

# LAWS OF MALAYSIA

REPRINT

**Act 26**

## **LEGAL AID ACT 1971**

*Incorporating all amendments up to 1 January 2006*

PUBLISHED BY  
THE COMMISSIONER OF LAW REVISION, MALAYSIA  
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968  
IN COLLABORATION WITH MALAYAN LAW JOURNAL SDN BHD AND  
PERCETAKAN NASIONAL MALAYSIA BHD  
**2006**

## LEGAL AID ACT 1971

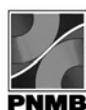
Date of Royal Assent ... .. 24 April 1971

Date of publication in the *Gazette* ... .. 29 April 1971

### *PREVIOUS REPRINTS*

*First Reprint* ... .. 1992

*Second Reprint* ... .. 2000



PREPARED FOR PUBLICATION BY  
MALAYAN LAW JOURNAL SDN BHD  
AND PRINTED BY  
PERCETAKAN NASIONAL MALAYSIA BERHAD  
KUALA LUMPUR BRANCH  
2006



**LAWS OF MALAYSIA**

**Act 26**

**LEGAL AID ACT 1971**

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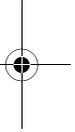
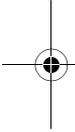
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## LAWS OF MALAYSIA

### Act 26

### LEGAL AID ACT 1971

An Act to make provisions for the grant of legal aid to certain persons and for matters connected with it.

*[Throughout Malaysia—30 April 1971]*

**BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

#### PART I PRELIMINARY

##### **Short title**

1. This Act may be cited as the Legal Aid Act 1971.

##### **Interpretation**

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

“aided person” means a person who has been granted a certificate that he is entitled to legal aid under this Act and, where such a person is an infant, includes his guardian;

“court” means a court established by or under Part IX of the Federal Constitution, the Syariah Subordinate Court, the Syariah High Court and the Syariah Appeal Court;

“Director General of Legal Aid” or “Director” means the Director General of Legal Aid appointed under section 3;

“Director of Social Welfare” means the person for the time being executing the duties of the Director of Social Welfare and includes such other officers as may be vested with the powers or as may be exercising the functions of the Director of Social Welfare in a State;

“guardian” in relation to an infant, includes without prejudice to the generality of the expression, such person as the Director General considers might properly be appointed to be the next friend or guardian *ad litem* of the infant;

“judge” means—

- (a) a judge of a court established by Part IX of the Federal Constitution, and includes a Sessions Court Judge or a Magistrate; or
- (b) a judge of a Syariah Subordinate Court, a Syariah High Court or a Syariah Appeal Court;

“mediation” includes—

- (a) the undertaking of any activity for the purpose of promoting the discussion and settlement of disputes;
- (b) the bringing together of the parties to any dispute for the purpose referred to in paragraph (a), either at the request of one of the parties to the dispute or on the initiative of the Director General of Legal Aid; and
- (c) the follow-up of any matter being the subject of any such discussion or settlement;

“mediation session” means a meeting in accordance with Part VA;

“mediator” means any person who is appointed under section 29F;

“solicitor” means an advocate and solicitor admitted to practise in any part of Malaysia.

## PART II ADMINISTRATION

### **Director of Legal Aid and other persons assisting him**

3. (1) The Minister may appoint from amongst members of the Judicial and Legal Service of the Federation a person to be or to act as a Director General of Legal Aid.

(2) The Director General shall be assisted by such other person as the Minister may appoint and who shall carry such designation as the Minister may determine.

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(3) Notwithstanding any provision of any written law to the contrary, the Director General and any person appointed under subsection (2) shall, for the purposes of this Act, have the right to appear and plead in all courts in Malaysia.

(4) For the purposes of this Act, every person appointed under subsection (2) shall be subject to the general direction and supervision of the Director General, and subject thereto, shall have and exercise all the powers conferred on the Director General by or under this Act, other than those conferred by sections 5 and 27.

(5) Every person appointed under subsection (2) shall, unless he is already a public servant—

- (a) receive such remuneration as the Yang di-Pertuan Agong may determine;
- (b) be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

**Overall supervision by the Minister**

4. (1) The Director General shall be responsible to the Minister.

(2) The Minister may from time to time issue directions to the Director General not inconsistent with the provisions of this Act and the Director General shall comply with such directions.

**Panels of solicitors**

5. (1) The Director General of Legal Aid shall prepare and maintain panels of solicitors willing to investigate, report and give an opinion upon applications for the grant of legal aid, to act for persons receiving legal aid or to give legal advice under the provisions of this Act; and there may be separate panels for different purposes and for different courts.

(2) Any solicitor shall be entitled to have his name on the panels or any of them unless there is good reason for excluding him arising out of his conduct when acting or assigned to act for persons receiving legal aid or his professional conduct generally.

(3) Where a solicitor is aggrieved by any decision excluding him (whether permanently or temporarily) from the panels or any of them, he may appeal against the decision to a High Court and

the High Court (whose decision shall be final) may confirm or quash the decision appealed against or may substitute such decision as it thinks fit.

(4) Subject to subsection 24(2) any solicitor may at any time request the Director General to remove his name from the panels or any of them and the Director General shall comply with such request.

(5) Subject to any regulations made under this Act the Director General shall pay to a solicitor investigating and reporting or giving an opinion upon applications for the grant of legal aid or acting for persons receiving legal aid or giving legal advice under the provisions of this Act such fees as may be agreed between the Director General and the solicitor.

6. *(Deleted by Act A578).*
7. *(Deleted by Act A1188).*
8. *(Deleted by Act A1188).*
9. *(Deleted by Act A1188).*

### PART III

#### LEGAL AID IN CRIMINAL CASES

#### **Application for legal aid in criminal cases**

**10.** (1) Criminal proceedings in connection with which legal aid may be given are any proceedings of a description specified in the Second Schedule.

(2) The Minister may by order amend or vary the Second Schedule.

(2A) Notwithstanding subsection (1) and sections 15 and 16, where the Minister is satisfied that in any particular case of hardship it is in the interests of justice to do so, he may authorize, in writing, the Director General to give legal aid in connection with any proceedings, whether or not of a description specified in the Second Schedule.

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(3) Any person may at any time within fourteen days after the committal under the Criminal Procedure Code [*Act 593*], charge or conviction before or by any court, apply in writing in the prescribed form to the judge by whom the order was made or before whom the person was charged, or to the Director General, for legal aid for his defence or for the preparation and conduct of his appeal, as the case may be.

(4) Where the Public Prosecutor has lodged notice of appeal against any judgment, sentence or order pronounced by any court, the respondent may make application to the judge by whom the judgment, sentence or order was made, or to the Director General, for legal aid resisting the appeal.

(5) Every application under this section shall be accompanied by a statutory declaration verifying the facts stated in the application.

(6) The judge before whom the person appears on a charge shall inform such person of his right to apply for legal aid under this Part.

**Free legal aid certificate**

**11.** (1) Where application is made under section 10 the judge or the Director General of Legal Aid may refer the application to the Director of Social Welfare for a report on the means of the applicant.

(2) If the judge or the Director General of Legal Aid is of opinion on the facts brought before him including any report by the Director of Social Welfare that the person making the application is without adequate means to obtain legal aid and that it is desirable in the interests of justice that such legal aid should be supplied, he shall certify to that effect and the Director General of Legal Aid may thereupon cause arrangements to be made for the defence of that person and payment of the expenses of all material witnesses or for the preparation and conduct of the appeal or for resisting the appeal, as the case may be.

(3) Any doubt whether an applicant's means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid shall be resolved in favour of the applicant.

PART IV  
LEGAL AID IN CIVIL ACTIONS

**General conditions of legal aid in civil actions**

**12.** (1) Civil proceedings in connection with which legal aid may be given are any proceedings of a description specified in the Third Schedule.

(2) The Minister may by order amend or vary the Third Schedule.

(3) Notwithstanding subsection (1) and sections 15 and 16, where the Minister is satisfied that in any particular case of hardship it is in the interests of justice so to do, he may authorize the Director General to give legal aid in connection with any proceedings, whether or not of a description specified in the Third Schedule.

**Application for legal aid in civil cases**

**13.** (1) (a) Any person who whether in his own right or in a representative capacity desires to be granted legal aid under this Part shall make application in that behalf to the Director General of Legal Aid.

(b) Every such application shall be in the prescribed form and accompanied by a statutory declaration verifying the facts stated in the application.

(2) Where the person who desires to be granted legal aid is an infant the application under this section shall be made on behalf of the infant by his guardian.

(3) Where any application is made on behalf of an infant under subsection (2)—

(a) a reference in section 14, paragraph 15(2)(a) or 16(1)(a) to an applicant shall be construed as a reference to the guardian and the infant jointly or to either of them severally; and

(b) a reference in paragraph 15(2)(b) or 16(1)(b) to an applicant shall, in any case where the infant is unmarried and the guardian is a near relative (as defined in subsection (4) of this section) of the infant,

be construed as a reference to both the guardian and the infant and in every other case shall be construed as a reference to the infant only.

(4) In subsection (3) of this section the expression “near relative” means—

- (i) in the case of a legitimate child, the father or the mother;
- (ii) in the case of an adopted child, an adopting parent;
- (iii) in the case of an illegitimate child, the mother.

**Power of Director General to make inquiries**

**14.** Where an application is made under section 13 the Director General of Legal Aid may—

- (a) make such inquiries as he thinks fit as to the means and conditions of the applicant and as to the merits of the case or refer the application to the Director of Social Welfare for a report on the means of the applicant;
- (b) require the applicant to furnish such information and such documents as the Director General may require for the purpose of considering the application;
- (c) require the applicant to attend personally;
- (d) refer the application or any matter arising out of the application to any solicitor whose name is on the appropriate panel maintained pursuant to section 5 to investigate the facts and make a report thereon or to give any opinion thereon or on any question of law arising out of the application;
- (e) take or cause to be taken such steps as may be necessary to conserve the interests of the applicant pending determination of his application;
- (f) defray expenses incidental to any of the foregoing matters out of moneys provided for the purpose.

**Grant of legal aid certificates**

**15.** (1) (*Deleted by Act A578*).

(2) The Director General may grant to an applicant for legal aid a certificate (hereinafter referred to as a “legal aid certificate”) that the applicant is entitled under this Part to legal aid in connection with any proceedings where—

- (a) he is satisfied that the applicant has reasonable grounds for taking, defending, continuing or being a party thereto; and
- (b) he is satisfied that the applicant possessed financial resources which do not exceed twenty-five thousand ringgit per annum.

#### **Additional powers to grant legal aid service**

**16.** (1) Notwithstanding section 15 the Director General may grant to an applicant a legal aid certificate in connection with any proceedings where—

- (a) he is satisfied that the applicant has reasonable grounds for taking, defending, continuing or being a party thereto; and
- (b) he is satisfied that the applicant possesses financial resources which exceed twenty-five thousand ringgit per annum but do not exceed thirty thousand ringgit per annum.

(2) Any person to whom a legal aid certificate is granted under this section may be required to pay to the Director General a contribution in respect of the sums payable on his account.

#### **Grant of legal aid certificate where Director General authorized by Minister to give legal aid**

**16A.** (1) Notwithstanding sections 15 and 16, the Director General shall grant to an applicant for legal aid a legal aid certificate in connection with any proceedings where the Minister has authorized the Director General to give legal aid under subsection 12(3).

(2) Any person to whom a legal aid certificate is granted under this section may be required to pay to the Director General a contribution in respect of the sums payable on his account.

**Registration fee**

**16B.** Any person who has qualified for legal aid under section 15, 16 or 16A shall be required to pay to the Director General a sum of two ringgit as registration fee.

**17.** (*Deleted by Act A1188*).

**Contributions from aided persons**

**18.** (1) Any person to whom a legal aid certificate is granted under section 16 or 16A in respect of any proceedings may be required to make any contribution in a lump sum or by instalment.

(2) (*Deleted by Act A1188*).

(3) If the total contribution made by a person in respect of any proceedings is more than the net liability of the Director General on his account, the excess shall be repaid to him.

(4) Except in so far as regulations may otherwise provide any sums remaining unpaid on account of a person's contribution in respect of any proceedings and, if the total contribution is less than the net liability of the Director General on his account, a sum equal to the deficiency shall be a first charge on any property (wherever situate) which is recovered or preserved for that person in the proceedings.

(5) The reference in the preceding subsection to property recovered or preserved for any person, shall include his rights under any settlement or compromise arrived at to avoid or bring to an end the proceedings and any sums recovered by virtue of an order for costs made in his favour in the proceedings (not being sums otherwise payable to the Director General).

(6) The charge created by subsection (4) of this section on any damages or costs shall not prevent a court allowing them to be set off against other damages or costs in any case where a solicitor's lien for costs would not prevent it.

(7) References in this section to the net liability of the Director General on any person's account in relation to any proceedings refer to the aggregate amount of the sums paid or

payable by the Director General on his account and where the person has been represented in the proceedings by the Director General, such sums as would in the opinion of the Director General have been payable on the person's account had he been represented by a solicitor assigned to him, in respect of those proceedings and not recouped by sums which are recovered by virtue of an order or agreement for costs made in his favour with respect to those proceedings.

### **Cancellation of certificate**

**19.** (1) The Director General of Legal Aid or any person appointed under subsection 3(2) may, at any time, and whether or not application has been made for the purpose, cancel any legal aid certificate issued under section 15 or 16 or, where so authorized by the Minister, under section 16A, and subject to subsection (2) of this section the person to whom the certificate was granted shall, as from the date of such cancellation, cease to be an aided person.

(2) Where the legal aid certificate so cancelled has been filed in the registry of any court the Director General or any person appointed under subsection 3(2) shall file in court a notification of such cancellation, and, as from the date of filing of such notification, the person to whom the legal aid certificate was granted shall cease to be an aided person.

(3) Upon the filing in court of such notification, then, unless otherwise ordered by a judge of the court in which the litigation is pending, all proceedings in the litigation shall, by virtue of this subsection, be stayed for a period of fourteen days and, subject as aforesaid, during such period, time fixed by or under any law or by or under any rules of court, regulations or otherwise for the doing of any act or the taking of any step in the proceedings shall not run.

(4) The time during which proceedings are stayed by virtue of subsection (3) of this section may be reduced or extended by order of a judge of the court in which the litigation is pending.

(5) The Director General or any person appointed under subsection 3(2) shall take such steps as seem to him reasonable or necessary to inform the person to whom a legal aid certificate has been granted of the cancellation of any such certificate.

**Application for aid by more than one party**

**20.** If, in relation to any proceedings to which a person who has made an application for legal aid under this Part or an aided person is a party, any other party makes application for legal aid under this Part the provisions of this Act shall apply to both such parties:

Provided that the Director General of Legal Aid shall not himself act for either such party but shall assign a solicitor to be selected by the aided person, if he so desires, or otherwise by the Director General from the appropriate panel of solicitors maintained pursuant to section 5 to act for each aided person.

**Endorsement and filing of certificate**

**21.** (1) Where a legal aid certificate is granted pursuant to section 15, 16 or 16A the Director General of Legal Aid may act for the aided person or may assign a solicitor to be selected by the aided person, if he so desires, or otherwise by the Director General from the appropriate panel maintained pursuant to section 5 so to act, and in such case shall endorse on the legal aid certificate the name of the solicitor so assigned:

Provided that in any case where a solicitor is assigned to act after such certificate is filed in court, or in any case where a new assignment is made in lieu of a solicitor assigned previously, the Director General shall not be required to endorse on the certificate the name of the solicitor so assigned, or newly assigned, as the case may be, but may, instead, give notice of such assignment or new assignment by letter to the proper officer of the court in which proceedings are pending.

(2) Before taking any other step in the proceedings the Director General or the solicitor so assigned shall file the legal aid certificate in the registry of the court in which the proceedings are pending or are to be taken and no court fee shall be charged in respect of the filing of the certificate.

(3) Where any legal aid certificate is so filed the aided person—

(a) shall not be liable in respect of any proceedings to which the certificate relates for court fees or for such fees payable for the service of process or for any fees

due to the Sheriff in connection with the execution of process;

- (b) shall be entitled to be supplied free of charge with a copy of the judge's notes of evidence in any proceedings to which the certificate relates; and
- (c) shall not, except where express provision is made in this Act, be liable for costs to any other party in any proceedings to which the certificate relates.

(4) Subject to sections 18 and 22 no person who, pursuant to any reference under this Act, makes any investigation or report or gives any opinion or who pursuant to any assignment under this Act conducts any proceedings, shall take or agree to take or seek from an aided person any fee, profit or reward (pecuniary or otherwise) in respect thereof.

### **Deposit in respect of out of pocket expenses**

**22.** (1) The Director General of Legal Aid may require any applicant for legal aid under this Part or any person to whom a legal aid certificate has been granted under section 15, 16 or 16A to deposit with him such amounts at such times as the Director General may think fit to be used in or towards meeting out of pocket expenses (not including office expenses) incurred in connection with the application or with any proceedings to which the application or the legal aid certificate relates.

(2) Any amount so deposited shall be used for the payment of such out of pocket expenses and any part of any such amount not so expended shall be refunded.

(3) In any case where the Director General is satisfied that the making of a deposit under subsection (1) of this section would occasion hardship, the Director General may, out of moneys provided for the purpose from time to time, meet any out of pocket expenses (not including office expenses) or make such payments to meet such out of pocket expenses as he may consider necessary.

(4) Any payment so made shall be used only for payment of such out of pocket expenses and any part of such amount not so expended shall be refunded to the Director General of Legal Aid.

**Court may order payment of costs by aided person in certain event**

23. (1) Where it appears to a court or judge that a legal aid certificate granted under section 15 or 16 has been obtained by fraud or misrepresentation the court or judge may order the aided person to pay the costs of the Director General or of the solicitor who acted for him or the costs of the other party, or the costs of both the Director General or such solicitor and such party.

(2) In subsection (1) a reference to an “aided person” shall include, in any case where the legal aid certificate has been cancelled before the making of the order, the person who immediately before such cancellation was the aided person.

(3) Where it appears to a court or judge that an aided person has acted improperly in bringing or defending any legal proceedings or in the conduct of them the court or judge may order the aided person to pay the costs of the Director General or of the solicitor who acted for him or the costs of the other party, or the costs of both the Director General or such solicitor and such party.

(4) Where an order is made under subsection (1) or (3) the costs shall be taxed as if the party ordered to pay them were not an aided person.

(5) The costs so ordered to be paid shall, unless otherwise directed by the order, include—

- (a) fees and charges of the nature referred to in paragraphs 21(3)(a) and (b); and
- (b) any sums which, pursuant to subsection 22(3) were expended by the Director General in meeting out of pocket expenses or were paid by the Director General for that purpose.

(6) Where the costs of the Director General or the solicitor who acted for the aided person ordered to be paid under subsection (1) or (3) of this section include any of the fees, charges or sums referred to in subsection (5) of this section, if any amount is recovered by the Director General in respect of such costs the same shall be applied in the first instance in or towards the satisfaction of such fees, charges or sums.

**Legal aid not to discontinue without leave**

**24.** (1) An aided person shall not without the leave of the Director General discharge any solicitor assigned to act under this Part for him.

(2) Any solicitor assigned to act for an aided person shall not discontinue his aid without the leave of the Director General of Legal Aid:

Provided that any solicitor may be represented by any other solicitor.

**Costs**

**25.** (1) Where proceedings in which an aided person is a party are taken in any court, the court shall make, in favour of the aided person, the like order for costs (except against another aided person) as that court would have made in favour of the aided person had he not been an aided person, and in proceedings in which costs follow the event an aided person shall (except against another aided person) be entitled to costs in like manner as if he were not an aided person, notwithstanding that no amount is or will be payable by the aided person, or that the costs are in excess of the amount which is or will be payable by the aided person.

(2) Where any moneys are recovered by an aided person (whether in proceedings or by virtue of a settlement or compromise) he shall be liable to pay to the Director General so much of the moneys so recovered as is recovered in respect of costs.

(3) For the purposes of subsection (2) of this section the moneys recovered in respect of costs shall be deemed to be so much of the total amount so recovered as exceeds the amount (if any) recoverable by the aided person otherwise than as costs.

(4) Where any moneys are recovered by a person to whom a legal aid certificate has been granted under section 15, 16 or 16A (whether in proceedings or by virtue of a settlement or compromise) he shall, subject to the provisions of this subsection, be liable to pay, out of moneys so recovered, to the Director General the aggregate amount of the sums paid or payable by the Director General on his account and, where such person has been represented in the proceedings by the Director General such sums

as would in the opinion of the Director General have been payable on his account had he been represented by a solicitor assigned to him:

Provided that—

- (a) where the amount recovered does not exceed one thousand ringgit, no sum shall be payable by the aided person under this subsection;
- (b) where the amount recovered exceeds one thousand ringgit, the sum payable by the aided person under this subsection shall not exceed—
  - (i) one-fourth of the amount recovered; or
  - (ii) the difference between the amount received and the amount of one thousand ringgit whichever is the less.

(5) Without prejudice to the generality of subsections (1), (2), (3) and (4) the expression “costs” shall include—

- (a) counsel’s fees whether or not the same have been paid;
- (b) fees and charges of the nature referred to in paragraphs 21(3)(a) and (b); and
- (c) any sums which, pursuant to subsection 22(3), are expended by the Director General in meeting out of pocket expenses or are paid by the Director General for that purpose.

(6) Where the costs recovered by the Director General under this section include any of the fees, charges or sums referred to in paragraphs (5)(b) and (c) such costs shall be applied, in the first instance, in and towards satisfaction of such fees, charges or sums.

#### **Stay of proceedings upon making of application for legal aid**

**26.** (1) Where litigation has been instituted and any party makes an application for legal aid under this Act the Director General shall, as soon as practicable after the application is made, notify the other party or each of the other parties, and file in the court in which the litigation is pending a memorandum of such notification and no fee shall be charged in respect of the filing of the memorandum.

(2) Where any memorandum is so filed, unless otherwise ordered by a judge of the court in which the litigation is pending, all proceedings in the litigation shall, by virtue of this section be stayed for a period of fourteen days, and during such period (unless otherwise ordered by any such judge) time fixed by or under any written law or by or under any rules of court, regulations or otherwise for the doing of any act or the taking of any step in the proceedings shall not run:

Provided, however—

- (a) that the filing of the memorandum shall not operate to prevent the making of—
  - (i) an interlocutory order for an injunction or for the appointment of a receiver or manager or receiver and manager;
  - (ii) an order to prevent the lapse of a caveat against dealings with land; or
  - (iii) any other order which, in the opinion of a judge of the court in which the litigation is pending is necessary to prevent an irremediable injustice;
- (b) that, unless otherwise ordered by a judge of the court in which the litigation is pending, the filing of the memorandum shall not operate to prevent the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order as is mentioned in paragraph (a) of this proviso or a decree to the like effect.

(3) The time during which proceedings are stayed by virtue of this section may be reduced or extended by order of a judge of the court in which the litigation is pending.

### Appeals by aided persons

27. Where a legal aid certificate granted pursuant to section 15, 16 or 16A has been filed in any court and the proceedings to which the certificate relates have been heard in that court and the aided person desires to prosecute any appeal or proceedings in the nature of an appeal therefrom, he shall not be entitled to prosecute such appeal or proceedings in the nature of an appeal as an aided person unless, in a case where the certificate was granted pursuant to section 16A, the Minister, and in all other cases, the Director

General, is satisfied that the aided person has good grounds of appeal and so certifies.

### **Rules of court**

**28.** Where it is necessary or expedient so to do, the Rules Committee may make rules regulating the practice and procedure of any court in which proceedings may be taken by an aided person.

## PART V LEGAL ADVICE

### **Right to and nature of legal advice**

**29.** (1) Subject to this Part, legal advice on any matter specified in the Second, Third and Fourth Schedules shall be available to persons resident and present in Malaysia.

(2) Legal advice shall consist of oral advice on legal questions given by the Director General of Legal Aid or a solicitor whose name is on the appropriate panel of solicitors maintained pursuant to section 5 and shall include help in preparing an application for legal aid and in supplying information required in determining financial resources of the applicant but shall not include advice on any law other than the law of Malaysia.

(3) Provisions may be made by regulations for further defining or restricting the questions on which legal advice may be given and for regulating all matters relating to fees, charges and costs in relation to the giving of legal advice.

(4) A person seeking legal advice shall apply to the Director General of Legal Aid and shall be required—

- (a) to satisfy the Director General that he cannot afford to obtain it in the ordinary way; and
- (b) to pay to the Director General a fee of two ringgit or such other fee as may be prescribed.

(5) The Minister may by order amend or vary the Fourth Schedule.

PART VIA  
MEDIATION

**Provision of mediation services**

**29A.** (1) The Minister may authorize the Director General of Legal Aid to provide mediation services to aided persons.

(2) Each mediation session shall be conducted by one or more mediators.

**Dispute**

**29B.** (1) Any person who is a party to a dispute which is the subject of or which may become the subject of or which is related to any proceedings of a description specified in the Third Schedule may refer the dispute to a mediator.

(2) Without prejudice to subsection (1), the Director General may refer to a mediator any dispute which is the subject of or which may become the subject of or which is related to any proceedings of a description specified in the Third Schedule.

(3) A mediation session may commence or continue whether or not the dispute can be a subject matter or is the subject matter before any court, tribunal or body.

(4) An aided person or persons may be treated as being in dispute on any matter if he or they are not in agreement on the matter whether or not any relevant negotiations are still in progress.

**Mediation to be voluntary**

**29C.** (1) Attendance at and participation in a mediation session is voluntary.

(2) A party to a mediation session may withdraw from the mediation session at any time.

(3) Attendance at, participation in or withdrawal from a mediation session conducted under this Act shall not affect any rights or remedies that a party to a dispute has.

**Settlement or agreement to be reduced into writing**

**29D.** No settlement or agreement shall be binding on the parties to a mediation session unless it has been reduced into writing and signed by the parties to the settlement or agreement.

**Confidential communications with a mediator**

**29E.** No person shall be compelled to disclose to the court any confidential communication which has taken place between that person and a mediator, if the mediation process fails, unless that person offers himself as a witness, in which case that person may be compelled to disclose only such communications as may appear to the court to be necessary to be known in order to explain any evidence which he has given.

**Mediator**

**29F.** (1) The Minister may appoint any person as a mediator for the purpose of this Part.

(2) Every person appointed under subsection (1) shall be subject to the general direction and supervision of the Director General of Legal Aid and shall have no right to appear and plead in any court in Malaysia.

PART VI  
GENERAL

**Privileges attaching to certain relationships**

**30.** (1) The like privileges and rights as those which arise from the relationship of client and advocate and solicitor acting in his professional employment shall arise from the following relationship, that is to say:

- (a) the relationship between a person granted legal aid under section 11 and the Director General and the solicitor (if any) assigned to act for him;
- (b) the relationship between an applicant for legal aid under this Act and the Director General and the solicitor (if any) to whom the application is referred;

- (c) the relationship between an aided person and the Director General and the solicitor (if any) assigned to act for him in any proceedings to which a legal aid certificate under section 15, 16 or 16A relates;
- (d) the relationship between a person seeking legal advice and the Director General and the solicitor (if any) by whom such advice is given.

(2) Notwithstanding anything contained in subsection (1) the privileges therein referred to shall not arise in relation to any information tendered to the Director General concerning the property or income of the applicant for a legal aid certificate under this Act.

(3) Save as provided by this Act or by regulations made thereunder the rights conferred by this Act on a person receiving legal aid or legal advice under Part III, IV or V, as the case may be, shall not affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised.

### **False statement**

**31.** If any person seeking or receiving legal aid or advice in furnishing any information in his application knowingly makes any false statement or false representation, he shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

### **Finality of decision made under Act**

**31A.** Any decision made under this Act—

- (a) to grant or refuse to grant legal aid pursuant to Part III or IV;
- (b) to cancel or refuse to cancel any legal aid certificate pursuant to section 19; or
- (c) to certify or refuse to certify pursuant to section 27 that an aided person has good grounds of appeal,

shall be final and conclusive and shall not be subject to question or review in any court:

Provided that any person dissatisfied with a decision made under this Act by any person appointed under subsection 3(2) to refuse to grant legal aid may appeal to the Director General whose decision thereon shall be final and conclusive and shall not be subject to question or review in any court.

### **Exoneration from liability**

**31B.** No matter or thing done or omitted to be done by—

- (a) the Director General of Legal Aid;
- (b) persons appointed under subsection 3(2); or
- (c) a mediator appointed under section 29F,

shall, if the matter or thing was done in good faith for the purpose of executing this Act and did not involve any fraud or wilful misconduct, subject any of them to any action, liability, claim or demand.

### **Regulations**

**32.** (1) The Minister may make regulations not inconsistent with the provisions of this Act prescribing anything which may be prescribed (other than for the purpose of regulating the practice and procedure of any court).

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for any or all of the following matters:

- (a) fees, charges and costs in relation to proceedings to which an aided person or a person to whom legal aid is supplied under this Act is a party and the remission of any such fees or charges;
- (b) the recovery of sums due in respect of legal aid and for making effective the charge created by this Act on property recovered or preserved for a person receiving legal aid, including provision—
  - (i) for the enforcement of any order or agreement for costs made in favour of a person who has received legal aid; and

- (ii) for making a solicitor's right to payment wholly or partly dependent on his performance of any duties imposed on him by regulation made for the purposes of this paragraph;
- (c) any provision necessary to meet the special circumstances where—
  - (i) a person seeks legal aid in a matter of special urgency;
  - (ii) a person begins to receive legal aid after having consulted a solicitor in the ordinary way with respect to the same matter, or ceases to receive legal aid before the matter in question is finally settled; and
  - (iii) there is any relevant change of circumstances while a person is receiving legal aid;
- (ca) to resulate the practice and procedure of mediation; and
- (d) any other matter for the purpose of carrying into effect any of the provisions of this Act.

**Repeal**

**33.** The Emergency (Essential Powers) Ordinance No. 39, 1970 [*P.U.(A)257/1970*] is hereby repealed.

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FIRST SCHEDULE

*(Deleted by Act A1188)*

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SECOND SCHEDULE

[Section 10]

DESCRIPTION OF CRIMINAL PROCEEDINGS

1. All criminal proceedings in which the accused not being represented by counsel pleads guilty to the charge and wishes to make a plea in mitigation in respect thereof.
2. Criminal proceedings under the Child Protection Act 1991 [*Act 468*] \*.
3. Criminal proceedings under the Minor Offences Act 1955 [*Act 336*].

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THIRD SCHEDULE

[Section 12]

DESCRIPTION OF CIVIL PROCEEDINGS

1. Proceedings under the Married Women and Children (Maintenance) Act 1950 [*Act 263*].
2. Proceedings under the Maintenance Orders (Facilities for Enforcement) Act 1949 [*Act 34*] for a provisional order.
3. Proceedings under the Married Women and Children (Enforcement of Maintenance) Act 1968 [*Act 356*].
4. Proceedings relating to maintenance, custody, divorce and harta sepencarian in courts administering Muslim law where any person or advocate and solicitor may be authorized to appear.
5. Rights and liabilities under the Workmen's Compensation Act 1952 [*Act 273*].
6. Rights and liabilities under the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 [*Act 528*].
7. Rights and liabilities under the Small Estates (Distribution) Act 1955 [*Act 98*].
8. Rights and liabilities in respect of civil action for damages arising out of accidents involving motor vehicles within the meaning of the Road Transport Act 1987 [*Act 333*].

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\*NOTE—Applicable only to Peninsular Malaysia and the Federal Territory of Labuan—see P.U.(B)77/1992. The Child Protection Act 1991 has been repealed by the Child Act 2001 [*Act 611*].

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9. Rights and liabilities under the Moneylenders Act 1951 [*Act 400*].
10. Rights and liabilities in respect of proceedings for divorce and custody.
11. Rights and liabilities in respect of proceedings relating to tenancy.
12. Rights and liabilities under the Hire-Purchase Act 1967 [*Act 212*].
13. Applications for Probate and Letters of Administration.
14. Rights and liabilities under the Adoption Act 1952 [*Act 257*].
15. Consumer claims.

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FOURTH SCHEDULE

[Subsection 29(1)]

DESCRIPTION OF MATTERS IN RESPECT OF WHICH  
LEGAL ADVICE MAY BE GIVEN

Legal advice on all matters.

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## LAWS OF MALAYSIA

### Act 26

### LEGAL AID ACT 1971

#### LIST OF AMENDMENTS

Amending law	Short title	In force from
P.U.(A 214/1971	Legal Aid (Amendment) Order 1971	25-06-1971
P.U.(A)293/1972	Legal Aid (Amendment) Order 1972	22-09-1972
P.U.(A)104/1973	Legal Aid (Amendment) Order 1973	07-04-1973
P.U.(A)46/1975	Legal Aid (Amendment) Order 1975	01-03-1975
P.U.(A)27/1982	Legal Aid (Amendment) Order 1982	01-02-1982
Act A578	Legal Aid (Amendment) Act 1984	20-01-1984
Act A653	Legal Aid (Amendment) Act 1986	16-05-1986
Act A911	Legal Aid (Amendment) Act 1995	17-02-1995
Act A1188	Legal Aid (Amendment) Act 2003	15-07-2003: for section 2, paragraphs 3(a), (b), (c) and (f) and section 12 [P.U.(B)242/2003]  01-06-2005: other sections [P.U.(B)177/2005]

**LAWS OF MALAYSIA****Act 26****LEGAL AID ACT 1971****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
2	Act A578	20-01-1984
	Act A653	16-05-1986
	Act A911	17-02-1995
	Act A1188	15-07-2003; 01-06-2005
3	Act A578	20-01-1984
	Act A653	16-05-1986
	Act A1188	15-07-2003; 01-06-2005
4	Act A653	16-05-1986
	Act A1188	15-07-2003
5	Act A1188	15-07-2003
6	Act A578	20-01-1984
7	Act A653	16-05-1986
	Act A1188	01-06-2005
8	Act A578	20-01-1984
	Act A653	16-05-1986
	Act A1188	01-06-2005
9	Act A578	20-01-1984
	Act A1188	01-06-2005

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Section	Amending authority	In force from
10	Act A578	20-01-1984
	Act A653	16-05-1986
	Act A1188	15-07-2003; 01-06-2005
11	Act A578	20-01-1984
	Act A1188	15-07-2003
12	Act A578	20-01-1984
	Act A653	16-05-1986
	Act A1188	15-07-2003
13	Act A1188	15-07-2003; 01-06-2005
14	Act A578	20-01-1984
	Act A1188	15-07-2003
15	Act A578	20-01-1984
	Act A911	17-02-1995
	Act A1188	15-07-2003; 01-06-2005
16	Act A578	20-01-1984
	Act A911	17-02-1995
	Act A1188	15-07-2003; 01-06-2005
16A	Act A578	20-01-1984
	Act A653	16-05-1986
	Act A1188	15-07-2003
16B	Act A911	17-02-1995
	Act A1188	15-07-2003
17	Act A578	20-01-1984
	Act A911	17-02-1995

Section	Amending authority	In force from
	Act A1188	01-06-2005
18	Act A578	20-01-1984
	Act A1188	15-07-2003; 01-06-2005
19	Act A578	20-01-1984
	Act A653	16-05-1986
	Act A1188	15-07-2003
20	Act A1188	15-07-2003
21	Act A578	20-01-1984
	Act A1188	15-07-2003
22	Act A578	20-01-1984
	Act A1188	15-07-2003
23	Act A1188	15-07-2003
24	Act A1188	15-07-2003
25	Act A578	20-01-1984
	Act A1188	15-07-2003
26	Act A1188	15-07-2003
27	Act A578	20-01-1984
	Act A653	16-05-1986
	Act A1188	15-07-2003
29	Act A653	16-05-1986
	Act A911	17-02-1995
	Act A1188	15-07-2003; 01-06-2005
29A–29F	Act A1188	01-06-2005
30	Act A578	20-01-1984
	Act A1188	15-07-2003

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Section	Amending authority	In force from
31A	Act A578	20-01-1984
	Act A1188	15-07-2003
31B	Act A1188	01-06-2005
32	Act A1188	01-06-2005
First Schedule	Act A578	20-01-1984
	Act A1188	01-06-2005
Second Schedule	P.U.(A)104/1973	07-04-1973
	P.U.(A)27/1982	01-02-1982
Third Schedule	P.U.(A)214/1971	25-06-1971
	P.U.(A)293/1972	22-09-1972
	P.U.(A)104/1973	07-04-1973
	P.U.(A)46/1975	01-03-1975
	P.U.(A)27/1982	01-02-1982
	P.U.(A)214/1971	25-06-1971
Fourth Schedule	P.U.(A)293/1972	22-09-1972
	P.U.(A)104/1973	07-04-1973
	P.U.(A)46/1975	01-03-1975
	P.U.(A)27/1982	01-02-1982

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