

# JUDGES' ETHICS COMMITTEE BILL 2008

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## A BILL

### *i n t i t u l e d*

An Act to establish a Judges' Ethics Committee and to provide for its functions and powers and for other matters connected therewith.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

## PART I

### PRELIMINARY

#### **Short title and commencement**

**1.** (1) This Act may be cited as the Judges' Ethics Committee Act 2008.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

#### **Interpretation**

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

“complaint” means any complaint concerning the misconduct of a judge;

“judge” means a judge of the High Court, a judge of the Court of Appeal and a judge of the Federal Court, and includes a Judicial Commissioner;

“Committee” means the Judges’ Ethics Committee constituted under section 3;

“Code of Ethics” means the Judges’ Code of Ethics 2008 [P.U. (A) ...../200.....];

“breach” means the breach of any provisions of the Code of Ethics;

“Chairman” means the Chairman of the Committee appointed under section 5.

## PART II

### JUDGES’ ETHICS COMMITTEE

#### **Constitution of the Committee**

**3.** There shall be constituted a committee by the name of “Judges’ Ethics Committee”.

#### **Jurisdiction of the Committee**

**4.** The Committee shall have jurisdiction in matters relating to the conduct and discipline of all judges other than the removal of a judge from office under Clause (3) of Article 125 of the Federal Constitution.

#### **Membership of the Committee**

**5.** (1) The Committee shall be in odd numbers and shall consist of persons who hold or have held office as the President of the Court of Appeal, Chief Judge of the High Court of Malaya, Chief Judge of the High Court of Sabah and Sarawak, judge of the Federal Court, the Court of Appeal or a High Court as the Chief Justice of the Federal Court deems fit to appoint.

(2) The Chief Justice of the Federal Court shall be the Chairman of the Committee, unless he is the complainant, in which case the next senior judge shall be the Chairman.

(3) The appointment of the members of the Committee shall be on an *ad hoc* basis.

(4) Notwithstanding any provisions of this Act, the members of the Committee shall comprise judges who are senior in the order of precedence to the judge who is the subject of a disciplinary proceeding.

### **Substitute member**

6. (1) Where the Chairman is unable, through illness or for any other reason, to attend a disciplinary proceeding, the next senior serving judge in the Committee shall be the Chairman, and the Chief Justice of the Federal Court shall appoint another judge in place of that senior judge.

(2) Where any member of the Committee is unable, through illness or for any other reason, to attend a disciplinary proceeding, the Chief Justice of the Federal Court shall appoint another judge in place of that member.

(3) A member of the Committee appointed under subsection (1) or (2) shall be a judge who is senior in the order of precedence to the judge who is the subject of a disciplinary proceeding.

### **Principles and procedure**

7. In the exercise of its functions under this Act, the Committee shall abide by the principles and procedures set out in this Act and the Code of Ethics.

### **Proceedings *in camera***

8. The proceedings of the Committee shall be *in camera*.

### **Enquiry**

9. (1) The proceedings of the Committee shall not be a trial but an enquiry as regards the breach of any provisions of the Code of Ethics committed by a judge referred to it by the Chief Justice of the Federal Court.

(2) The Evidence Act 1950 [Act 56] shall not apply to proceedings of the Committee.

### **Disclosure of interest**

**10.** (1) If the Chairman or any member of the Committee has a direct or indirect interest in any disciplinary proceeding, he shall disclose to the Committee the fact of his interest and the nature of that interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the proceeding in which the disclosure was made and, after the disclosure, the Chairman or the member shall not take part in the deliberation or decision of the Committee.

### **Meetings of the Committee**

**11.** The Committee shall meet on such dates and at such places and times as the Chairman may determine.

### **Quorum**

**12.** The Chairman and not less than two members of the Committee shall form the quorum for every proceedings of the Committee.

### **Adjournment of hearing before the Committee**

**13.** (1) The Committee may adjourn the hearing from time to time.

(2) No written notice of an adjournment is required to be given to any party when the adjournment is made in the presence of that party.

### **Records and minutes of proceedings**

**14.** The Chairman shall cause the records and minutes of proceedings of the Committee to be maintained and kept in a proper form.

## Decision of the Committee

**15.** (1) Where the Committee is not unanimous on any question or matter to be determined, the decision of the majority shall be deemed to be the decision of the Committee.

(2) The Committee shall ensure that its decision in any disciplinary proceeding is communicated in writing to the judge who is the subject of the disciplinary proceedings.

(3) Notwithstanding any provision in any other written law, the decision of the Committee shall be final and conclusive and shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.

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## EXPLANATORY STATEMENT

This Bill seeks to establish the Judges' Ethics Committee as envisaged by Clause (3A) of Article 125 of the Federal Constitution to deal with any judge who has committed a breach of any provisions of the Judges' Code of Ethics 2008 [*P.U. (A) ...../200.....*], if the Chief Justice of the Federal Court is of the opinion that such breach does not warrant the judge being referred to a tribunal appointed under Clause (4) of Article 125 of the Federal Constitution.

### PART I

2. Part I of the Bill contains preliminary matters.
3. *Clause 1* seeks to provide for the short title and the commencement of the proposed Act.
4. *Clause 2* contains the definition of several expressions used in the proposed Act.

### PART II

5. Part II of the Bill deals with matters relating to the Judges' Ethics Committee.
6. *Clause 3* provides for the constitution of the Judges' Ethics Committee.

7. *Clause 4* deals with the jurisdiction of the Committee. The Committee shall deal in matters relating to the conduct and discipline of all judges other than the removal of a judge from office pursuant to Clause (3) of Article 125 of the Federal Constitution.

8. *Clauses 5 and 6* deal with the membership of the Committee and the appointment of substitute members of the Committee.

9. *Clause 7* imposes a duty on the Committee to abide by the principles and procedures set out in the proposed Act and the Code of Ethics.

10. *Clause 8* requires the proceedings of the Committee to be conducted *in camera*.

11. *Clause 9* specifically states that the proceeding of the Committee shall be an enquiry upon a reference by the Chief Justice of the Federal Court and not a trial. That being so, the strict rules of evidence under the Evidence Act 1950 [Act 56] do not apply in such proceeding.

12. *Clause 10* requires any member of the Committee to disclose his interest in any disciplinary proceedings conducted by the Committee and in such cases, the particular member is prohibited from taking part in the deliberation of or decision made by the Committee.

13. *Clauses 11, 12, 13 and 14* deal with the meetings of the Committee, its quorum, adjournment of hearings before the Committee and maintenance of record and minutes of proceedings of the Committee respectively.

14. *Clause 15* provides that where a unanimous decision could not be achieved, the decision of the majority shall be deemed to be the decision of the Committee. The decision of the Committee shall be final and conclusive and shall not be challenged, *etc.*, in any court.

#### *FINANCIAL IMPLICATIONS*

This Bill will not involve the Government in any extra financial expenditure.

[PN(U<sup>2</sup>)2646]