



LAWS OF MALAYSIA

REPRINT

Act 359

GOVERNMENT PROCEEDINGS ACT 1956

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
PERCETAKAN NASIONAL MALAYSIA BHD
2006

GOVERNMENT PROCEEDINGS ACT 1956

First enacted 1956 (Ord. No. 58 of
1956)

Revised 1988 (Act 359 w.e.f.
1 December 1988)

PREVIOUS REPRINT

First Reprint 2001

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LAWS OF MALAYSIA

Act 359

GOVERNMENT PROCEEDINGS ACT 1956

An Act relating to proceedings by and against the Federal Government and the Governments of the States.

*[Peninsular Malaysia—1 April 1958, L.N. 107/1958;
Sabah and Sarawak—25 February 1965, L.N. 67/1965]*

PART I

PRELIMINARY

Short title and application

1. (1) This Act may be cited as the Government Proceedings Act 1956 and shall have effect throughout Malaysia.

(2) *(Omitted).*

Interpretation

2. (1) Any reference in this Act shall, unless the context otherwise requires, include a reference to rules of court made for the purposes of this Act.

(2) In this Act, except in so far as the context otherwise requires or it is otherwise expressly provided—

“civil proceedings” means any proceeding whatsoever of a civil nature before a court and includes proceedings for the recovery of fines and penalties and an application at any stage of a proceeding, but does not include proceedings under Chapter VIII of the Specific Relief Act 1950 [*Act 137*], or such proceedings as would in England be brought on the Crown side of the Queen’s Bench Division;

“Government” includes the Federal Government and the Governments of the States;

“High Court” means the High Court in Malaya and the High Court in Borneo or either of them, as the case may require;

“Land law” means the National Land Code [*Act 56 of 1965*] and the corresponding law in force in any State;

“law officer” means the Attorney General and the Solicitor General and, in respect of proceedings by or against the Government of a State or to which a State officer is a party, includes the Legal Adviser of such State, and, in the case of the States of Sabah and Sarawak, the State Attorney General;

*“Legal Adviser” means the Legal Adviser of a State;

“legal officer” includes a law officer, the Parliamentary Draftsman and a Federal Counsel, and, in the case of the States of Sabah and Sarawak, a law officer and a legally qualified member of the Federal or State Attorney General’s Chambers, authorized by a law officer in accordance with section 24;

“officer”, in relation to a Government, includes a person in the permanent or temporary employment of such Government and accordingly (but without prejudice to the generality of the foregoing) includes a Minister of such Government;

“order” includes a judgment, decree, rule, award or declaration;

“prescribed” means prescribed by or under rules of court made for the purposes of this Act;

“proceedings against the Government” includes a claim by way of set-off or counterclaim in proceedings by such Government;

“statutory duty” means any duty imposed by any written law;

“State land” has the meaning assigned to it in the Land law;

“subordinate Court” means a Sessions Court and any Magistrate’s Court.

(3) Any reference in Part IV or V to civil proceedings by or against the Government, or to civil proceedings to which the

*NOTE—The definition of “Legal Adviser” is not applicable to Sabah and Sarawak—*see* L.N. 67/1965.

Government is a party, shall be construed as including a reference to civil proceedings to which any officer of a Government as such is a party:

Provided that the Federal Government shall not for the purposes of Parts IV and V be deemed to be a party to any proceedings by reason only that they are brought by the Attorney General upon the relation of some other person.

PART II

SUBSTANTIVE LAW

Right of the Government to sue

3. Subject to this Act and of any written law where the Government has a claim against any person which would, if such claim had arisen between subject and subject, afford ground for civil proceedings, the claim may be enforced by proceedings taken by or on behalf of the Government for that purpose in accordance with this Act.

Claims enforceable by proceedings against Government

4. Subject to this Act and of any written law, any claim against the Government which—

- (a) is founded on the use or occupation or the right to the use or occupation of State land; or
- (b) arises out of the revenue laws; or
- (c) arises out of any contract made by the authority of the Government which would, if such claim had arisen between subject and subject, afford ground for civil proceedings; or
- (d) is a claim (other than a claim in tort) for damages or compensation not included in the preceding paragraphs which might lawfully be enforced by civil proceedings as between subject and subject,

shall be enforceable by proceedings against the Government for that purpose in accordance with this Act.

Liability of the Government in tort

5. Subject to this Act, the Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that

in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent, and for the purposes of this section and without prejudice to the generality thereof, any public officer acting or purporting in good faith to be acting in pursuance of a duty imposed by law shall be deemed to be the agent of and to be acting under the instructions of the Government.

Limits of liability of the Government

6. (1) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally.

(2) Any written law which negatives or limits the amount of the liability of any public officer in respect of any act, neglect or default committed by that officer shall, in the case of proceedings against the Government under section 5 in respect of such act, neglect or default of such officer, apply in relation to the Government as it would have applied in relation to such officer if the proceedings against the Government had been proceedings against such officer.

(3) No proceedings shall lie against the Government by virtue of section 5 in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

(4) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless that officer was at the material time employed by the Government and paid in respect of his duties as an officer of the Government wholly out of the revenues of the Government, or any fund certified by the appropriate financial officer for the purposes of this subsection or was at the material time holding an office in respect of which the appropriate financial officer certifies that the holder thereof would normally be so paid.

(5) For the purposes of subsection (4) the expression “appropriate financial officer” means, in respect of the Federal Government, the Minister of Finance, and in respect of the Government of a State, the State Financial Officer, and, in the case of the States of Sabah and Sarawak, the State Minister responsible for finance.

Savings of acts done in exercise of public duties

7. (1) Notwithstanding any other provisions of this Act to the contrary no proceedings, other than proceedings for breach of contract, shall lie against the Government on account of anything done or omitted to be done or refused to be done by the Government or any public officer in exercise of the public duties of the Government.

(2) For the purposes of subsection (1) the expression “exercise of the public duties” includes—

- (a) the construction, maintenance, diversion and abandonment of railways, roads, bridle-paths or bridges;
- (b) the construction, maintenance and abandonment of schools, hospitals or other public buildings;
- (c) the construction, maintenance and abandonment of drainage, flood prevention and reclamation works; and
- (d) the maintenance, diversion and abandonment of the channels of rivers and waterways.

(3) Nothing in this section shall prevent the bringing of any suit for damages or compensation arising out of negligence or trespass in the execution of any works of construction or maintenance undertaken by the Government in the exercise of the said public duties.

(4) Nothing in this Act shall subject the Government, in its capacity as a highway authority, to any greater liability than that to which a local authority is subject in that capacity.

Public nuisances

8. (1) In the case of a public nuisance the Attorney General, or two or more persons having obtained the consent in writing of the Attorney General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

*(3) The powers of the Attorney General under this section shall, subject to any directions of the Attorney General, be exercisable by the State Attorney General.

Public, religious, social or charitable trusts

9. (1) In the case of any alleged breach of any express or constructive trust for public, religious, social or charitable purposes, or where the direction of the court is deemed necessary for the administration of any such trust, the Attorney General or two or more persons having an interest in the trust and having obtained the consent in writing of the Attorney General, may institute a suit or be joined as a party in any existing suit on behalf of the Government or the public for the purpose of—

- (a) asserting any interest or right in the trust property;
- (b) removing any trustee;
- (c) appointing a new trustee;
- (d) vesting any property in a trustee;
- (e) directing accounts and inquiries;
- (f) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (g) authorizing the whole or any part of the trust property to be let, sold, mortgaged, charged or exchanged;
- ***(h)* settling a scheme; and
- (i) obtaining such further or other relief as the nature of the case may require.

(2) No suit claiming any of the reliefs specified in subsection (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with that subsection.

(3) Subject to subsections (1) and (2), all suits and proceedings in any court relating to any such trust as is therein referred to or otherwise in which the Government is interested, or in which the

*NOTE—Subsection 8(3) is applicable to Sabah and Sarawak only—see L.N. 67/1965.

**NOTE—Paragraph 9(1)(h) is not applicable to Sabah and Sarawak—see L.N. 67/1965.

interests of the public are affected, or in which if brought in England the Attorney General of England would be, or would be made, a necessary party as plaintiff or defendant, whether by himself or by relation of parties, shall be brought and had in the name of the Attorney General as plaintiff or defendant; and the Attorney General shall have and exercise therein the same rights, duties and powers as the Attorney General of England would have and exercise in England in similar cases so far as the circumstances of Malaysia admit.

*⁽⁴⁾ The powers of the Attorney General under this section shall, in respect of any trust on the concurrent list, be exercisable by the State Attorney General.

Priority of Government debts

10. (1) All debts due and claims owing from time to time by any person to the Government, whether upon judgment, bond, or other specialty, or upon simple contract or otherwise, shall be entitled from the date of the accrual thereof, respectively, to a preference of payment over all debts or claims of every kind which shall, subsequent to such date, have been contracted or incurred by or become due from such person to any other person whomsoever.

(2) Nothing herein contained shall affect any right vested in any person by virtue of a mortgage or charge of immovable property duly registered in the manner provided by law for the registration of such mortgage or charge.

Sureties to be sued as principals

11. All sureties for persons owing money to the Government may be sued as principals; and if the liability is several as well as joint, they may be sued either severally or any two or more of them may be sued together; and either separately or together with the principal debtors, or with any one, two or more of the principal debtors.

Provisions as to industrial property

12. (1) Where after the commencement of this Act any servant or agent of the Government infringes a patent, or infringes a registered trade mark, or infringes any copyright and the infringement is

*NOTE—Subsection 9(4) is applicable to Sabah and Sarawak only—see L.N. 67/1965.

committed with the authority of the Government, then, subject to this Act, civil proceedings in respect of the infringement shall lie against the Government.

(2) Save as expressly provided by this section, no proceedings shall lie against the Government by virtue of this Act in respect of the infringement of a patent, a registered trade mark, or a copyright.

Application of law as to indemnity, contribution and contributory negligence

13. Where the Government is subject to any liability by virtue of this Part, any written law relating to indemnity, contribution and contributory negligence shall apply in favour of or against the Government in respect of the liability to which it is so subject as if the Government were a private person of full age and capacity.

Provisions relating to the armed forces

14. (1) Nothing done or omitted to be done by a member of the forces while on duty as such shall subject either him or the Government to liability in tort for causing the death of another person, or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the forces if—

- (a) at the time when that thing is suffered by that other person, he is either on duty as a member of the forces or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the forces; and
- (b) the Minister of Finance certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award under any written law relating to the disablement or death of members of the force of which he is a member:

Provided that this subsection shall not exempt a member of the said forces from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of those forces.

(2) No proceedings in tort shall lie against the Government for death or personal injury due to anything suffered by a member of the forces if—

- (a) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as aforesaid, or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces; and
- (b) the Minister of Finance certifies as mentioned in the preceding subsection,

nor shall any act or omission of an officer of the Government subject him to liability in tort for death or personal injury, in so far as the death or personal injury is due to anything suffered by a member of the forces being a thing as to which the conditions aforesaid are satisfied.

(3) The Minister charged with the responsibility for Defence and Internal Security, if satisfied that it is the fact—

- (a) that a person was or was not on any particular occasion on duty as a member of the forces; or
- (b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of the said forces;

may issue a certificate certifying that to be the fact; and any such certificate shall, for the purposes of this section, be conclusive as to the fact which it certifies.

(4) In this section the expression—

- (a) “armed forces” means any armed force, whether volunteer or otherwise, raised and maintained in Malaysia;
- (b) “forces” includes the armed forces and the police force; and
- (c) “police force” means the Royal Malaysia Police and includes any volunteer, auxiliary or special force attached to, or coming under the jurisdiction of, that Force.

Saving in respect of acts done under prerogative and statutory powers

15. (1) Nothing in this Part shall extinguish or abridge any powers or authorities which, if this Act had not been passed, would have been exercisable by virtue of the prerogative of the Yang di-Pertuan Agong or a Ruler or Yang di-Pertua Negeri or the Government, or any powers or authorities conferred on the Yang di-Pertuan Agong or a Ruler or Yang di-Pertua Negeri or the Government by any written law, and, in particular, nothing in this Part shall extinguish or abridge any such powers or authorities, whether in time of peace or of war, for the purpose of the defence of the realm or of training, or maintaining the efficiency of, the armed forces.

(2) Where in any proceedings under this Act it is material to determine whether anything was properly done or omitted to be done in the exercise of the prerogative of the Yang di-Pertuan Agong or a Ruler or Yang di-Pertua Negeri or the Government, the Yang di-Pertuan Agong may, if satisfied that the act or omission was necessary for any such purpose as is mentioned in the last preceding subsection, issue a certificate to the effect that the act or omission was necessary for that purpose; and the certificate shall, in those proceedings, be conclusive as to the matter so certified.

PART III**JURISDICTION AND PROCEDURE***The High Court***Civil proceedings in the High Court**

16. Subject to this Act, civil proceedings by or against the Government as are provided by any statutory provision repealed by this Act are hereby abolished, and all civil proceedings by or against the Government in the High Court shall, subject to any other written law for the time being in force, be instituted and proceeded with in accordance with this Act and not otherwise.

Sessions Court

Civil proceedings in the Sessions Court

17. (1) Subject to this Act and of any written law limiting the jurisdiction of a Sessions Court (whether by reference to the subject matter of the proceedings to be brought or the amount sought to be recovered in the proceedings or otherwise) any civil proceedings against the Government may be instituted in a Sessions Court.

(2) Any proceedings by or against the Government in a Sessions Court shall be instituted and proceeded with in accordance with this Act and not otherwise.

General

Application of written law relating to procedure

18. Subject to this Act, the written law relating to procedure shall apply to civil proceedings by or against the Government in the same way as to suits between subject and subject.

Summary application to the High Court in certain revenue matters

19. (1) Subject to and in accordance with rules of court, the Government may apply in a summary manner to the High Court for the payment of any duty, penalty or other sum payable under the written law, or for the delivery of any accounts required to be delivered, or the furnishing of any information required to be furnished, by any written law.

(2) Rules of court made for the purposes of this section may provide that judgment may be given upon an affidavit by a duly authorized officer when the facts are not in dispute upon a written application to the court by such officer.

(3) For the purposes of this section the expression “duly authorized officer” means an officer of any Government department whose duty it is to administer or enforce the written law in respect of which such application as is referred to in subsection (2) is made duly authorized by the head of such department for the purpose.

Interpleader

20. The Government may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings, in the same manner in which a subject may obtain relief by way of such proceedings or be made a party thereto, and may be made a party to such proceedings notwithstanding that the application for relief is made by a sheriff or other like officer; and all rules of court relating to interpleader proceedings shall, subject to this Act, have effect accordingly.

Parties to proceedings by and against the Federal Government

21. (1) Civil proceedings by or against the Federal Government shall be instituted by or against, as the case may be, the Government of Malaysia.

(2) Where any civil proceedings against the Federal Government are instituted, an application may at any stage of the proceedings be made to the court by or on behalf of the Attorney General to have the Government of such State as may be specified in the application substituted for or joined with the Federal Government as defendant to the proceedings.

(3) Upon any such application as is mentioned in the last preceding subsection or in subsection 22(2) the court may if it thinks fit make an order granting the application on such terms as the court thinks just; and on such an order being made the proceedings shall continue as if they had been commenced against the Government specified in that behalf in the order.

Parties to proceedings by and against a State Government

22. (1) Civil proceedings by or against the Government of a State shall be instituted by or against the Government of such State.

(2) Where any civil proceedings against the Government of a State are instituted, an application may at any stage of the proceedings be made to the court by or on behalf of the Legal Adviser of such State, or, in the case of the States of Sabah and Sarawak, the State Attorney General to have the Federal Government or the Government of such other State as may be specified in the application substituted for or joined with the Government of such State as defendant to the proceedings.

Suits in the name of deceased persons

23. (1) Suits by the Government against deceased persons may be brought in the names of such deceased persons; and on the death after the commencement of any such suit by the Government of any defendant named in such suit, the suit shall not abate, nor shall the name of the deceased defendant be struck out; but the personal representatives, or any of the next of kin, of the deceased defendant or the official administrator, to be appointed as is provided in subsection (2), shall on application *ex parte* be allowed to intervene to defend, or continue the defence of, the suit as the deceased defendant might have done; and such personal representatives, or next of kin, or official administrator, on entering an appearance, shall give notice in writing thereof to the Government, and shall be served with process as the defendant might have been if he had lived.

(2) If none of the executors named in the will of a deceased defendant, or none of the next of kin of such deceased defendant take a grant of probate of such will or of letters of administration to the estate within one month from the death of such defendant, the Court may, on the application of the Government, and on notice to the executors or next of kin, or to such of them as are known to be in Malaysia, appoint an official administrator to the estate for the purposes of the suit; and such administrator may defend or continue the defence of the suit.

(3) The Court may, of its own motion or on the application of any such personal representative or next of kin or official administrator, grant time in any such suit, and otherwise make such arrangements, and impose such terms and conditions for the continuance of the suit as to the Court seem right to secure justice to the parties.

Appearance of law officers

24. (1) Notwithstanding any written law—

- (a) in civil proceedings by or against the Federal Government a law officer, the Parliamentary Draftsman or a Federal Counsel, or, in the case of the States of Sabah and Sarawak, a legally qualified member of the Federal or State Attorney General's Chambers authorized by the Attorney General for the purpose; and

- (b) in civil proceedings by or against the Government of a State a law officer, the Parliamentary Draftsman or a Federal Counsel authorized by the Legal Adviser of such State, and, in the case of the States of Sabah and Sarawak, the State Attorney General or any legally qualified member of the State Attorney General's Chambers authorized by the State Attorney General for the purpose,

may appear as advocate on behalf of such Government and may make and do all appearances, acts and applications in respect of such proceedings on behalf of the Government.

(2) Notwithstanding any written law in civil proceedings to which a public officer is a party—

(a) by virtue of his office; or

*(b) in his personal capacity, if the Attorney General certifies in writing that it is in the public interest that such officer should be represented by a legal officer,

a legal officer may appear as advocate on behalf of such officer and shall be deemed to be the recognized agent of such officer by whom all appearances, acts and applications in respect of such proceedings may be made or done on behalf of such officer.

(3) An advocate and solicitor of the High Court duly retained by the Attorney General in the case of civil proceedings by or against the Federal Government or a Federal officer, or by the Legal Adviser, or, in the case of the States of Sabah and Sarawak, by the State Attorney General in the case of civil proceedings by or against the Government of a State or a State officer, may appear as advocate on behalf of such Government or officer in such proceedings.

(4) In civil proceedings to which the Attorney General is a party under section 8 or 9, a law officer, the Parliamentary Draftsman or a Federal Counsel authorized by the Attorney General for the purpose, and, in the case of the States of Sabah and Sarawak, a legal officer, may appear as advocate and make and do all appearances, acts and applications in respect of such proceedings on behalf of the Attorney General.

*NOTE—For Sabah and Sarawak substitute the following paragraph for paragraph 24(2)(b):

“(b) in his personal capacity, if—

(i) in the case of a Federal Officer, the Attorney General certifies in writing; and

(ii) in the case of a State Officer, the State Attorney General certifies in writing;

that it is in the public interest that such officer should be represented by a legal officer;”

—see L.N. 67/1965.

Appearance of public officers

25. (1) Any public officer authorized by a Minister in respect of proceedings by or against the Federal Government or by the State Secretary, or, in the case of the States of Sabah and Sarawak, by the State Attorney General, in respect of proceedings by or against the Government of a State, to act for such Government in respect of any civil proceedings may appear as advocate on behalf of such Government and shall be deemed to be the recognized agent of such Government by whom all appearances, acts and applications in respect of such proceedings may be made or done on behalf of such Government.

(2) An authorization under subsection (1) may be special in respect of any particular proceedings or general in respect of all proceedings or in respect of all proceedings of a particular class.

Service of documents

26. Without prejudice to sections 24 and 25, all documents required to be served on the Government for the purpose of or in connection with any civil proceedings by or against the Government may be served, in the case of proceedings by or against the Federal Government, on the Attorney General or such other officer as may be designated in that behalf, either generally or specially, by the Attorney General by notification in the *Gazette*, and, in the case of proceedings by or against the Government of a State, on the State Secretary, and, in the case of the States of Sabah and Sarawak, on the State Attorney General of such State.

Removal of proceedings in the High Court or Subordinate Courts

27. *(1) If at any stage in any civil proceedings in the High Court to which the Government is a party an application in that behalf is made by the Government to the Court and there is produced to the Court a certificate of the Attorney General to the effect that it is in the public interest or for any other reason desirable that such proceedings should be removed to the High Court in Kuala Lumpur the Court shall order the proceedings to be removed accordingly.

*NOTE—In subsection 27(1), for Sabah and Sarawak insert the word “Federal” before the word “Government” in each case and substitute the words “Kota Kinabalu” and “Kuching” respectively for the word “Kuala Lumpur”—see L.N. 67/1965.

*(1A) If, at any stage in any civil proceedings in the High Court to which the State Government is a party, an application in that behalf is made by the State Government to the Court and there is produced to the Court a certificate of the State Attorney General to the effect that it is in the public interest or for any other reason desirable that such proceedings should be removed to the High Court in Kota Kinabalu/Kuching the Court shall order the proceedings to be removed accordingly.

** (2) If at any stage in any civil proceedings in a subordinate Court to which the Government is a party an application in that behalf is made by the Government to the High Court and there is produced to the Court a certificate of the Attorney General to the effect that it is in the public interest or for any other reason desirable that such proceedings should be removed into the High Court in Kuala Lumpur or in such other place as may be specified in such certificate the Court shall order the proceedings to be removed to the High Court accordingly.

*** (2A) If, at any stage in any civil proceedings in a subordinate Court to which the State Government is a party, an application in that behalf is made by the State Government to the High Court and there is produced to the Court a certificate of the State Attorney General to the effect that it is in the public interest or for any other reason desirable that such proceedings should be removed to the High Court in Kota Kinabalu/Kuching or in such other place as may be specified in such certificate, the Court shall order the proceedings to be removed into the High Court accordingly.

† (3) Notwithstanding subsections (1) and (2), if it appears to the Court that the removal of the proceedings in accordance with those provisions is likely to occasion substantial additional expense to any party to the proceeding other than the Government, the Court may refuse to grant the application unless the Government enters into an undertaking that it will, on or before such date as the Court may specify, pay to such other party such sum of money as in the opinion of the Court is necessary to cover the additional expense likely to be so occasioned to such party.

*NOTE—Subsection 27(1A) is applicable to Sabah and Sarawak only—see L.N. 67/1965.

**NOTE—In subsection 27(2), for Sabah and Sarawak insert the word “Federal” before the word “Government” in each case and substitute the words “Kota Kinabalu” and “Kuching” respectively for the word “Kuala Lumpur”—see L.N. 67/1965.

***NOTE—Subsection 27(2A) is applicable to Sabah and Sarawak only—see L.N. 67/1965.

†NOTE—In subsection 27(3), for Sabah and Sarawak substitute “subsections (1), (1A), (2) and (2A)” for “subsections (1) and (2)” —see L.N. 67/1965.

(4) The amount of such sum of money shall be ascertained in such manner as the Court may direct.

(5) If upon the taxation of the costs of the proceedings it appears to the Court or Registrar that such sum of money was greater or less than the additional expense actually incurred by the party the Court or Registrar may in its or his discretion order that the amount of the excess or the deficiency as the case may be, should be repaid by the party to the Government or paid by the Government to the party respectively and any such amount shall be recoverable as if it were costs awarded in such proceedings to the party entitled to receive the same but subject as aforesaid no sum or any part thereof paid by the Government in accordance with such undertaking shall be recoverable by the Government as costs or otherwise whatever the event of the proceedings.

Removal and transfer of proceedings

28. Without prejudice to the rights of the Government under section 27 any written law relating to the removal or transfer of proceedings from a subordinate Court to the High Court or the transfer of proceedings from the High Court to a subordinate Court, shall apply in relation to proceedings against the Government:

Provided that an order for the transfer to a subordinate Court of any proceedings against the Government in the High Court shall not be made without the consent of the Government and shall not be conditional upon the giving of security by the Government.

Nature of relief

29. (1) In any civil proceedings by or against the Government the court shall, subject to this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that—

- (a) where in any proceedings against the Government any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(b) in any proceedings against the Government for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Government to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government.

Appeals and stay of execution

30. Subject to this Act, all written laws and rules of court relating to appeals and stay of execution shall, with any necessary modifications, apply to civil proceedings by or against the Government as they apply to proceedings between subjects.

PART IV

COSTS, JUDGMENTS AND EXECUTION

Costs

31. (1) Subject to this section, in any civil proceedings or arbitration to which the Government or a public officer is a party the court shall have power to order costs for or against such Government or public officer in the same manner and upon the same principles as in proceedings between subject and subject:

Provided that—

(a) in the case of proceedings to which by reason of any written law or otherwise the Attorney General or any officer of Government as such is authorized or required to be made a party, the court shall have regard to the nature of the proceedings and the circumstances in which the Attorney General or such officer appears and may in the exercise of its discretion order any other party to the proceedings to pay the costs of the Attorney General or such officer whatever may be the result of the proceedings; and

- (b) nothing in this section shall affect the power of the court to order, or any written law requiring, the payment of costs out of any particular fund or property or any provision of any written law expressly relieving the Attorney General or such officer of the liability for costs.

*(2) In any civil proceedings before any court in which a legal officer appears as an advocate under this Act, and costs are awarded to or against the Attorney General, or to or against the party on whose behalf such legal officer appears, such costs shall include such items, including fees for drawing, for getting up the case and for attendances, as would be included within the meaning of the word “costs” in any written law if an advocate and solicitor of the High Court had appeared.

***(3) Such costs shall be in accordance with any scale of fees prescribed from time to time to be chargeable by advocates and solicitors and may be taxed in accordance with any written law for the time being in force for the taxation of the fees and costs of such advocates and solicitors.

(4) In any such civil proceedings as are referred to in subsection (2) in which two legal officers appear as advocates and the court certifies for two counsel, costs shall be payable in respect of the services of both such legal officers.

(5) Costs awarded in accordance with this section to a party for whom any of the legal officers referred to in subsection (2) appear as advocate shall, when recovered, be paid into the Treasury.

(6) A legal officer shall not be personally liable for costs in any proceedings under this Act.

(7) In this section and in section 33 the word “court” includes an arbitrator.

Interest on debts, damages and costs

32. (1) Any written law relating to the payment of interest on judgment debts, damages or costs shall apply to judgments given in proceedings by or against the Government.

*NOTE—In subsection 31(2), for Sabah and Sarawak delete the words “and solicitor”—see L.N. 67/1965.

**NOTE—In subsection 31(3), for Sabah and Sarawak delete the words “and solicitor”—see L.N. 67/1965.

(2) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

Satisfaction of orders against the Government

33. (1) Where in any civil proceedings by or against the Government or in any proceedings under Chapter VIII of the Specific Relief Act 1950, or in any such proceedings as would in England be brought on the Crown side of the Queen's Bench Division, or in connection with any arbitration to which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the person for the time being named in the record as the advocate for the Government or for the Government department or officer concerned.

(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the appropriate Government shall, subject as hereinafter provided, pay to the person entitled or to his solicitor the amount appearing by the certificate to be due to him together with the interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such directions to be inserted therein.

(4) Save as aforesaid no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government or any officer of the Government as such, of any such money or costs.

(5) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

Execution by the Government

34. (1) Subject to this Act, any order made in favour of the Government against any person in any civil proceedings to which the Government is a party may be enforced in the same manner as an order made in an action between subjects, and not otherwise.

(2) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

(3) Nothing in this section shall affect any procedure which immediately before the commencement of this Act was available for enforcing an order made in favour of the Government in proceedings brought by the Government for the recovery of any fine or penalty, or the forfeiture or condemnation of any goods, or of any ship or any share in a ship.

Attachment of moneys payable by the Government

35. (1) Where any money is payable by the Government to some person who, under any order of any court, is liable to pay any money to any other person, and that other person would, if the money so payable by the Government were money payable by a subject, be entitled under rules of court to obtain an order for the attachment thereof as a debt due or accruing due, or an order for the appointment of a sequestrator or receiver to receive the money on his behalf, the High Court may, subject to this Act and in accordance with rules of court, make an order restraining the first-mentioned person from receiving that money and directing payment thereof to that other person, or to the sequestrator or receiver.

(2) No such order shall be made in respect of any money which is subject to any written law prohibiting or restricting assignment or charging or taking in execution.

(3) No such order shall be made unless and until there shall have been produced in court the written consent to such order, of the Minister of Finance in the case of an order against the Federal Government, or of the Chief Minister in the case of an order against a State Government.

(4) For the purposes of this section the word “Government” shall be deemed to include any public officer who in his official capacity has any money in his custody or control.

(5) The preceding subsections shall, so far as they relate to forms of relief falling within the jurisdiction of a subordinate Court, have effect in relation to subordinate Courts as they have effect in relation to the High Court.

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

Discovery

36. (1) Subject to and in accordance with rules of court—

- (a) in any civil proceedings in the High Court or a subordinate Court to which the Government is a party, the Government may be required by the court to make discovery of documents and produce documents for inspection; and
- (b) in any such proceedings as aforesaid, the Government may be required by the court to answer interrogatories:

Provided that this section shall be without prejudice to any other written law, or to any rule of law which authorizes or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(2) Any order of the court made under the powers conferred by paragraph (1)(b) shall direct by what officer of the Government the interrogatories are to be answered.

(3) Without prejudice to the proviso to the preceding subsection (1), any rules made for the purposes of this section shall be such as to secure that the existence of a document will not be disclosed if, in the opinion of the persons hereinafter mentioned, it would be injurious to the public interest to disclose the existence thereof. Such persons are—

(a) in respect of the Federal Government, a Minister;

(b) in respect of the Government of a State, the Chief Minister of such State:

Provided that it shall not be deemed injurious to the public interest to disclose the existence of any document by reason only of the fact that such disclosure would or might lead or tend to the success of the opposite party in the proceedings.

Exclusion of proceedings *in rem* against the Government

37. (1) Nothing in this Act shall authorize proceedings *in rem* in respect of any claim against the Government, or the arrest, detention or sale of any ships or aircraft, or of any cargo or other property belonging to the Government, or give to any person any lien on such ship, aircraft, cargo or other property.

(2) Where proceedings *in rem* have been instituted in the High Court or in a subordinate Court against any such ship, aircraft, cargo or other property, the court may, if satisfied, either on an application by the plaintiff for an order under this subsection or an application by the Government to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo or other property did not belong to the Government, order that the proceedings shall be treated as if they were *in personam* duly instituted against the Government in accordance with this Act, or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.

(3) An order under subsection (2) may be made upon such terms, if any, as the court thinks just; and where the court makes any such order it may make such consequential orders as the court thinks expedient.

Limitation of actions

38. Any written law relating to the limitation of time for bringing proceedings against public authorities may be relied upon by the Government as a defence in any civil proceedings against the Government.

Application to the Government of certain statutory provisions

39. This Act shall not prejudice the right of the Government to take advantage of any written law although not named therein; and in any civil proceedings against the Government any written law which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Government.

40. (*Omitted*).

Proceedings in courts other than the High Court and Sessions Court

41. (1) The Yang di-Pertuan Agong may by order make such provision as appears to him to be expedient with respect to civil proceedings by or against the Government in any court not being the High Court or a Sessions Court.

(2) An order made under this section may in particular—

- (a) define the jurisdiction of the court to which the order relates in civil proceedings by or against the Government; and
- (b) apply, in relation to civil proceedings by or against the Government in the said court, any provisions of this Act which would not otherwise apply in relation to those proceedings with such additions, exceptions and modifications as appear to the Yang di-Pertuan Agong to be expedient.

(3) Any such order shall have effect notwithstanding any provision made by or under any written law with respect to the court in question; and any such order may provide for amending or revoking any provision so made as aforesaid.

(4) An order made under this section may be varied or revoked by a further order made by the Yang di-Pertuan Agong thereunder.

(5) An order made under this section shall be published in the *Gazette* and, as soon as possible thereafter, shall be laid before Parliament and, if at the next meeting of the Parliament after any such order is laid before it a resolution is passed annulling such order or any part thereof, the whole order shall thenceforth be void, but without prejudice to the validity of anything previously done or omitted to be done thereunder, as from the date of notification in the *Gazette* of the passing of such resolution.

Supplemental

Rules of court

42. (1) Any power to make rules of court shall include power to make rules for the purpose of giving effect to this Act, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Government in substitution for or by way of addition to any of the rules applying to proceedings between subjects.

(2) Provision shall be made by rules of court with respect to the following matters—

- (a) for securing that where any civil proceedings are brought against the Government in accordance with this Act the plaintiff shall, before the Government is required to take any step in the proceedings, provide the Government with such information as the Government may reasonably require as to the circumstances in which it is alleged that the liability of the Government has arisen and as to the departments and officers of the Government concerned;
- (b) for providing that in the case of proceedings against the Government the plaintiff shall not enter judgment against the Government in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the defendant;
- (c) for excepting proceedings brought against the Government from the operation of any rule of court providing for summary judgment without trial, and for enabling any such proceedings to be put in proper cases into any special

list which may be kept for the trial of short causes in which leave to defend is given under any such rule of court as aforesaid;

(d) for enabling evidence to be taken on commission in proceedings by or against the Government;

(e) for providing—

(i) that a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Government for the recovery of taxes, duties or penalties, or to avail himself in proceedings of any other nature by the Government of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties;

(ii) that a person shall not be entitled without the leave of the court to avail himself of any set-off or counterclaim in any proceedings by the Government; and

(iii) that the Government shall not be entitled to avail itself of any set-off or counterclaim without the leave of the court.

(3) Provision may be made by rules of court for regulating any appeals to the High Court, whether by way of case stated or otherwise, under the written law relating to the revenue, and any rules made under this subsection may revoke any written law in force immediately before the commencement of this Act so far as they regulate any such appeals, and may make provision for any matters for which provision was made by any written law so in force.

(4) Rules of court made under this section shall be published in the *Gazette* and, as soon as possible thereafter shall be laid before the Parliament and if at the next meeting of the Parliament after any such rule is laid before it a resolution is passed annulling such rule or any part thereof, the whole rule shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, as from the date of notification in the *Gazette* of the passing of such resolution.

Pending proceedings

***43.** Save as otherwise expressly provided, this Act shall not affect proceedings by or against the Government which have been instituted before the commencement of this Act; and for the purposes of this section proceedings by petition of right shall be deemed to have been so instituted if a petition of right with respect to the matter in question has been left with the Clerk of Council for submission to the Governor in Council before the commencement of this Act.

Financial provisions

44. (1) Any expenditure incurred by or on behalf of the Government by reason of the passing of this Act shall be defrayed out of the revenue of the appropriate Government.

(2) Any sums payable to the Government by reason of the passing of this Act shall be paid into the appropriate Treasury.

Savings

45. (1) Nothing in this Act shall apply to proceedings by or against, or authorize proceedings in tort to be brought against, the Yang di-Pertuan Agong or a Ruler or Yang di-Pertua Negeri in his private capacity.

(2) Except as therein otherwise expressly provided, nothing in this Act shall—

(a) affect the law relating to prize salvage, or apply to proceedings in causes or matters within the jurisdiction of the High Court as a prize court or to any criminal proceedings;

(b) *(Omitted)*.

(c) *(Omitted)*.

(d) subject the Government to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Government than those to which the Government would be subject in respect of such acts or omissions if it were a private person;

*NOTE—Section 43 is not applicable to Sabah and Sarawak—see L.N. 67/1965.

- (e) affect any rules of evidence or any presumption relating to the extent to which the Government is bound by any written law;
- (f) affect any right of the Government to control or otherwise intervene in proceedings affecting its rights, property or profits;
- (g) apply to any proceedings by or against the Official Administrator or the Public Trustee or affect any liability imposed on the Public Trustee or on the revenues of Malaysia by the *Public Trustee Act 1950 [Act 247]; or
- ***(h)* apply to any proceedings by or against the Railway Administration or any person employed or deemed to be employed by the Railway Administration under the Railway Ordinance 1948 [*Ord. 8/1948*].

(3) (*Omitted*).

(4) Where any property vests in the Government by virtue of any rule of law which operates independently of the acts or the intentions of the Crown or the Government, the Government shall not by virtue of this Act be subject to any liabilities in tort by reason only of the property being so vested; but this subsection shall be without prejudice to the liabilities of the Government under this Act in respect of any period after the Government or any person acting for the Government has in fact taken possession or control of any such property, or entered into occupation thereof.

****(5)* This Act shall not operate to limit the discretion of the court to grant relief under Chapter VIII of the Specific Relief Act 1950, or by way of mandamus in cases in which such relief might have been granted before the commencement of this Act, notwithstanding that by reason of this Act some other and further remedy is available.

46. (*Omitted*).

*NOTE—The Public Trustee Act 1950 [Act 247] has since been repealed by the Public Trust Corporation Act 1995 [Act 532]—see section 43 of Act 532.

**NOTE—Paragraph 45(2)*(h)* is not applicable to Sabah and Sarawak—see L.N. 67/1965.

***NOTE—Subsection 45(5) is not applicable to Sabah and Sarawak—see L.N. 67/1965.

LAWS OF MALAYSIA

Act 359

GOVERNMENT PROCEEDINGS ACT 1956

LIST OF AMENDMENTS

Amending law	Short title	In force from
Ord. 60/1956	Settlements Nominated Council (Change of Title) Ordinance, 1956	01-09-1956
L.N. 219/1957	Minister (Transfer of Functions) (Amendment) Order 1957	10-05-1957
L.N. 107/1958	Pending Laws Validation (Government Proceedings Ordinance) Order 1958	28-03-1958
L.N. 334/1959	Notification under s. 3 of the Title of Office Ordinance, 1949	25-09-1959
L.N. 67/1965	Modification of Laws (Government Proceedings and Public Authorities Protection) (Extension and Modification) Order 1965	26-02-1965
Act A354	Constitution (Amendment) Act 1976	27-08-1976
P.U. (A) 357/1980	Subordinate Courts Act (Extension) Order 1980	01-06-1981
P.U. (A) 252/1989	Revision of Laws (Government Proceedings) Order 1989	01-09-1989

LAWS OF MALAYSIA**Act 359****GOVERNMENT PROCEEDINGS ACT 1956**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	L.N. 334/1959 P.U. (A) 357/1980	05-09-1959 01-06-1981
14	L.N. 67/1965	26-02-1965
24	L.N. 334/1959	25-09-1959
35	L.N. 219/1957	10-05-1957
40	L.N. 107/1958	28-03-1958
45	L.N. 107/1958	28-03-1958
Throughout the Act	Ord. 60/1956 L.N 107/1958 Act A354	01-09-1956 28-03-1958 27-08-1976

