majlis may think fit, and, until the seal is provided by the Majlis, the seal of the previous Majlis may be used as the common seal of the Majlis.

(2) The Majlis may sue and be sued in its corporate name.

(3) Subject to and for the purposes of this Act, the Majlis may, upon such terms as it deems fit in accordance with *Hukum Syarak*—

(a) enter into contracts; and

(b) in respect of movable and immovable property and interest in movable and immovable property of every description—

(i) acquire, purchase and take such property and interest; and

(ii) hold, enjoy, convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, such property and any interest in the property vested in the Majlis.

(4) The Majlis shall have power to act as an executor of a will or as an administrator of the estate of a deceased person or as a trustee of any trust.

(5) The Majlis shall have such further powers and carry out such duties as may be assigned to it by this Act or by any other Act.

The Majlis shall aid and advise the Yang di-Pertuan Agong

6. The Majlis shall aid and advise the Yang di-Pertuan Agong in respect of all matters relating to the religion of Islam in the Federal Territories, except matters of *Hukum Syarak* and those relating to the administration of justice, and in all such matters shall be the chief authority in the Federal Territories after the Yang di-Pertuan Agong, except where otherwise provided in this Act.

The duty of the Majlis for the economic and social development of Muslims

7. (1) It shall be the duty of the Majlis to promote, stimulate, facilitate and undertake the economic and social development of the Muslim community in the Federal Territories consistent with *Hukum Syarak*.

(2) For the purposes of discharging its duty under subsection (1), the Majlis shall have power—

- (a) to carry on all activities which does not involve any element which is not approved by the religion of Islam, particularly the development of commercial and industrial enterprises, the carrying on of which appears to the Majlis to be requisite, advantageous or convenient for or in connection with the discharge of such duty, including the manufacturing, assembling, processing, packing, grading and marketing of products;
- (b) to promote the carrying on of any such activities by other bodies or persons, and for that purpose to establish or expand, or promote the establishment or expansion, of other bodies to carry on any such activities either under the control or partial control of the Majlis or independently, and to give assistance to other bodies or persons appearing to the Majlis to have the facilities for the carrying on of any such activities, including the giving of financial assistance by way of loan or otherwise;
- (c) to carry on any such activities in association with other bodies or persons, including the departments or authorities of the Federal Government or the State Government, or as managing agent or otherwise on behalf of the Federal Government;
- (d) to invest in any authorized investment as defined by the Trustee Act 1949, and to dispose of the investment on such terms and conditions as the Majlis may determine;
- (e) to establish any scheme for the granting of loans from the *Baitulmal* to Muslim individuals for the purpose of higher education;
- (f) to establish, maintain and control Islamic schools, Islamic teaching institutions and Islamic training and research institutions;
- (g) to establish, maintain and manage welfare home, shelter and rehabilitation centre; and
- (h) to do such acts as the Majlis considers desirable or expedient.

Power to establish companies

8. (1) The Majlis may, with the approval of the Yang di-Pertuan Agong, establish companies under the Companies Act 1965 [Act 125] to carry on any activity by the Majlis in the execution of its duties and powers under section 7.

(2) Every company established or purported to be established by the Majlis under the Companies Act 1965 immediately before the commencement of this section, shall, on the commencement of this section, be deemed to have been lawfully established and shall continue to exist as if it had been established by the Majlis under subsection (1).

(3) Any financing or financial assistance given by the Majlis to a company referred to in subsection (2) shall be deemed to have been lawfully given under subsection 7(2).

Power to borrow

9. (1) The Majlis may, with the approval of the Minister of Finance and on such terms and conditions as may be determined by the Minister of Finance, borrow such sums as it may require for discharging any of its functions under this Act.

(2) Sums borrowed by virtue of subsection (1) shall be paid into the *Baitulmal*.

Membership of the Majlis

10. (1) The Majlis shall consist of the following members:

- (a) a Chairman, who shall be appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister;
- (b) the Director General of the Department of Islamic Development Malaysia as Deputy Chairman;
- (c) the Chief Secretary to the Government or his representative;
- (d) the Attorney General or his representative;

- (e) the Mufti;
- (f) the Chief Police Officer of the Federal Territory of Kuala Lumpur or his representative;
- (g) the Commissioner of the City of Kuala Lumpur or his representative; and
- (h) not more than eighteen other members who shall be appointed by the Yang di-Pertuan Agong on the advice of the Minister, at least six of whom shall be persons who are learned in *Hukum Syarak*.

(2) The members of the Majlis appointed under paragraphs (1)(a) and (h) shall hold office for a period not exceeding three years.

(3) A member of the Majlis whose term of office has expired is eligible to be reappointed.

(4) If the person holding the appointment specified in paragraph (1)(c), (d), (f) or (g) is not a Muslim, his representative shall be a Muslim and shall be a member in place of that person.

(5) Every person who, immediately before the commencement of this section was appointed as the Chairman, Deputy Chairman and members of the previous Majlis shall, on the commencement of this section and subject to this Act, continue to be the Chairman, Deputy Chairman and members of the Majlis respectively until the expiry of their term of appointment.

Termination of appointment

11. The appointment of an appointed member of the Majlis shall terminate—

- (a) on his death;
- (b) if he resigns his office by letter addressed to the Yang di-Pertuan Agong through the Chairman, or in the case of the Chairman, by letter addressed to the Yang di-Pertuan Agong through the Minister; or
- (c) if he has been absent from Malaysia, without the written permission of the Chairman, for a period exceeding six months.

Revocation of appointment

12. The Yang di-Pertuan Agong may, on the advice of the Minister, revoke the appointment of any appointed member of the Majlis if—

- (a) his conduct, whether in connection with his duties as a member or otherwise, has been such as to bring discredit to the Majlis;
- (b) he has become incapable of properly carrying out his duties as a member of the Majlis;
- (c) he has been absent from three consecutive meetings of the Majlis without any excuse which is sufficient in the opinion of the Chairman or, in the case of the Chairman, without leave of the Minister;
- (d) he has acted contrary to the interest of the Majlis; or
- (e) he is a bankrupt.

Publication of appointment, and termination and revocation of appointment, in the *Gazette*

13. The appointment under section 10, and termination and revocation of appointment under sections 11 and 12, shall be published in the *Gazette*.

Control by the Chairman

14. The Chairman shall exercise control over all deliberations and proceedings of the Majlis and shall be responsible for the proper and orderly conduct thereof.

Secretary of the Majlis

15. (1) The Director of the Islamic Religious Department of the Federal Territories shall be the Secretary of the Majlis.

(2) Subject to such directions as may be given to him by the Chairman, the Secretary shall have charge of all correspondence and documents of the Majlis, and shall in all other respects carry out such duties as may be imposed upon him by this Act or assigned to him by the Chairman.

(3) The Secretary is entitled to attend all meetings of the Majlis and to participate in its deliberations, but is not entitled to vote.

Attendance of non-members at meetings of the Majlis

16. (1) If a member of the Majlis under paragraph 10(1)(c), (d), (e), (f), (g) or subsection 10(4) is unable to attend any meeting of the Majlis, the member may be represented by another Muslim officer in the same Department at the meeting.

(2) The Chairman may invite any person who is not a member of the Majlis to attend any meeting of the Majlis if the business before the meeting makes the presence of the person desirable.

(3) A representative of a member referred to under subsection (1) and a person invited under subsection (2) is entitled to participate in the deliberations of the Majlis but is not entitled to vote.

Presiding over meetings

17. (1) The Chairman, or in his absence, the Deputy Chairman, shall preside over all meetings of the Majlis.

(2) If the Chairman and the Deputy Chairman are absent from a meeting, the members present shall elect one of the members to preside over the meeting.

Quorum

18. No business, except that of adjournment, shall be transacted at a meeting, and no resolution or action of the Majlis made or performed at a meeting shall be valid, unless at least one-third of the members, including the person presiding over the meeting, are present at the meeting.

Conduct of business

19. (1) Except as otherwise expressly provided by this Act, all business of the Majlis shall be conducted in a meeting of the Majlis regularly convened and shall be disposed of by the resolution of the majority of the members present and entitled to vote.

(2) A resolution in writing signed by all members of the Majlis shall, unless in any special case or class of cases the Yang di-Pertuan Agong otherwise directs, have the same effect as a resolution duly passed under subsection (1).

Summoning of meetings

20. (1) Meetings of the Majlis shall be held with such regularity that not more than three calendar months shall have elapsed between one meeting and the next.

(2) All meetings of the Majlis shall be summoned by the Secretary.

(3) The Chairman may, at any time, direct the Secretary to summon a meeting.

(4) Any four members of the Majlis may at any time in writing require the Secretary to summon a meeting of the Majlis on condition that they inform the Secretary the purpose for which they desire the meeting to be summoned.

(5) The Secretary shall summon a meeting within fourteen days from the date of receipt of the direction under subsection (3) or the requirement under subsection (4).

(6) At least seven days' notice in writing shall be given of any meeting, but the Chairman may, if he considers that there is urgent need to summon a meeting at shorter notice, direct that the requirement of seven days' notice be dispensed with.

(7) Notice of a meeting may be sent by post, facsimile or e-mail.

(8) A notice sent to a member of the Majlis by post shall be addressed to his last-known place of residence and shall be deemed to have been served in the due course of post.

(9) A notice sent to a member of the Majlis by facsimile shall be sent to the facsimile number given by the member in writing to the Secretary and shall be deemed to have been received by the member when the call back code is received by the Secretary.

(10) A notice sent to a member of the Majlis by e-mail shall be sent to the e-mail address of the member given to the Secretary in writing and shall be deemed to have been received by the member—

- (a) if the relevant e-mail administrator informs that the e-mail has been successfully delivered; or
- (b) if there is no information from the e-mail administrator that the e-mail has not been successfully delivered.

(11) No notice of a meeting shall be necessary in the case of a member of the Majlis who is for the time being outside Malaysia.

Minutes of the meeting

21. (1) The Secretary shall keep the minutes of all meetings of the Majlis.

(2) Subject to subsection (4), the minutes of the previous meeting shall be read and confirmed, subject to any amendment which may be required, at every meeting.

(3) The minutes shall be entered in the minute book of the Majlis and shall contain a full verbatim record of every resolution made by the Majlis.

(4) Before the minutes of the previous meeting is read and confirmed in every meeting under subsection (2), a copy of the draft minutes shall be sent to the Yang di-Pertuan Agong for his assent as soon as possible to be done after each of the meeting in relation to the draft of the minutes; and if on confirmation the draft minutes are amended, the Yang di-Pertuan Agong shall forthwith be informed of the amendments made.

(5) No decision made in any meeting of the Majlis shall be acted upon until the minutes of the meeting have been confirmed or, if action is required to be taken before the minutes have been confirmed, the Yang di-Pertuan Agong has signified his assent in writing for the action to be taken.

Order of business at meeting

22. (1) The Chairman shall determine the order of business at meetings.

(2) The Chairman may determine in what order the members of the Majlis may address the meeting and may at any time require any member to cease addressing the meeting.

(3) The Chairman shall have a casting vote if there is an equality of votes on any resolution.

Certified copies of resolution

23. A copy of any resolution of the Majlis certified by the Secretary to be a true copy of the resolution shall be sufficient evidence thereof, and all courts shall take judicial notice of the resolution without proof of the Secretary's signature.

Application for leave by the Chairman and other members

24. (1) If the Chairman expects to be absent from Malaysia for a period of more than thirty days, he shall apply for leave from the Yang di-Pertuan Agong and the Yang di-Pertuan Agong may give such directions as he thinks fit.

(2) If any member of the Majlis expects to be absent from Malaysia for more than thirty days, he shall apply for leave from the Chairman.

Action in cases of urgency

25. (1) In any case of urgency, the Chairman may do or direct to be done on behalf of the Majlis any act or thing that may lawfully be done by resolution of the Majlis.

(2) If any act or thing is done pursuant to subsection (1), a meeting of the Majlis shall be held within seven days thereafter for the purpose of confirming the act or thing done; and if the Majlis declines to confirm the act or thing done, the Yang di-Pertuan Agong may issue any direction with respect thereto as he thinks fit.

Committees

26. The Majlis may appoint any committee to assist it in the discharge of its duties or exercise of its powers.

Delegation of duties or powers of the Majlis

27. (1) The Majlis may, by resolution, and subject to conditions and restrictions as the Majlis thinks fit, delegate the discharge of any of its duties or the exercise of any of its powers to the Chairman, the Secretary or any committee of the Majlis.

(2) The discharge of duties and exercise of powers in pursuance of a delegation under subsection (1) shall be subject to the control and direction of the Majlis.

(3) The Chairman, the Secretary or committee to whom or to which a delegation is made under subsection (1) shall inform the Majlis of all acts and things done by him or it in pursuance of such delegation.

Appointment of Chief Executive Officer

28. (1) The Majlis shall appoint a Chief Executive Officer of the Majlis amongst the officers in the general public service of the Federation on such terms and conditions as the Majlis thinks desirable.

(2) The Chief Executive Officer shall—

(a) be responsible in assisting the Secretary in carrying out the policies and resolutions of the Majlis;

- (b) have the general control of the officers and servants of the Majlis; and
- (c) be responsible for any directions of the Majlis from time to time.

Appointment of officers and servants of the Majlis

29. (1) The Majlis may appoint or employ such number of officers and servants as may be necessary to assist it in carrying out its functions.

(2) The Majlis may, with the approval of the Yang di-Pertuan Agong, make regulations with respect to the conditions of service of its officers and servants.

Secrecy

30. The proceedings of the Majlis shall be kept secret and no member of the Majlis, including his representative referred to in section 16, officer and servant of the Majlis, and person invited to a meeting of the Majlis, shall disclose any matter that has arisen at any meeting of the Majlis to any person other than the Yang di-Pertuan Agong or Minister or any member of the Majlis unless he is expressly authorized by the Majlis.

Public servant

31. Every member, officer and servant of the Majlis shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

Majlis may determine its own procedure

32. Subject to the other provisions of this Act, the Majlis may determine its own procedure and practice.

PART III

THE MUFTI, THE *FATWA* COMMITTEE AND *FATWA* RELATING TO
MATTER AFFECTING NATIONAL INTEREST**Appointment of Mufti and Deputy Mufti**

33. (1) The Yang di-Pertuan Agong, on the advice of the Minister, after consulting the Majlis, may appoint any fit and proper person to be the Mufti and Deputy Mufti for the Federal Territories.

(2) The appointment of the Mufti and Deputy Mufti shall be published in the *Gazette*.

(3) The persons who, immediately before the commencement of this section, were the Mufti and Deputy Mufti for the Federal Territories under the previous Act shall, on the commencement of this section, be deemed to have been duly appointed under this section and shall continue to hold office as such.

Functions of the Mufti

34. The Mufti shall aid and advise the Yang di-Pertuan Agong in respect of all matters of *Hukum Syarak*, and in all such matters shall be the chief authority in the Federal Territories after the Yang di-Pertuan Agong, except where otherwise provided in this Act.

***Fatwa* Committee**

35. (1) A committee known as the *Fatwa* Committee is established.

(2) The *Fatwa* Committee shall consist of—

- (a) the Mufti, as Chairman;
- (b) the Deputy Mufti;
- (c) two members of the Majlis nominated by the Majlis;
- (d) not less than two and not more than seven fit and proper persons appointed by the Majlis; and

(e) an officer from the Department of Mufti appointed by the Majlis, as Secretary.

(3) The persons who, immediately before the commencement of this section, were appointed or nominated as members of the Islamic Legal Consultative Committee established under the previous Act shall, on the commencement of this section and subject to this Act, be deemed to have been appointed or nominated under this section and shall continue to be members of the *Fatwa* Committee until the expiry of their terms of appointment under the previous Act.

(4) Subject to this Act, the *Fatwa* Committee may determine its own procedure and practice.

Power of the *Fatwa* Committee to make a *fatwa*

36. Subject to section 40, the *Fatwa* Committee shall, on the direction of the Yang di-Pertuan Agong, and may on its own initiative or on the request of any person by letter addressed to the Mufti, make a *fatwa* on any unsettled or controversial question relating to *Hukum Syarak*.

Procedure in making a *fatwa*

37. (1) Before the *Fatwa* Committee makes a *fatwa*, the Mufti may cause any study or research to be carried out as directed by him and a working paper to be prepared.

(2) Whenever the *Fatwa* Committee proposes to make a *fatwa*, the Mufti shall call a meeting of the *Fatwa* Committee for the purpose of discussing the proposed *fatwa*.

(3) After a *fatwa* is made by the *Fatwa* Committee, the Mufti shall, on behalf and in the name of the *Fatwa* Committee, make a recommendation to the Yang di-Pertuan Agong for his assent for the publication of the *fatwa* in the *Gazette*.

(4) When a *fatwa* has been assented to by the Yang di-Pertuan Agong, the Mufti shall inform the Majlis about the *fatwa* and thereafter shall cause the *fatwa* to be published in the *Gazette*.

(5) A *fatwa* published in the *Gazette* shall be accompanied by a statement that the *fatwa* is made under this section.

(6) A *fatwa* shall be published in the national language in the *Rumi* script, but the text of the *fatwa* in the *Jawi* script may also be published.

(7) Any statement made by the *Fatwa* Committee shall not be taken to be a *fatwa* unless such statement is published in the *Gazette* in accordance with subsection (4).

A *fatwa* published in the *Gazette* is binding

38. (1) Upon its publication in the *Gazette*, a *fatwa* shall be binding on every Muslim in the Federal Territories as a dictate of his religion and it shall be his religious duty to abide by and uphold the *fatwa* unless he is permitted by *Hukum Syarak* to depart from the *fatwa* in matters of personal observance, belief or opinion.

(2) A *fatwa* shall be recognised by all courts in the Federal Territories of all matters laid down therein.

Amendment, modification or revocation of *fatwa*

39. (1) The *Fatwa* Committee may amend, modify or revoke any *fatwa* that has been published in the *Gazette* under this Act or under the previous Act.

(2) An amendment, modification or revocation of a *fatwa* shall be deemed to be a *fatwa* and section 37, except subsection 37(5), shall apply thereto.

(3) An amendment, modification or revocation of a *fatwa* published in the *Gazette* shall be accompanied by a statement that the *fatwa* is made under subsection (1).

***Fatwa* relating to matters affecting national interest**

40. (1) Notwithstanding the powers of the *Fatwa* Committee under section 36, whenever it appears to the *Fatwa* Committee

that a *fatwa* proposed to be made is related to matters affecting national interest, the *Fatwa* Committee shall adjourn the proposed *fatwa* and make a recommendation to the Yang di-Pertuan Agong for his assent to refer the proposed *fatwa* to the National *Fatwa* Committee, through the Conference of Rulers.

(2) A *fatwa* shall be deemed to be related to matters affecting national interest if the question is related to any matter, policy, programme or activity which directly affects the interest of the Federal Government, a State Government or any of its ministries, departments or agencies.

(3) If the Yang di-Pertuan Agong gives his assent under subsection (1), the *Fatwa* Committee shall refer the *fatwa* to the National *Fatwa* Committee, through the Conference of Rulers.

(4) If the National *Fatwa* Committee advises or recommends that—

- (a) the proposed *fatwa* be made, with or without any modification; or
- (b) another *fatwa* on the same matter be made,

and the Conference of Rulers have agreed with the advice and recommendation of the National *Fatwa* Committee, the *Fatwa* Committee shall cause the *fatwa* according to such advice and recommendation to be published in the *Gazette* without any amendment or modification and the provision of section 37, except subsection 37(5), shall apply thereto.

(5) A *fatwa* published in the *Gazette* shall be accompanied by a statement that the *fatwa* is made under this section.

Adoption of advice and recommendation of National *Fatwa* Committee

41. (1) The *Fatwa* Committee shall adopt any advice and recommendation of the National *Fatwa* Committee which affects any act or observance which has been agreed upon by the Conference of Rulers as an act or observance which extends to the Federation as a whole pursuant to paragraph (b) of Clause (2) of Article 38 of the Federal Constitution.

(2) The advice or recommendation adopted by virtue of subsection (1) shall be deemed to be a *fatwa* and section 37, except subsection 37(5), shall apply thereto.

(3) A *fatwa* published in the *Gazette* shall be accompanied by a statement that the *fatwa* is made under this section.

Request for opinion of *Fatwa* Committee

42. The Mufti shall not be liable to be summoned to any Civil Court or Syariah Court to give opinion or evidence relating to *Hukum Syarak*, but if in any court other than a Syariah Court, any question on *Hukum Syarak* calls for a decision, the court may request for the opinion of the *Fatwa* Committee on the question, and the Mufti may certify the opinion of the *Fatwa* Committee to the requesting court.

***Qaul muktamad* to be followed**

43. (1) In issuing any *fatwa* under section 37, or giving any opinion under section 42, the *Fatwa* Committee shall ordinarily follow *qaul muktamad* (the accepted views) of the *Mazhab Syafie*.

(2) If the *Fatwa* Committee is of the opinion that following the *qaul muktamad* of the *Mazhab Syafie* will lead to a situation which is repugnant to public interest, the *Fatwa* Committee may follow the *qaul muktamad* of the *Mazhab Hanafi*, *Maliki* or *Hanbali*.

(3) If the *Fatwa* Committee is of the opinion that none of the *qaul muktamad* of the four *Mazhabs* may be followed without leading to a situation which is repugnant to public interest, the *Fatwa* Committee may make the *fatwa* according to *ijtihad* without being bound by the *qaul muktamad* of any of the four *Mazhabs*.

PART IV

SYARIAH COURTS AND SYARIAH APPEAL COURT

Establishment of Syariah Courts and Syariah Appeal Court

44. (1) The Yang di-Pertuan Agong may, on the advice of the Majlis, by notification in the *Gazette*, constitute Syariah Subordinate Courts for the Federal Territories at such places as he considers fit.

(2) The Yang di-Pertuan Agong may, on the advice of the Majlis, by notification in the *Gazette*, constitute a Syariah High Court for the Federal Territories at such places as he considers fit.

(3) The Yang di-Pertuan Agong may, on the advice of the Majlis, by notification in the *Gazette*, constitute a Syariah Appeal Court for the Federal Territories.

Appointment of Chief Syariah Judge

45. (1) The Yang di-Pertuan Agong may, on the advice of the Majlis, appoint a Chief Syariah Judge.

(2) A person is qualified for appointment under subsection (1) if he is a citizen and has for a period of not less than—

(a) ten years before his appointment, been a Judge of the Syariah High Court, a Judge of the Syariah Subordinate Court, a *Kadhi*, a Registrar or a Syariah Prosecutor or sometimes one and sometimes another;

(b) fifteen years before his appointment, been holding any post, other than those specified in paragraph (a), under the Syariah Officers' Scheme in the general public service of the Federation; or

(c) fifteen years before his appointment, been a *Pegulam Syarie* and is learned in *Hukum Syarak*.

(3) The person who, immediately before the commencement of this section, was holding the office of Chief Syariah Judge under the previous Act shall, on the commencement of this section, continue to hold office as the Chief Syariah Judge as if he had been appointed under subsection (1).

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

(5) For the purpose of this section, “Registrar” means Registrar of the Syariah High Court appointed under section 50 and includes Chief Registrar of the Syariah Appeal Court.

(6) For the purpose of this section, “Syariah Prosecutor” includes the Chief Syariah Prosecutor.

Appointment of Judges of the Syariah Appeal Court

46. (1) The Yang di-Pertuan Agong may, on the advice of the Majlis, appoint nine Muslims to constitute a standing panel of judges of the Syariah Appeal Court.

(2) The Yang di-Pertuan Agong may, on the recommendation of the Majlis, appoint a Chairman of the Syariah Appeal Court from amongst the judges of the Syariah Appeal Court.

(3) A person appointed under subsection (1), if he is not from amongst Syariah Officers in the general public service of the Federation, shall hold office for a period of three years and is eligible for reappointment.

(4) The Chairman of the Syariah Appeal Court shall select two or four from amongst the standing panel of judges to form a quorum of judges in the Syariah Appeal Court in respect of every hearing.

(5) The persons who, immediately before the commencement of this section, were holding office as Judges of the Syariah Appeal Court under the previous Act shall, on the commencement of this section, continue to hold office as Judges of the Syariah Appeal Court as if they had been appointed under subsection (1).

(6) All appointments under subsection (1) shall be published in the *Gazette*.

Appointment of Judges of the Syariah High Court

47. (1) The Yang di-Pertuan Agong may, on the advice of the Majlis, appoint Judges of the Syariah High Court.

(2) A person is qualified for appointment under subsection (1) if he is a citizen and has for a period of not less than—

- (a) ten years before his appointment, been a Judge of the Syariah Subordinate Court, a *Kadhi*, a Registrar or a Syariah Prosecutor or sometimes one and sometimes another;
- (b) ten years before his appointment, been holding any post, other than those specified in paragraph (a), under the Syariah Officers' Scheme in the general public service of the Federation; or
- (c) fifteen years before his appointment, been a *Pegulam Syarie* and is learned in *Hukum Syarak*.

(3) The persons who, immediately before the commencement of this section, were holding office as Judges of the Syariah High Court under the previous Act shall, on the commencement of this section, continue to hold office as Judges of the Syariah High Court as if they had been appointed under subsection (1).

(4) All appointments under subsection (1) shall be published in the *Gazette*.

(5) For the purpose of this section, "Registrar" means Registrar of the Syariah High Court appointed under section 50 and includes Chief Registrar of the Syariah Appeal Court.

(6) For the purpose of this section, "Syariah Prosecutor" includes the Chief Syariah Prosecutor.

Appointment of Judges of Syariah Subordinate Courts

48. (1) The Yang di-Pertuan Agong may, on the recommendation of the Chief Syariah Judge, appoint from amongst Syariah Officers in the general public service of the Federation, Judges of the Syariah Subordinate Courts.

(2) The persons who, immediately before the commencement of this section, were holding office as Judges of the Syariah Subordinate Courts under the previous Act shall, on the commencement of this section, continue to hold office as Judges of the Syariah Subordinate Courts as if they had been appointed under subsection (1).

(3) All appointments under subsection (1) shall be published in the *Gazette*.

Code of ethics of Syariah Judges and Judges of the Syariah Appeal Court

49. The Yang di-Pertuan Agong may, on the recommendation of the Chairman of the Syariah Appeal Court, specify in writing a code of ethics which shall be followed by all Syariah Judges and Judges of the Syariah Appeal Court.

Chief Registrar, Registrars, Deputy Registrars and Assistant Registrars

50. The Yang di-Pertuan Agong may, on the advice of the Chief Syariah Judge, appoint a Chief Registrar of the Syariah Appeal Court, Registrars of the Syariah High Court, Deputy Registrars of the Syariah High Court and Assistant Registrars of the Syariah Subordinate Courts from amongst Syariah Officers in the general public service of the Federation.

Jurisdiction of Syariah High Court

51. (1) A Syariah High Court shall have jurisdiction throughout the Federal Territories and shall be presided over by a Judge of the Syariah High Court.

(2) Notwithstanding subsection (1), the Chief Syariah Judge may sit as a Judge of the Syariah High Court 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 this Act, the Islamic Family Law (Federal Territories) Act 1984 [Act 303], the Syariah Criminal Offences (Federal Territories) Act 1997 [Act 559] or under any other written law for the time being in force prescribing offences against the precepts of the religion of Islam, and may impose any punishment provided for such offences; and
- (b) in its civil jurisdiction, hear and determine all actions and proceedings if all 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*;
 - (vi) gifts *inter vivos*, or settlements made without adequate consideration in money or money's worth, by a Muslim;
 - (vii) *wakaf* or *nazar*;
 - (viii) division and inheritance of testate or intestate property;

- (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;
- (x) a declaration that a person is no longer a Muslim;
- (xi) a declaration that a deceased person was a Muslim or otherwise at the time of his death; and
- (xii) other matters in respect of which jurisdiction is conferred by any written law.

Jurisdiction of Syariah Subordinate Court

52. (1) A Syariah Subordinate Court shall have jurisdiction throughout the Federal Territories 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 this Act, the Islamic Family Law (Federal Territories) Act 1984, the Syariah Criminal Offences (Federal Territories) Act 1997 or any other written law which prescribes offences against the precepts of the religion of Islam for which the punishment for such offence provided by such Act or other written law does not exceed three thousand ringgit or imprisonment for a term of two years or both, and may impose any punishment provided for such offences; and
- (b) in its civil jurisdiction, hear and determine all such actions and proceedings as a Syariah High Court is authorised to hear and determine, 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-Pertuan Agong may, from time to time, by order published in the *Gazette*, extend the jurisdiction of the Syariah Subordinate Courts.

Appeals to Syariah High Court

53. (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; and

(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; and

(iii) in all cases relating to maintenance of dependants, by any person aggrieved by the decision,

but no 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

54. (1) An appeal or application for leave to appeal under paragraph 53(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 judgment, order or decision in respect of which the application is 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 judgment, order or decision came to his knowledge.

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

Inheritance certificates

55. If in the course of any proceedings relating to the administration or distribution of the estate of a deceased Muslim, any court or authority, other than the Syariah High Court or 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 of 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 to share in the estate and as to shares to which they are respectively entitled.

Supervisory and revisionary jurisdiction of Syariah High Court

56. (1) The Syariah High Court shall have supervisory and revisionary jurisdiction over all Syariah Subordinate Courts and may, if it appears desirable in the interest of justice, 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 of such matter or proceedings and may give such directions, orders or decisions as justice may require.

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

Jurisdiction of Syariah Appeal Court

57. (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

58. (1) The Syariah Appeal Court shall have supervisory and revisionary jurisdiction over the Syariah High Court and may, if it appears desirable in the interest of justice, either of its own motion or at instance of any party or person interested, at any stage in any matter or proceedings, whether civil or criminal, in the Syariah High Court, call for and examine any records of such matter or proceedings and may give such directions, orders or decisions as justice may require.

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

Composition of Syariah Appeal Court

59. (1) An appeal in the Syariah Appeal Court shall be heard and disposed of by a chairman and two or four other Judges of the Syariah Appeal Court as the Chairman of the Syariah Appeal Court may determine.

(2) Notwithstanding section 46, the Chairman of the Syariah Appeal Court may appoint any Judge of the Syariah High Court to be a member of the Syariah Appeal Court for any particular proceedings if he considers it desirable to do so.

(3) The Chairman of the Syariah Appeal Court shall be the chairman for every proceedings of the Syariah Appeal Court unless—

(a) the appeal or revision before the Syariah Appeal Court is against the decision of the Chairman of the Syariah Appeal Court who sat as a Judge of the Syariah High Court; or

(b) the Chairman of the Syariah Appeal Court is unable to be the chairman for any other reason.

(4) If the Chairman of the Syariah Appeal Court cannot be the chairman for any reason specified in subsection (3), the Chairman of the Syariah Appeal Court shall appoint the most senior of the Judges of the Syariah Appeal Court to be the chairman.

Decision of Syariah Appeal Court shall be by the majority

60. An appeal shall be decided in accordance with the opinion of the majority of the members of the Syariah Appeal Court.

Continuation of proceedings in Syariah Appeal Court notwithstanding absence of Judge

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

62. (1) Subject to any other written law and subsection (2), all trials in the Syariah Court shall be open to the public.

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

Language

63. The national language shall be the language for all proceedings in the Syariah Court and all documents and notes of proceedings may be in the *Rumi* or *Jawi* Script.

Reciprocal action

64. (1) Where a Syariah Court in any State in Malaysia issues a warrant or summons, as the case may be, 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 Federal Territories, any Syariah Judge may endorse the warrant or summons by signing it and the warrant or summons may be executed or served on such person as if the warrant or summons had been issued by a Syariah Court in the Federal Territories according to the provisions of this Act.

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

(3) Where a Syariah Court in any State in Malaysia makes an order or a judgment 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 Federal Territories, a Syariah Judge, if he is satisfied that the order or judgment was duly issued by a competent Syariah Court in any State in Malaysia, may endorse the order or judgment and such order or judgment may be executed or served, as the case may be, as if it had been an order or a judgment lawfully made by any Syariah Court in the Federal Territories according to the provisions of this Act.

(4) Where a Syariah Court in the Federal Territories makes an order or a judgment against any person, or an order calling any person to appear in a Syariah Court and such person is or is believed to be in another State in Malaysia and the order or judgment is executed or served on such person in accordance with any law in force in that State, such order or judgment shall, for the purpose of this Act, be deemed to have been duly executed or served as if the execution or service had been effected in the Federal Territories.

Protection of Judges, Court officials, etc.

65. (1) No Judge of the Syariah Appeal Court or Syariah 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 that time he in good faith believed himself to have the jurisdiction to do or order the act complained of.

(2) No officer of any Court or other person bound to execute the lawful warrant or order of a Judge of the Syariah Appeal Court or a Syariah Judge shall be liable to be sued in any Syariah Court or Civil Court for the execution of such warrant or order.

Rules Committee of the Syariah Courts

66. (1) There shall be established a committee to be called the Rules Committee of the Syariah Courts for the making of rules on the procedures of the Syariah Appeal Court, the Syariah High Court and the Syariah Subordinate Court and matters related to it.

(2) The Rules Committee of the Syariah Courts shall consist of—

- (a) the Chairman of the Syariah Appeal Court, as Chairman;
 - (b) the Attorney General or his representative;
 - (c) the Chief Syariah Prosecutor;
 - (d) the Legal Advisor of the Department of Syariah Judiciary Malaysia;
 - (e) a representative of the Syariah Lawyers Association of Malaysia who is practising in the Federal Territories;
 - (f) a Syariah Officer serving with the Legal Aid Department established under the Legal Aid Act 1971 [Act 26];
- and

(g) the following persons appointed by the Chairman of the Rules Committee of the Syariah Courts:

- (i) not less than two Judges of the Syariah Appeal Court;
- (ii) a Judge of the Syariah High Court; and
- (iii) a Judge of the Syariah Subordinate Court.

(3) The Chairman of the Rules Committee of the Syariah Courts may appoint a secretary who shall be responsible to carry out the decisions of the Committee.

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

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

Practice Directions

67. The Chairman of the Syariah Appeal Court may, from time to time, give any practice directions as he considers necessary.

PART V

PROSECUTION AND REPRESENTATION

Chief Syariah Prosecutor and Syariah Prosecutors

68. (1) The Yang di-Pertuan Agong may, on the advice of the Majlis, appoint a person who is qualified to be a Judge of the Syariah High Court to be the Chief Syariah Prosecutor.

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

(3) The Majlis may appoint fit and proper persons from amongst the Syariah Officers in the general public service of the Federation to be Syariah Prosecutors.

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

Chief Religious Enforcement Officer and Religious Enforcement Officer

69. (1) The Majlis may appoint from amongst the members of the joint service or the general public service of the Federation, a Chief Religious Enforcement Officer and Religious Enforcement Officers to carry out the investigation of offences under this Act or under any other written law which prescribes offences against the precepts of the religion of Islam.

(2) The Religious Enforcement Officers shall act under the general control and direction of the Chief Religious Enforcement Officer and may exercise all or any of the rights and powers vested in or exercisable by the Chief Religious Enforcement Officer, except rights and powers expressed to be exercisable by the Chief Religious Enforcement Officer personally.

Pegulam Syarie

70. (1) Subject to subsections (2), (3) and (4), the Majlis may admit any person having sufficient knowledge of *Hukum Syarak* to be *Pegulam Syarie* to represent parties in any proceedings before a Syariah Court.

(2) The Majlis may, with the approval of the Yang di-Pertuan Agong, make regulations—

- (a) to provide for the procedures, qualifications and fees for the admission of *Pegulam Syarie*; and
- (b) to regulate, control and supervise the conduct of *Pegulam Syarie*.

(3) Notwithstanding subsection (1)—

- (a) any member of the Judicial and Legal Service;

- (b) any person appointed under section 3 of the Legal Aid Act 1971;
- (c) any Syariah Officer in the general public service of the Federation; or
- (d) any legal officer of the Majlis,

may act as *Peguam Syarie* representing any party to any proceedings in the Syariah Court.

(4) Notwithstanding subsections (1) and (2), any person who has been admitted as *Peguam Syarie* under any written law in force in any State in Malaysia shall be admitted as *Peguam Syarie* for the Federal Territories on application being made by him to the Majlis accompanied by evidence of his admission as a *Peguam Syarie* in that other State.

(5) A person who, immediately before the commencement of this section, was admitted as a *Peguam Syarie* under the previous Act shall, on the commencement of this section and subject to this Act, be deemed to have been admitted as *Peguam Syarie* 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 *Peguam Syarie* and a person mentioned in subsection (3), is entitled to appear in any Syariah Court on behalf of any party to any proceedings before it.

PART VI

FINANCIAL PROVISIONS

Baitulmal and financial procedure of the Majlis

Establishment of *Baitulmal*

71. (1) A fund to be known as the *Baitulmal* is established.

(2) The *Baitulmal* shall consist of all moneys and property, movable or immovable, which by *Hukum Syarak* or under this Act or regulations or rules made under this Act, accrue, or are contributed by any persons, to the *Baitulmal*.

(3) All moneys and property in the *Baitulmal* shall be vested in the Majlis which shall administer all such moneys and property in accordance with regulations made under this Act.

(4) Notwithstanding the regulations referred to in subsection (3), any investment, assets or funds vested in the Majlis may be sold, realised and disposed of, and the proceeds thereof may be invested from time to time in any investments authorized by any written law for the time being in force for the investment of trust funds and *Hukum Syarak*.

(5) Subject to the provisions of this Act, the Majlis may, with the approval of the Yang di-Pertuan Agong, make regulations for the collection, administration and distribution of all of the property of the *Baitulmal*.

(6) On the commencement of this section, the *Baitulmal* existing immediately before the commencement of this section by virtue of the previous Act, shall be deemed to be the *Baitulmal* established under subsection (1), and all moneys and property standing in or due to be paid or belonging to the *Baitulmal* established under the previous Act shall be transferred to and vested in the *Baitulmal* established under subsection (1).

Estimates of income and expenditure

72. (1) The Majlis shall prepare and submit to the Yang di-Pertuan Agong, not later than 31 October in each year, estimates of all income and expenditure of the Majlis, including the estimates of all property and disposables in kind, in respect of the ensuing year.

(2) The Yang di-Pertuan Agong may, on the advice of the Minister, approve such estimates or direct that the estimates be amended.

(3) Estimates which have been approved, with or without amendments under subsection (2), shall be published in the *Gazette*.

(4) The Majlis may, at any time, submit to the Yang di-Pertuan Agong supplementary estimates of expenditure in respect of the current year, or, at any time prior to 31 March in any year, in respect of the preceding year, and the estimates may be approved or amended, and shall be published in accordance with subsection (3).

(5) No money shall be expended, or property disposed of in kind, except in accordance with such estimates as are provided for in this section and upon a voucher signed by the Chairman or any officer of the Majlis or any other officer authorized by the Chairman.

Expenses of the Majlis

73. All costs, charges and expenses of administering the property and assets vested in the Majlis, including the costs of maintenance and repair of any immovable property, the salaries and allowances payable to any officer or servant of the Majlis, and the fees and allowances payable to any officer, servant or member of the Majlis in respect of his services as the officer, servant or member of the Majlis, shall be paid out of the property and assets of the *Baitulmal*.

Bank accounts

74. (1) The Majlis may operate such account or accounts as it may deem proper with any suitable bank.

(2) Payments by the Majlis of any amount shall be made by any means as the Majlis may determine.

(3) All moneys received by or for the Majlis shall be paid into a bank account of the Majlis in the manner provided in the financial procedure of the Majlis.

(4) Cheques drawn on any bank account of the Majlis shall be signed by the Chairman or by any member or officer of the Majlis or any other officer authorized by the Chairman.

Accounts and annual reports

75. The Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall apply to the Majlis.

Zakat and fitrah

Power of Majlis to collect and distribute *zakat* and *fitrah*

76. The Majlis is empowered to collect *zakat* and *fitrah* due from every Muslim person in the Federal Territories and distribute the *zakat* and *fitrah* in accordance with *Hukum Syarak* on behalf of the Yang di-Pertuan Agong.

Power to make regulations

77. The Majlis may, with the approval of the Yang di-Pertuan Agong, make regulations providing for or relating to—

- (a) the supervision of all matters pertaining to the collection, administration and division of *zakat* and *fitrah*;
- (b) the rate of value for *zakat* and *fitrah* payable by every Muslim in the Federal Territories;
- (c) the procedures on the collection of *zakat* and *fitrah*;
- (d) the appointment of *amil*s to collect *zakat* and *fitrah*;
and
- (e) the penalties and punishments for matters relating to the collection or delivery of all proceeds of *zakat* and *fitrah*.

Appeal

78. (1) Any person may appeal to the Majlis against any claim on payment of *zakat* made on him.

(2) Majlis shall consider the appeal and may order the person to pay the amount of *zakat* claimed on him, or any lesser amount as the Majlis deems fit, or may order that the person is not required to pay *zakat*, or either one of it in a particular year or years.

(3) The decision of the Majlis on the appeal shall be conclusive and shall not be questioned in any Syariah Court.

*Wakaf, nazar and trust***Majlis to be sole trustee of *wakaf, nazar and trust***

79. Notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting it, the Majlis shall be the sole trustee of—

- (a) all *wakaf*, whether *wakaf am* or *wakaf khas*;
- (b) all *nazar am*; and
- (c) all trusts of every description creating any charitable trust for the support and promotion of the religion of Islam or for the benefit of Muslims in accordance with *Hukum Syarak*,

to the extent of the property affected by the *wakaf, nazar am* or trust and situated in the Federal Territories.

Vesting of *wakaf, nazar and trust* property in Majlis

80. All property, subject to section 81, shall without any conveyance, assignment or transfer, and, in the case of immovable property, upon registration under the written law relating to land, vest in the Majlis for the purpose of the *wakaf, nazar am* or trust affecting the property.

Restriction on creation of charitable trusts

81. (1) Whether or not made by way of will or death-bed gift (*marad-al-maut*), no *wakaf* or *nazar*, made after the commencement of this section and involving more than one-third of the property of the person making the *wakaf* or *nazar*, shall be valid in respect of the excess beyond such one-third.

(2) Every *wakaf khas* or *nazar* made after the commencement of this section shall be null and void unless—

- (a) the Yang di-Pertuan Agong, on the advice of the Majlis, has expressly sanctioned and validated the *wakaf khas* or *nazar*; or

(b) the *wakaf khas* or *nazar* was made while the maker was seriously ill and the maker subsequently died of such illness and was made in writing by an instrument executed by him and witnessed by two adult Muslims living in the same *kariah masjid* as the maker.

(3) This section shall not operate to render valid any will, death-bed gift, *wakaf* or *nazar* which is invalid under the provisions of *Hukum Syarak*.

(4) Any *wakaf* or *nazar* which is valid in accordance with the previous Act shall remain valid for the purpose of this Act.

Income from *wakaf* and *nazar*

82. (1) The income received by the Majlis from a *wakaf khas* shall be applied by it in accordance with the lawful provisions of such *wakaf khas*.

(2) The income of every *wakaf* other than *wakaf khas* and of every *nazar am* shall be paid into and form part of the *Baitulmal*.

Capital of *wakaf* and *nazar*

83. (1) Subject to subsections (2) and (3), the capital property and assets affected by any lawful *wakaf* or *nazar am* shall not form part of the *Baitulmal*, but shall be applied in pursuance of such *wakaf* or *nazar am* and held as segregated funds.

(2) If, due to lapse of time or change of circumstances, it is no longer possible beneficially to carry out the exact provisions of any *wakaf* or *nazar am*, the Majlis shall prepare a scheme for the application of the property and assets affected thereby in a manner as closely as may be analogous to that required by the terms of such *wakaf* or *nazar am* and shall apply the property and assets accordingly.

(3) Notwithstanding subsection (2), the Majlis may, with the approval in writing of the Yang di-Pertuan Agong, direct that the property and assets referred to in subsection (2) be added to and form part of the *Baitulmal*.

(4) Notwithstanding subsection (1), if the terms of any *wakaf* or *nazar am* do not specify the method of application of the capital property or assets affected thereby, or it is uncertain from such terms in what manner the capital property or assets should be applied, the Majlis may direct that such capital property and assets shall be added to and form part of the *Baitulmal*.

(5) All instruments creating, evidencing or affecting any *wakaf* or *nazar am*, together with any documents of title or other securities relating thereto, shall be held and retained by the Majlis.

Construction of instruments on *wakaf* or *nazar*

84. If, in the opinion of the Majlis, the meaning or effect of any instrument or declaration creating or affecting any *wakaf* or *nazar* is obscure or uncertain, the Majlis may refer the matter to the *Fatwa* Committee for its opinion as to the meaning or effect of the instrument or declaration, and shall act on any opinion so given by the *Fatwa* Committee.

Publication of list of *wakaf*, *nazar* and trust property

85. As soon as possible after 31 December in each year, the Majlis shall prepare, issue and publish in the *Gazette*, a list of all properties, investments and assets vested in the *Majlis*, subject to any *wakaf*, *nazar* or trust, and not forming part of the *Baitulmal*.

Charitable collections

Charitable collections

86. (1) Majlis may—

(a) collect; or

(b) authorize any person or body of persons, by an authorization letter issued by the Majlis, on such terms as the Majlis deems fit, to collect,

moneys or other contributions for any charitable purpose for the support and promotion of the religion of Islam or for the benefit of Muslims in accordance with *Hukum Syarak*.

(2) It shall be deemed to be a term of every authorization letter granted under paragraph (1)(b) that the grantee thereof and every other person authorized thereby to collect moneys or other contributions shall—

- (a) issue in respect of every sum so collected a serially numbered receipt in the prescribed form;
- (b) keep true and full accounts of all sums so collected and of the disposal thereof with all proper vouchers;
- (c) produce, on demand, the counterfoils of such receipts and all such accounts and vouchers for inspection and audit by the Majlis;
- (d) apply and dispose of all sums of money or other contributions so collected in accordance with the terms of such authorization letter or, if no method for the disposal of the moneys or other contributions is expressly authorized by the authorization letter, pay and account for the sums to the *Baitulmal*.

(3) Moneys or other contributions collected pursuant to this section may be applied for any purpose specified by the Majlis, and if there is no purpose so specified, shall form part of the *Baitulmal*.

(4) No person shall make or take part in any collection of money for any purpose as mentioned in subsection (1) except with the express authority of the Majlis or by virtue of an authorization letter under subsection (1).

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

PART VII

MOSQUES

Majlis to be sole trustee of mosques and related land

87. (1) Notwithstanding any provision to the contrary in any written instrument, the Majlis shall be the sole trustee of all mosques in the Federal Territories.

(2) Every mosque, together with the land on which it stands and any land which is appurtenant to and used for the purposes of the mosque, other than Government land or land reserved for a public purpose, shall, upon registration under the relevant written law relating to land, and without any conveyance, assignment or transfer, vest in the Majlis for the purposes of this Act.

Restriction on establishment of mosques and penalty

88. (1) No person shall, without the permission in writing from the Majlis, erect any building to be used, or use or cause or permit to be used any building for purposes which may only be carried on, in or by a mosque.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for term not exceeding one year or to both.

Establishment of mosques

89. (1) The Majlis may at any time—

- (a) permit a building to be erected for use as a mosque;
- (b) permit the use of any building as a mosque; and
- (c) prescribe any *surau*, *madrasah* or other building to be a mosque.

(2) The Majlis shall not give its permission or make a prescription under subsection (1) unless the site of the building to be used as mosque has been made a *wakaf* in perpetuity.

(3) The Majlis may, by notification in the *Gazette*, determine or alter the boundaries of any *kariah masjid*.

Maintenance of mosques and their compounds

90. (1) The Majlis shall ensure that all mosques in the Federal Territories are kept in a proper state of repair and that their compounds are maintained in a proper state of cleanliness.

(2) The Majlis may raise and apply, or authorize the raising and application of, special funds for the purpose of such repairs and maintenance, or may defray the cost of such repairs and maintenance from the *Baitulmal*.

(3) The *Jawatankuasa Kariah* shall promptly inform the Majlis of any want of repair in their mosque and shall inspect or supervise any repairs as agent for and on behalf of the Majlis.

(4) No material alteration to the structure of a mosque shall be made without the permission in writing from the Majlis.

(5) The Majlis may direct a *Jawatankuasa Kariah* to keep the mosque for which it is responsible in a proper state of repair.

Appointment of *Pegawai Masjid*

91. (1) For every mosque in the Federal Territories, the Majlis shall appoint one or several *Pegawai Masjid*.

(2) The posts of *Pegawai Masjid*, other than *Imam Ratib* and *Pembantu Bilal*, shall be posts in the general public service of the Federation.

(3) The *Imam* and *Bilal* shall be appointed by the Majlis from amongst persons serving in the Religious Administrative service.

(4) The *Imam Ratib* and *Pembantu Bilal* shall be appointed by the Majlis, on the advice of the *Fatwa* Committee, from amongst the *anak kariah*.

(5) Every person who, immediately before the commencement of this section, was the *Imam*, *Imam Ratib*, *Bilal* or *Pembantu Bilal* of mosques appointed under the previous Act shall, on the commencement of this section, be deemed to have been duly appointed under this section to be the *Imam*, *Imam Ratib*, *Bilal* or *Pembantu Bilal* respectively of the mosques and shall, subject to section 93, continue to hold office as the *Imam*, *Imam Ratib*, *Bilal* or *Pembantu Bilal* of such mosque.

(6) For the purpose of this Part, “*Imam*” means the Head of *Imam* and includes the Deputy Head of *Imam*.

Tauliah of Pegawai Masjid

92. (1) Every person appointed under section 91 to be a *Pegawai Masjid*, including every person deemed to have been so appointed under subsection 91(5), shall be given a *tauliah* by the Majlis.

(2) Every *Pegawai Masjid* shall have such powers and duties as may be set out in the regulations made under this Act and in his *tauliah*.

Tenure of office of *Pegawai Masjid*

93. (1) The appointment of a *Pegawai Masjid*, other than the *Imam* and *Bilal* of a mosque appointed under subsection 91(3) or deemed to be appointed under subsection 91(5), may be terminated by written notice from the Majlis.

(2) No *Pegawai Masjid* appointed or deemed to be appointed under subsection 91(5) shall remain in office after reaching the age of sixty years.

(3) Notwithstanding subsection (2), the Majlis may, if it deems fit, appoint any person to be a *Pegawai Masjid* notwithstanding that he has attained the age of sixty years or extend the tenure of office of a *Pegawai Masjid* who has attained the age of sixty years.

(4) The Secretary shall inform the Majlis of any disgraceful conduct on the part of any *Pegawai Masjid*, whether in relation to his duties as *Pegawai Masjid* or otherwise, and to make any reasonable recommendations.

Control and direction of *Pegawai Masjid*

94. In the performance of their duties, the *Imam*, the *Imam Ratib*, *Bilal* and *Pembantu Bilal* shall be subject to the control and direction of the Majlis.

Jawatankuasa Kariah

95. (1) The Majlis may, with the approval of the Yang di-Pertuan Agong, make regulations for—

- (a) the establishment of a *Jawatankuasa Kariah* for a *kariah masjid*;
- (b) prescribing the manner in which the members of the *Jawatankuasa Kariah* shall be appointed; and
- (c) prescribing the functions of the *Jawatankuasa Kariah*.

(2) The *Jawatankuasa Kariah* of a *kariah masjid*, together with the *Pegawai Masjid*, shall—

- (a) be responsible for the proper conduct and good order of the mosque and all Muslim burial grounds within the *kariah masjid*;
- (b) be responsible for the good conduct of the *anak kariah* in matters relating to the religion of Islam; and
- (c) give due and prompt information to the Majlis of all matters arising in the *kariah masjid* that require the attention of the Majlis.

Exemption of mosques

96. The Majlis may, with the approval of the Yang di-Pertuan Agong, by notification in the *Gazette*, exempt the application of all or any of the provisions of this Part to any mosque.

PART VIII

CONVERSION TO THE RELIGION OF ISLAM

Requirements for conversion to the religion of Islam

97. (1) The following requirements shall be complied with for a valid conversion of a person to the religion of Islam:

- (a) the person must utter clearly in reasonably intelligible Arabic the two clauses of the Affirmation of Faith;

- (b) at the time of uttering the two *clauses* of the Affirmation of Faith, the person must be aware that they mean “I bear witness that there is no God but Allah and I bear witness that the Prophet Muhammad S.A.W. is the Messenger of Allah”; and
- (c) the utterance must be made of the person’s own free will.

(2) A person who is incapable of speech may, for the purpose of fulfilling the requirement of paragraph (1)(a), utter the two clauses of the Affirmation of Faith by means of signs that convey the meaning specified in paragraph (1)(b).

Moment of conversion to the religion of Islam

98. A person is converted to the religion of Islam and becomes a Muslim as soon as he finishes uttering the two clauses of the Affirmation of Faith provided that the requirements of section 97 are fulfilled; and that person shall thereupon be referred to as a *mualaf*.

Duties and obligations of *mualaf*

99. From the moment of his conversion, a *mualaf* becomes subject to the same duties and obligations as any other Muslim.

Appointment of Chief Registrar of *Mualafs* and Registrars of *Mualafs*

100. (1) The Majlis shall appoint a Chief Registrar of *Mualafs* to maintain a Register of *Mualafs* in the prescribed form for the registration of *mualaf*.

(2) The Majlis may appoint such numbers of Registrars of *Mualafs* to assist the Chief Registrar of *Mualafs* in the performance of his duties under this Act.

Registration of *mualaf*

101. (1) A person who has converted to the religion of Islam may apply to the Chief Registrar of *Mualafs* or Registrar of *Mualafs* in the prescribed form for registration as a *mualaf*.

(2) If the Chief Registrar of *Mualafs* or Registrar of *Mualafs* is satisfied that the requirements of section 97 have been fulfilled in respect of the applicant, the Chief Registrar of *Mualafs* or Registrar of *Mualafs* may register the applicant's conversion to the religion of Islam by entering in the Register of *Mualafs* the name of the applicant and other particulars as required in the Register of *Mualafs*.

(3) The Chief Registrar of *Mualafs* or Registrar of *Mualafs* shall also determine the date of the applicant's conversion to the religion of Islam and enter such date in the Register of *Mualafs*.

(4) In order to satisfy himself of the fact and date of conversion to the religion of Islam by the applicant and the other particulars to be entered in the Register of *Mualafs*, the Chief Registrar of *Mualafs* or Registrar of *Mualafs* may make such inquiries and call for such evidence as he considers necessary; but this subsection shall not be construed as precluding the Chief Registrar of *Mualafs* or Registrar of *Mualafs* from relying solely on the words of the applicant as far as the fact and date of conversion are concerned.

(5) If the Chief Registrar of *Mualafs* or Registrar of *Mualafs* is not satisfied that the requirements of section 97 have been fulfilled in respect of the applicant, he may permit the applicant to utter, in his presence or in the presence of any of his officers, the two clauses of the Affirmation of Faith in accordance with the requirements of that section.

Certificate of Conversion to the Religion of Islam

102. (1) The Chief Registrar of *Mualafs* or Registrar of *Mualafs* shall furnish every person whose conversion to the religion of Islam has been registered a Certificate of Conversion to the Religion of Islam in the prescribed form.

(2) A Certificate of Conversion to the religion of Islam shall be conclusive proof of the facts stated in the Certificate.

Recognition of *mualaf* as a Muslim

103. (1) A person who has converted to the religion of Islam and whose conversion has been registered in the Register of *Mualafs* shall, for the purposes of any Federal or State law, and for all time, be treated as a Muslim.

(2) A person whose conversion to the religion of Islam has been registered under any law of any State shall, for all purposes in the Federal Territories and for the purposes of implementing the provisions of any law in the Federal Territories, be treated as a Muslim.

Determination whether a non-registered person is a *mualaf*

104. If any question arises as to whether a person is a *mualaf*, and the person is not registered in the Register of *Mualafs* or under any law of any State as a *mualaf*, that question shall be decided on the merits of the case by reference to the requirement under section 97.

Offence of giving false information

105. Any person who, in an application for registration under section 101, or in response to any request for information or evidence made by the Chief Registrar of *Mualafs* or Registrar of *Mualafs* under that section, wilfully furnishes to the Chief Registrar of *Mualafs* or Registrar of *Mualafs* any false or misleading information or evidence commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Power to make regulations

106. (1) The Majlis may, with the approval of the Yang di-Pertuan Agong, make regulations for carrying into effect the provisions of this Part.

(2) Without prejudice to the generality of powers conferred under subsection (1), regulations may be made to provide for—

- (a) the care and instruction of *mualaf*, and the method of registering *mualaf*; and
- (b) the shelter home of *mualaf*.

Capacity to convert to the religion of Islam

107. For the purpose of this Part, a person who is not a Muslim may convert to the religion of Islam if he is of sound mind and—

- (a) has attained the age of eighteen years; or
- (b) if he has not attained the age of eighteen years, his parent or guardian consents to his conversion.

PART IX

ISLAMIC RELIGIOUS EDUCATION

Islamic Religious Teaching Supervisory Committee

108. (1) The Majlis shall appoint a committee known as the Religious Teaching Supervisory Committee, which shall consist of—

- (a) the Mufti, as Chairman;
- (b) not less than three and not more than seven persons with appropriate experience, knowledge and expertise; and
- (c) an officer from the Department of Mufti appointed by the Majlis, as Secretary.

(2) The Secretary of the Committee shall be responsible for implementing the decisions of the Committee.

(3) The Religious Teaching Supervisory Committee shall have power to grant a *tauliah* for the purpose of the teaching of the religion of Islam or any aspect of the religion of Islam and to withdraw such *tauliah*.

- (4) The Majlis may make regulations providing for—
- (a) the procedure, requirements and other matters relating to the granting of a *tauliah* under this section, including the fees chargeable;
 - (b) the procedure of the Islamic Religious Teaching Supervisory Committee; and
 - (c) allowances which shall be paid to the members of the Committee.

Offence of teaching the religion of Islam or any aspect of the religion of Islam without a *tauliah*

109. (1) Any person who teaches the religion of Islam or any aspect of the religion of Islam without a *tauliah* granted under section 108 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 three years or to both.

- (2) Subsection (1) shall not apply to—
- (a) any person or class of persons exempted by the Majlis under section 111; and
 - (b) any person who teaches the religion of Islam or any aspect of the religion of Islam in his own residence to members of his own household.

Islamic religious schools

110. The Majlis shall have power to register Islamic religious schools in the Federal Territories.

Exemption

111. The Majlis may exempt any person or class of persons from any provision of this Part.

PART X

GENERAL

General power to make regulations

112. (1) The Majlis may, with the approval of the Yang di-Pertuan Agong, make regulations, which shall be published in the *Gazette*, for carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of powers conferred under subsection (1), regulations may be made to provide for—

- (a) the procedure of the Majlis, the form and method of executing instruments by the Majlis, and the appointment of officers and servants of the Majlis;
- (b) the fees to be paid in respect of any act or thing done under or in pursuance of this Act, and the method of collecting and disposing of such fees;
- (c) the appointment of committees of the Majlis and their powers, duties and procedures;
- (d) the forms, registers, books of account, reports, accounts, estimates and other documents to be used in respect of any act or thing done under or in pursuance of this Act;
- (e) the conduct of any charitable collection and the disposal of its proceeds;
- (f) the conduct of any mosque or *surau* or burial ground and all matters relating thereto;
- (g) the powers and duties of any *Pegawai Masjid*;
- (h) the determination and amendment of the boundaries of a *kariah masjid*;
- (i) the administration of Islamic religious schools and activities relating to the teaching of the religion of Islam;
- (j) the matter of *wakaf*, *nazar* or trust property;

- (k) the administration of welfare home, shelter and rehabilitation centre; and
- (l) other matters necessary for the implementation of the provisions of this Act.

Hukum Syarak

113. (1) Any provision or interpretation of the provisions under this Act which is inconsistent with *Hukum Syarak* shall, to the extent of the inconsistency, be void.

(2) In the event of a *lacuna* or where any matter is not expressly provided for in this Act, the Court shall apply *Hukum Syarak*.

PART XI

REPEAL, SAVINGS AND TRANSITIONAL

Repeal

114. The Administration of Islamic Law (Federal Territories) Act 1993 [*Act 505*] is repealed.

Savings and transitional

115. (1) All rights, powers, obligations and liabilities which, immediately before the commencement of this Part, were vested in the previous Majlis shall, on the commencement of this Act, be vested in the Majlis.

(2) All property, whether movable or immovable which, immediately before the commencement of this Act, were vested in the previous Majlis shall, on the commencement of this Part, be vested in the Majlis without any conveyance, assignment or transfer.

(3) All regulations, rules, proclamations, orders, notifications, notices, forms, authorization letters and appointments issued or made under or by virtue of the law repealed under section 114

shall remain in operation, in so far as they are consistent with this Act, until revoked or replaced by regulations, rules, proclamations, orders, notifications, notices, forms, authorization letters or appointments issued or made under this Act.

(4) All references to the previous Majlis or the previous Act contained in any written law shall be construed as reference to the Majlis or this Act respectively.

(5) On the commencement of this Act, all powers of the Courts and the Syariah Appeal Court constituted under the previous Act shall be taken over or exercised by the Courts or the Syariah Appeal Court constituted under this Act and any reference in any written law or otherwise to the Courts and the Syariah Appeal Court constituted under the previous Act shall be deemed to be a reference to the Courts and the Syariah Appeal Court constituted under this Act.

Continuance of civil and criminal proceedings

116. (1) Subject to the provisions of this Act, the repeal under section 114 shall not affect any person's liability to be prosecuted or punished for offences committed under the previous Act or any proceedings brought or punishment imposed immediately before the commencement of this Act.

(2) Subject to the provisions of this Act, any proceedings whether civil or criminal or cause of action pending or existing immediately before the commencement of this Act by or against the previous Majlis may be continued or instituted by or against the Majlis as if this Act had not been enacted.

(3) Any appeal brought or any leave to appeal applied for, on or after the commencement of this Act, against a decision given in any legal proceedings immediately before the commencement of this Act may be brought by or against the Majlis as if this Act had not been enacted.

SCHEDULE

[Subsection 2(3)]

**ARABIC SCRIPT FOR CERTAIN WORDS
AND EXPRESSIONS**

Faraq	-	فرق
Fasakh	-	فسخ
Fatwa	-	فتوى
Hadith	-	حديث
Hukum Syarak	-	حكم شرع
Kariah	-	قرية
Nas	-	نص
Nazar	-	نذر
Qaul muktamad	-	قول معتمد
Quran	-	قرآن
Ratib	-	راتب
Syariah	-	شريعة
Waqif	-	واقف

EXPLANATORY STATEMENT

This Bill seeks to introduce new and better provisions for the administration of the religion of Islam, the constitution and jurisdiction of the Syariah Courts and the establishment and functions of the Majlis Agama Islam Wilayah Persekutuan in the Federal Territories, and for matters related thereto. This Bill repeals the Administration of Islamic Law (Federal Territories) Act 1993 [Act 505].

PART I

2. Part I of the Bill contains preliminary matters.
3. *Clause 1* contains the short title, application and the date of commencement of the proposed Act whilst *clause 2* contains the definitions of several words and expressions used in the Bill. *Clause 3* reiterates that the rights and powers of the Yang di-Pertuan Agong as the Head of the Religion of Islam in the Federal Territories are preserved.

PART II

4. Part II contains provisions on the Majlis Agama Islam Wilayah Persekutuan (“Majlis”).
5. *Clause 4* establishes the Majlis while *clause 5* incorporates it.
6. *Clause 6* provides that the Majlis is responsible for aiding and advising the Yang di-Pertuan Agong.
7. *Clause 7* requires the Majlis to be involved in the economic and social development and wellbeing of the Muslim community. For that purpose, *clause 8* gives powers to the Majlis to establish companies and validates companies that have been established by the Majlis under the Companies Act 1965. *Clause 9* deals with the powers of the Majlis to borrow for the purpose of performing its functions.
8. *Clauses 10 to 13* contain provisions relating to the membership of the Majlis, termination of appointment, revocation of appointment and publication of appointments and termination and revocation of appointments in the *Gazette*.
9. *Clauses 14 and 15* set out the responsibilities of the Chairman and Secretary of the Majlis, respectively.
10. *Clauses 16 to 23* deal with matters relating to meetings, minutes of meetings and resolutions of the Majlis.
11. *Clause 24* deals with the leave of the Chairman and members of the Majlis.

12. *Clause 25* allows the Chairman to act in cases of urgency.
13. *Clause 26* allows the Majlis to appoint committees. *Clause 27* empowers the Majlis to delegate its powers and responsibilities to the Chairman, the Secretary and its committees.
14. *Clause 28* provides for the appointment of a Chief Executive Officer on such terms and conditions as the Majlis thinks desirable.
15. *Clause 29* provides for the appointment of officers and servants of the Majlis and conditions of service.
16. *Clauses 30, 31 and 32* require the proceedings of the Majlis to be kept confidential, deem the members and officers of the Majlis to be public servants within the meaning of the Penal Code and permit the Majlis to determine its own procedure, respectively.

PART III

17. Part III contains provisions on the appointment of the Mufti, Deputy Mufti, *Fatwa* Committee and *fatwa* relating to matters of national interest.
18. *Clause 33* provides for the appointment of the Mufti and Deputy Mufti whilst *clause 34* spells out the functions of the Mufti.
19. *Clause 35* deals with the establishment of the *Fatwa* Committee. *Clauses 36 to 41* contain provisions relating to the making of a *fatwa* including *fatwa* affecting matters of national interest. *Clause 42* relates to request for the opinion of the *Fatwa* Committee by the courts other than the Syariah Courts whilst *clause 43* prescribes the authorities to be followed in making a *fatwa*.

PART IV

20. Part IV provides for matters relating to the Syariah Courts and Syariah Appeal Court.
21. *Clause 44* contains provisions on the establishment of the Syariah Subordinate Courts, Syariah High Courts and Syariah Appeal Court. *Clauses 45 to 50* provide for the appointment of the Chief Syariah Judge, Judges of the Syariah Appeal Court, Judges of the Syariah High Court and Judges of the Syariah Subordinate Court, Chief Registrar, Registrars, Deputy Registrars and Assistant Registrars. *Clauses 51 to 58* set out the extent of the jurisdiction of such Courts.
22. *Clauses 59 to 61* prescribe the procedure for appeals to the Syariah Appeal Court.
23. *Clause 62* provides that trials shall be held in open court whilst *clause 63* requires the proceedings in the Syariah Courts to be conducted in the national language.

24. *Clause 64* contains provisions relating to the reciprocal execution of warrants and service of summons between the Federal Territories and States.
25. *Clause 65* provides for the protection of Judges and Court officials.
26. *Clause 66* contains provisions on the establishment of a Rules Committee of the Syariah Courts.
27. *Clause 67* authorizes the Chairman of the Syariah Appeal Court to give any Practice Directions from time to time.

PART V

28. Part V contains provisions relating to prosecution and representation.
29. *Clauses 68* and *69* contain provisions on the appointment of the Chief Syariah Prosecutor, Syariah Prosecutors, Chief Religious Enforcement Officer and Religious Enforcement Officer.
30. *Clause 70* provides for matters relating to *Pegum Syarie*.

PART VI

31. Part VI contains financial provisions.
32. *Clause 71* deals with the establishment and matters relating to the administration of the *Baitulmal*. *Clause 72* provides for matters relating to the preparation of estimates of income and expenditure of the Majlis. *Clause 73* deals with the expenses of the Majlis whilst *clause 74* allows the Majlis to operate a bank account. *Clause 75* provides that the Statutory Bodies (Accounts and Annual Reports) Act 1980 applies to the Majlis.
33. *Clauses 76* to *78* empower the Majlis to collect and distribute *zakat* and *fitrah*, to make regulations and consider appeals from any person against a claim for payment of *zakat* and *fitrah* on him.
34. *Clause 79* provides that the Majlis shall be the sole trustee of all *wakaf*, *nazar* and trusts, whilst *clauses 80* to *85* contain provisions relating to the administration of charitable trusts, *wakaf* and *nazar*.
35. *Clause 86* contains provisions relating to charitable collections.

PART VII

36. Part VII contains provisions relating to mosques.
37. *Clause 87* provides that the Majlis shall be the sole trustee of all mosques.
38. *Clause 88* deals with restrictions on the establishment of mosques.

39. *Clauses 89 and 90* provide the terms for establishment of mosques, the determination of the boundaries of a *kariah masjid* and maintenance of mosques by the Majlis.

40. *Clauses 91 to 94* contain provisions relating to appointments, *tauliah* and tenure of office of *Pegawai Masjid*.

41. *Clause 95* empowers the Majlis to make regulations with respect to *Jawatankuasa Kariah*.

42. *Clause 96* allows the Majlis to exempt any mosque from the provisions of Part VII.

PART VIII

43. Part VIII contains provisions on conversion to the religion of Islam.

44. *Clauses 97 and 98* determine the requirements for conversion to the religion of Islam and the moment of conversion whilst *Clause 99* deals with the duties and obligations of a *mualaf*.

45. *Clauses 100 to 104* provide for the appointment of the Chief Registrar of *Mualafs* and Registrars of *Mualafs*, registration of *mualafs*, Certificates of Conversion to the religion of Islam, recognition of *mualafs* and method of determining whether a non-registered person is a *mualaf*.

46. *Clause 105* makes the act of giving false information or evidence during the process of registration of a *mualaf* an offence.

47. *Clause 106* empowers the Majlis to make regulations.

48. *Clause 107* relates to the capacity to convert to the religion of Islam.

PART IX

49. Part IX contains provisions on Islamic religious education and the offence of teaching the religion of Islam without *tauliah*.

50. *Clause 108* deals with the establishment of the Islamic Religious Teaching Supervisory Committee, its membership and functions. *Clause 109* makes it an offence to teach the religion of Islam or any aspect of the religion of Islam without *tauliah*.

51. *Clause 110* confers on the Majlis the power to register religious schools.

52. *Clause 111* enables the Majlis to grant exemptions to any person from the application of the provisions of Part IX.

PART X

53. Part X contains general provisions.
54. *Clause 112* deals with the powers of Majlis to make regulations.
55. *Clause 113* clearly states that any provision of the proposed Act which is inconsistent with *Hukum Syarak* shall be void to the extent of its inconsistency.

PART XI

56. Part XI contains repeal, savings and transitional and continuance of civil and criminal proceedings provisions in *clauses 114* to *116*.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U²)2382]