

No. S 34

**SYARIAH COURTS ACT
(CHAPTER 184)**

SYARIAH COURTS (SYAR'IE LAWYERS) RULES, 2002

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**SYARIAH COURTS ACT
(CHAPTER 184)**

SYARIAH COURTS (SYAR'IE LAWYERS) RULES, 2002

In exercise of the power conferred by section 28 of the Syariah Courts Act the Chief Syar'ie Judge, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Rules —

PART I

PRELIMINARY

Citation.

1. These Rules may be cited as the Syariah Courts (Syar'ie Lawyers) Rules, 2002 and shall commence on the same date as the Syariah Courts Act.

Interpretation.

2. In these Rules, unless the context otherwise requires —

"advocate and solicitor" has the same meaning as in the Legal Profession Act (Chapter 132);

"Chairman" means the Chairman of the Syar'ie Lawyers Committee;

"Committee" means the Syar'ie Lawyers Committee established under rule 3;

"Register" means Syar'ie Lawyers Register mentioned in rule 15;

"Syar'ie Lawyer Certificate examination" means the examination conducted by the Committee under rule 7.

PART II

ESTABLISHMENT OF SYAR'IE LAWYERS COMMITTEE

Establishment of the Committee.

3. To assist the Chief Syar'ie Judge, there shall be established a committee to be called the Syar'ie Lawyers Committee which will deal with matters relating to Syar'ie Lawyers.

Membership of the Committee.

4. (1) The Committee shall consist of –

(a) the most senior Syariah Appeal Court Judge, not being the Chief Syar'ie Judge, who shall be the Chairman;

(b) the Attorney General or his representative;

(c) the Chief Syar'ie Prosecutor;

(d) three other persons appointed by the Majlis and one of them shall be a member of the Majlis; and

(e) the Chief Registrar of the Syariah Appeal Court, who shall also be the Secretary.

(2) The members of the Committee appointed under sub-rule (1)(d) shall hold office for a period of 3 years and are eligible for reappointment.

Termination of appointment and resignation.

5. (1) The appointment of members of the Committee under rule 4(1)(d) may at any time be terminated by the Majlis without assigning any reason therefor.

(2) A member of the Committee appointed under rule 4(1)(d) may at any time resign by tendering a notice to the Chairman.

(3) The resignation under sub-rule (2) shall only take effect after approval from the Majlis.

Meetings of the Committee.

6. (1) The Chairman shall preside at any meeting of the Committee and if the Chairman is absent, the members present may elect one of them to preside at the meeting.

(2) Four members present including the Chairman, shall form the quorum of a meeting.

(3) The decision of the meeting of the Committee shall be made by *syura*.

(4) Subject to these Rules and any direction of the Majlis, the Committee may determine its own procedure.

Functions of the Committee.

7. The Committee shall have the following functions —

(a) to conduct the Syar'ie Lawyer Certificate examination and all matters necessary for or incidental to the examination, including —

(i) preparing and publishing the syllabus for the examination;

(ii) fixing the date of the examination;

(iii) preparing or evaluating questions and marking examination papers;

(b) to issue the Syar'ie Lawyer Certificate;

(c) to issue the Certificate of Annual Practice;

(d) to regulate the discipline of Syar'ie Lawyer;

(e) to make recommendation to become Syar'ie Lawyer;

(f) to perform any other function or duty as may be directed by the Majlis.

Remuneration and allowance.

8. The members of the Committee shall be paid any remuneration or allowance as may be determined by the Majlis.

PART III

SYAR'IE LAWYERS

Admission of Syar'ie Lawyers.

9. Subject to this Part, a Syar'ie Lawyer shall be admitted by the Chief Syar'ie Judge.

Qualification of Syar'ie Lawyers.

10. A person may be admitted to be Syar'ie Lawyer if he —

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

Islamic educational institution recognised by the Government of Brunei Darussalam;

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

Application.

11. (1) Any person who is qualified in accordance with rule 10 who desires to be admitted as Syar'ie Lawyer shall make an application by using Form A set out in the Second Schedule.

(2) Every application shall be addressed to the Chairman with copies of the necessary documents attached and shall be accompanied with the fees mentioned in the First Schedule.

(3) The applicant shall cause to be posted a copy of his application at every court in Brunei Darussalam for a period of one month after the delivery of his application to the Chairman.

Objection.

12. Any objection to the application as Syar'ie Lawyer shall be submitted in writing to the Chairman with the grounds for the objection within a period of 30 days from the date the copy of his application has been posted.

Decision.

13. (1) The Committee shall, within 7 days from the date of making its recommendation on the application, serve the recommendation on the Chief Syar'ie Judge. The Chief Syar'ie Judge, after agreeing to admit, may cause the decision on the application to be served on the applicant and every court in Brunei Darussalam.

(2) Before any application is rejected by the Chief Syar'ie Judge, the applicant shall have a right to be heard thereon.

(3) Any rejection made by the Chief Syar'ie Judge under sub-rule (2) shall be final.

Issue of Syar'ie Lawyer Certificate and Certificate of Annual Practice.

14. (1) The Syar'ie Lawyer Certificate in accordance with Form B set out in the Second Schedule shall be issued by the Committee to a Syar'ie Lawyer on payment of the registration and certificate fee mentioned in the First Schedule.

(2) The Certificate of Annual Practice in accordance with Form C set out in the Second Schedule shall be issued by the Committee to a Syar'ie Lawyer on payment of the certificate fee or the renewal fee, as the case may be, mentioned in the First Schedule.

(3) The Syar'ie Lawyer Certificate and the Certificate of Annual Practice shall be signed by the Chief Syar'ie Judge.

Syar'ie Lawyers Register.

15. (1) The Secretary of the Committee shall maintain a Syar'ie Lawyers Register.

(2) There shall be entered in the Syar'ie Lawyers Register —

- (a) the name of the Syar'ie Lawyer;
- (b) the name under which he practises or the name of the firm;
- (c) the postal address; and
- (d) his date of admission.

(3) In the event of any change in the particulars of a Syar'ie Lawyer as stated in sub-rule (2), the Syar'ie Lawyer shall, within a period of 14 days thereafter, inform the Committee and the change shall be entered into the Register.

(4) The Secretary of the Committee shall, at least once in every year, publish in the *Gazette* the names of all persons in the Register.

(5) Any person may inspect the Register during office hours without any payment.

Rights of a Syar'ie Lawyer.

16. Subject to these Rules and any other written law, every Syar'ie Lawyers has the right to appear and represent his client in the Syariah Courts.

PART IV

DISCIPLINE

All Syar'ie Lawyers under control of Committee.

17. (1) A Syar'ie Lawyer shall be subject to the control of the Committee and the Committee may order, on due cause shown, the Syar'ie Lawyer to be struck off from the Register, suspended from practice or censured.

(2) Due cause may be shown by proof that the Syar'ie Lawyer —

(a) has been convicted of a criminal offence which makes him unfit to become a Syar'ie Lawyer;

(b) has been guilty of dishonest conduct in the discharge of his professional duty of fraudulent conduct or conduct otherwise unbecoming a Syar'ie Lawyer;

(c) has tendered, given or agrees to give any gratification to any person for having procured the employment in any legal business, of himself or of any other Syar'ie Lawyers;

(d) has directly or indirectly, procured or attempted to procure the employment of himself or any other Syar'ie Lawyer, through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;

(e) has accepted employment in any legal business through a tout;

(f) allows any clerk or any other unauthorised person to undertake or carry on legal business in his name, such clerk or unauthorised person not being under the control of his principal as to ensure that he does not act without proper supervision;

(g) carries on, by himself or through any other person, any trade, business or calling which in the opinion of the Committee is incompatible with his position as a Syar'ie Lawyer;

(h) has contravened or failed to comply with any of the provisions of these Rules if in the opinion of the Committee such contravention or failure warrants disciplinary action;

(i) has made a statement which is false or misleading or has suppressed any material fact in or in relation to an application for a Certificate of Annual Practice under rule 29; or

(j) has been or is liable to be disbarred, struck off or suspended in his capacity as a legal practitioner by whatever name called in any other country.

(3) In any proceedings under this Part, the Committee may, in addition to the facts of the case, take into account the past conduct and character of the person concerned to determine what order referred to in sub-rule (1) should be made.

Complaint against a Syar'ie Lawyer.

18. (1) Any complaint concerning the conduct of any Syar'ie Lawyer in his professional capacity shall be made to the Committee.

(2) The Syariah Courts or the Chief Syar'ie Prosecutor may, at any time, refer to the Committee any information touching upon the conduct of a Syar'ie Lawyer in his professional capacity.

Order to show cause.

19. (1) The Committee shall, upon receiving a complaint under rule 18, conduct an investigation on the complaint and has the right to call any person to require any documents to be furnished and others, related to the complaint, to be furnished.

(2) The Committee shall, if it is of the opinion that there are reasonable reasons for disciplinary action to be taken against the Syar'ie Lawyer, prepare a charge against the Syar'ie Lawyer to be furnished to him.

(3) The Syar'ie Lawyer shall be required to give reasons in writing as to why it is unreasonable for a disciplinary action to be taken against him within 30 days from the date he receives the charges.

(4) If the Committee is satisfied with the reasons given by the Syar'ie Lawyer, the charges against him shall be dismissed.

(5) If he fails to give reasons in accordance with sub-rule (3), the Committee may make any order it thinks fit in accordance with rule 20.

(6) If the Committee is not satisfied with the reasons given for the charges, the Syar'ie Lawyer shall be required to appear before the Committee to defend himself.

(7) The Syar'ie Lawyer shall be given an opportunity to put questions to any witnesses called and to call witnesses on his behalf.

Power of Committee to make order.

20. The Committee shall have power to make such order as it thinks fair and reasonable, and may include any of the following —

(a) striking off the Register the name of the Syar'ie Lawyer to whom the application or complaint relates;

(b) suspending the Syar'ie Lawyer from practice for a period not exceeding 2 years; or

(c) censuring the Syar'ie Lawyer.

Report to Chief Syar'ie Judge.

21. Any order or decision made by the Committee in this Part, shall be reported to the Chief Syar'ie Judge by the Secretary to the Committee.

Appeal against order of Committee to Chief Syar'ie Judge.

22. An appeal against any order made by the Committee in respect of an application or complaint under these Rules shall be made to the Chief Syar'ie Judge at the instance either of the applicant or the Syar'ie Judge against whom the complaint is made within a period of one month from the date of the order, and the Chief Syar'ie Judge, with the assistance of 2 Syariah Appeal Court penal judges, shall review the appeal and his decision is final.

Service of decision.

23. Any decision made in accordance with rule 22 shall be served by the Secretary to the Committee on the Syar'ie Lawyer concerned and every court in Brunei Darussalam.

Syar'ie Lawyer may be represented.

24. A Syar'ie Lawyer, subject to the approval of the Committee and the Chief Syar'ie Judge, may be represented by any persons in any stage of proceedings in this Part.

Order of Committee to contain statement of its findings and others.

25. Every order made by the Committee in respect of an application or complaint made to it under these Rules shall be prefaced by a statement of its findings in relation to the facts of the case and shall be signed by the Chairman or by any other member of the Committee authorised by the Committee.

Syar'ie Lawyer may apply to have his name removed from Register.

26. (1) Any Syar'ie Lawyer may, subject to this rule, apply to the Committee to have his name removed from the Register.

(2) Every such application shall be supported by an *ikrar* witnessed by 2 persons which shall be served on the Committee and the Committee shall give its decision within the period of 2 months from the date the application is received.

(3) The Committee may require the Syar'ie Lawyer to publish a notice of his application to have his name removed from the Register in such manner or form as the Committee may direct.

Committee may restore a Syar'ie Lawyer.

27. (1) The Committee may, if it thinks fair and reasonable, at any time restore to the Register the name of a Syar'ie Lawyer who has been removed from or struck off the Register.

(2) An application for the name of a Syar'ie Lawyer to be restored to the Register shall be supported by an *ikrar* witnessed by 2 persons.

PART V

MISCELLANEOUS PROVISIONS

Submitting Syar'ie Lawyer Certificate and Certificate of Annual Practice.

28. Every Syar'ie Lawyer shall submit the Syar'ie Lawyer Certificate and the Certificate of Annual Practice if required by any Syariah Courts.

Certificate of Annual Practice.

29. Every Certificate of Annual Practice shall expire on the 31st. December of every year and all application to renew it shall be made not later than the 1st. November of every year by using Form D set out in the Second Schedule.

Application for Certificate of Annual Practice.

30. No Syar'ie Lawyer shall apply for a Certificate of Annual Certificate unless —

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

(b) he is or is about to be employed in his or their practice in Brunei Darussalam by a Syar'ie Lawyer or a firm of Syar'ie Lawyer in practice in Brunei Darussalam,

and he is ordinarily resident in Brunei Darussalam.

Restriction.

31. No person shall practise as a Syar'ie Lawyer or do any act as a Syar'ie Lawyer unless his name is in the Register and has a valid Syar'ie Lawyer Certificate and a Certificate of Annual Practice under rule 14.

Special admission.

32. (1) Notwithstanding any provisions to the contrary in these Rules, the Chief Syar'ie Judge may, for the purposes of any one case and on payment of the special admission fee mentioned in the First Schedule, allow a person to practise as a Syar'ie Lawyer by reason of his special skill and qualifications for the purposes of that case.

(2) For the purposes of this rule, rules 11, 12 and 13 shall apply with the necessary modifications.

Special exception.

33. The Attorney General, Chief Syar'ie Prosecutor, Syar'ie Prosecutors, Deputy Public Prosecutors and any officers authorised to represent the Government in any suit or prosecution, shall be deemed to be a Syar'ie Lawyer for the purposes of the Order.

FIRST SCHEDULE

(rule 14)

FEEES

Registration for admission to be Syar'ie Lawyer and Syar'ie Lawyer Certificate —

(i) for a citizen of Brunei Darussalam	\$500
(ii) for a non-citizen of Brunei Darussalam	\$1000
Special admission	\$200
Certificate of Annual Practice or renewal thereof	\$1000

SECOND SCHEDULE

FORMS

FORM A

(rule 11(1))

Reference number:

**SYARIAH COURTS ACT
(CHAPTER 184)**

SYARIAH COURTS (SYAR'IE LAWYERS) RULES, 2002

APPLICATION FOR ADMISSION AS SYAR'IE LAWYER

To:

Chairman,

Syar'ie Lawyer Committee.

I apply to be admitted as Syar'ie Lawyer and my personal details are as follows —

[To be filled by applicant in capital letters]

1. Name:
2. Other names (if any):
3. Sex:
4. Date of birth:
5. Place of birth:
6. Marital status:
7. Citizenship:
8. Race:
9. Identity card number and colour:
10. Place and date of issue of identity card:

FORM A – (continued)

11. Passport/identity card number (as the case may be) and expiry date:
12. Name of firm:
13. Telephone number: (H) (P)(M)
14. Correspondence address:
15. Mazhab:
16. Qualification:
17. Experience:

I hereby admit that all the above information are true.

Date:

.....
Applicant signature

Notice:

The applicant shall attach copies of certificates, employment pass and other related documents to support his application.

FOR COMMITTEE USE ONLY

Date received:

Decision of Committee:

Approval:

Deferred/rejected:

Reasons for deferment/rejection:

Date applicant informed:

Reference for decision:

Date registration and certificate fee received:

Receipt number:

FORM A – (continued)

Sent on:

Recorded in Register:

Serial number:

Signature:

Post :

Date: H

..... M

FORM B
(rule 14(1))

Serial number:

SYARIAH COURTS ACT
(CHAPTER 184)

SYARIAH COURTS (SYAR'IE LAWYERS) RULES, 2002

SYAR'IE LAWYER CERTIFICATE

It is hereby certified that —

Name:

Registration serial number:

Address:

who has satisfied the requirements of the Syariah Courts (Syar'ie Lawyers) Rules, 2002 has been registered as a Syar'ie Lawyer under the Syariah Courts Act with effect from H M.

SEAL

Date issued: H

..... M

.....
Chief Syar'ie Judge

FORM C
(rule 14(2))

Serial number:

SYARIAH COURTS ACT
(CHAPTER 184)

SYARIAH COURTS (SYAR'IE LAWYERS) RULES, 2002

CERTIFICATE OF ANNUAL PRACTICE

I hereby certify that has
paid the amount \$ for this Certificate in accordance with the Syariah
Courts Act, and with this Certificate he is free to practise as a Syar'ie Lawyer in the
Syariah Courts in Brunei Darussalam, with effect from the date of issue of
this certificate until the 31st. December

Made and signed by me onH

.....M

.....
Chief Syar'ie Judge

FORM D
(rule 29)

SYARIAH COURTS ACT
(CHAPTER 184)

SYARIAH COURTS (SYAR'IE LAWYERS) RULES, 2002

APPLICATION TO RENEW CERTIFICATE OF ANNUAL PRACTICE

To:

Chairman,

Syar'ie Lawyer Committee.

I apply to renew the Certificate of Annual Practice which has expired on the 31st. December

2. My personal information are as follows —

(a) Name:

(b) Identity card/passport number:

(c) Address:

(d) Registration number:

(e) Certificate number that has expired:

3. I hereby certify that no disciplinary action has been taken against me under the Syariah Courts Act.

4. With this I attach the payment amounting to \$

.....
Applicant signature

Date: H
..... M

24th. JUNE, 2002

Made this 8th. day of Rabiulawal, 1423 Hijriah corresponding to the 21st. day of May, 2002.

PEHIN DATU IMAM DATO PADUKA SERI SETIA
USTAZ HAJI AWANG ABDUL HAMID BIN BAKAL
Chief Syar'ie Judge,
Brunei Darussalam.