Response of The Law Society of Singapore's Muslim Law Practice Committee to the public consultation on the Draft Administration of Muslim Law (Amendment) Bill 2024

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The Law Society of Singapore
28 Maxwell Road, #01-03
Maxwell Chambers Suites, Singapore 069120
lawsoc@lawsoc.org.sg
www.lawsociety.org.sg

Public Consultation on Draft Administration of Muslim Law (Amendment) Bill 2024

A. Amendments to enable Muis to better administer its functions and duties to support the Muslim community

1. Comments on amendment to empower Muis to create wakafs

One member is of the view that the proposed amendment is clear and is to allow Muis to create wakafs from monies donated by the public. Another member referred to the proposed Section 64A(2): "… whether received from individuals, entities, mosques…" and queried why entities should not be allowed to create a wakaf as well.

2. Comments on amendment on recognition of Foreign Halal Certification Bodies (optional)

One member queried whether the new 88AA proscribes any food product from being sold here if the foreign certification authority is not recognized.

3. Comments on amendment to expand the (Fatwa) Legal Committee Membership and give the Committee more discretion in considering a fatwa request (optional)

<u>Section 31(1)</u>

One member queried the reason for the removal of the requirement for at least 2 who are not members of the Majlis. It was noted that the proposed wording allows all members of the Legal Committee to be members of the Majlis. Hence, it was suggested that perhaps at least four must be outside the Majlis.

Another member queried the reason for limiting it to 8 members and why it cannot be say 8 or more as deemed necessary by the Majlis.

<u>Section 32(3)</u>

The current Section 32(3) requires the Legal Committee to consider the question unless in its opinion the question is frivolous or for other good reason ought not to be answered, and if it ought to be answered, to prepare a draft ruling thereon. The proposed amendment removes any obligation of the Legal Committee to consider the question at all if it considers it frivolous.

In both cases, if there is no obligation of the Legal Committee to provide a response to the party/ies submitting the question, should not the proposed amendment make it a requirement? Otherwise "inconvenient questions" can easily be swept off the table to fall through the cracks. There is no accountability of the Legal Committee if they choose not to give adequate consideration to questions submitted.

4. Comments on amendments to introduce a definition of Muslim religious schools and inspection powers for Muis officers (optional)

One member queried what the position would be if it involved groups of less than 10, for example 8 or 9 people? This new definition does not seem to be in line with MUIS guidelines on its page for IECP. It states that IECP refers to providers who offers religious instruction to non-family members habitually. Does that mean that IECP with less than 10 people do not need to register?

What if it is 8 people per class and there are 3 classes of 8 different people every week? Should it not be sufficient that the IECP has ARS? It may be considered too intrusive for MUIS to inspect such small classes as between close friends and relatives for example. Also, does giving weekly tazkirahs fall under the definition of holding a class? Does an ARS ustaz who holds weekly tazkirahs for 10 people at a place of residence need to register?

There are also many people logging into online class provided by foreign teachers. What are the purposes of regulating classes of 10 or more, if anyone can learn anything online? One suggestion is for MUIS to provide a list of foreign online seminars which are palatable and in line with our context.

5. Comments on amendments to introduce a fixed period of appeal to Minister from religious school (optional)

No comments.

6. Comments on amendments to clarify that unaccounted contributions to the Mosque Building and MENDAKI Fund (MBMF) will go towards the purpose of building mosques (optional)

No comments.

B. Amendments to enable further digitalization of ROMM and SYC to enhance services to the public

7. Comments on amendment to support the implementation of ROMM's new digital Our Marriage Journey to enhance services to the public (optional)

No comments.

8. Comments on amendment to facilitate the operation of SYC's new digital system and simplify processes for members of the public (optional)

No comments.

C. Amendments to enhance the administrative provisions relating to SYC for effective outcomes

9. Comments on amendment to enhance SYC's powers to deliver fair and just outcomes through the judge-led approach (optional)

Proposed Section 36A

It is proposed that the Court will be given powers to prohibit the filing of an application if they deem it to be without merit or that it would adversely affect the welfare of the child.

How and when will the Court make this assessment? Presumably this will be after the application has been filed. Is it the Registrar or Deputy Registrar who will make this decision at PTC stage and if so, is it the duty of the opposing counsel to raise this objection to the Registrar or DR as otherwise this would require the Court to study all applications to amend/vary/revoke etc. at an early stage to determine if it is without merit or would adversely affect the child welfare. To do so without giving the applicant an opportunity to canvass the merits does not seem fair.

Proposed Section 36B(2)(a)

Generally, applications that are frivolous and/or without merit can be rectified by the imposition of costs. With regard to the proposed section 36B where "the Court **is satisfied** that the application by a party pending proceedings, or any document in support of application C, **will or is likely to**….", one member had the following queries:

- Depending on how case law determines this, what is the legal test and/or standard for "will or is likely to be"?
- Interlocutory applications are normally heard before the Registrar but the President eventually hears the divorce. What happens if the President does not agree with the Registrar (or unless it is the President who hears these applications moving forward)? Can there be a fresh application if the Registrar has prohibited the application at an earlier stage but new facts materialised during the course of the proceedings and should the matter be fixed before a different Registrar or President as he/she may already have formed a particular view which may affect the decision-making process of the fresh application?
- Assuming the President hears it and dismisses the application, the aggrieved party decides to appeal, is there a need to include a new provision at section 55 AMLA or will it be subsumed under section 55(1)(g)? If the party appeals, then it prolongs the matter which section 36B is itself trying to avoid in wanting a "just, **expeditious** or economical" hearing.

Proposed Section 36B(2)(b)

"where a child is a party to, or a subject of, the pending proceedings – have an adverse effect on the welfare of the child"

- At the Family Justice Courts' ("FJC") the hearing date from the time of filing of the application is typically much earlier than that of the Syariah Court ("SYC"). Hearing dates are usually given within two weeks or a month from its last case conference. In SYC, a typical hearing might be fixed 2 to 3 months from the last pre-trial conference. The lapse of time between the filing of the application and the hearing date may have an adverse effect on the child as in some cases, the situation in the family might be developing day by day, and relevant information might come up which ought to be considered by the Court. Hence, it is hoped that while this particular amendment has the good intention of ameliorating unfortunate circumstances the child may be in, it should be accompanied by clear signals from the Syariah Court that it will take expeditious steps in advancing the hearing dates. In this regard, it is hoped that the SYC will provide distinct guidelines via Practice Directions or Registrar Circulars with regard to the management of hearing dates for urgent cases involving the child or children.

Sections 36A and 36B

- Is the Registrar empowered to make such orders at the outset or it is the preserve of the Presidents? How will this play out in an interim application which is filed and later deemed to be frivolous? Will the Registrar in an administrative hearing make a determination that this case is to be dismissed and later hear parties out on the issue or will she refer the matter for a hearing to be fixed before the President?
- It was noted that the amendments provide that the court should only prohibit such applications 'if certain conditions are satisfied.' The conditions cited include past conduct of the party or where the application or document will have an adverse effect on the welfare of the child. The Committee is of the view that the conditions are very broad and gives the court an extremely wide discretion. There could be genuine reasons for such an application which may get dismissed. Hence, is the amendment intended to give unfettered discretion to the court, and if so, what are the safeguards in place to prevent any miscarriages of justice or the perception that parties are not given a fair chance to have their day in Court?

Amendment of Section 43

There is a concern that people may have a misconception of the proposed amendment of section 43. Such misconceptions can be illustrated by the following feedback from some members upon having sight of the section for the first time.

- *Does the amendment of Section 43 means that the court can now make substantive orders involving interveners?*
- *Can the Court now make orders on Mareva injunction?*
- *Does it allow the SYC to rehear a case on its own motion?*

- *Because the court is proposing a course of action on its own motion but requires every person likely to be affected by the order to be given an opportunity to be heard, what happens if the relevant party is missing or hard to locate?*
- *Who has the burden to prove adequate efforts have been made to communicate with the missing person?*

- *Is the standard of proof required set at a higher level because SYC moved on its own initiative, and has to act cautiously?*
- *Who bears the costs of producing requisite evidence?*
- *Will the proposed Section 43(2) give the SYC the power to award Care and Control to Primary Caregivers rather than surviving natural parent where the other parent is deceased?*

We note that the power of the Court to make an order on its own volition is subject to the jurisdictional ambit under section 35 of AMLA. This may however not be familiar to many, including practitioners. There may be perception issues that the SYC can now make all sorts of orders, especially since the proposed amendment includes the phrase ‘an order of a substantive nature’.

To avoid confusion, as manifested in cases such as *ER v ES* [2021] 8 SSAR 389, *DA and another (interveners) v DC* [2020] 8 SSAR 72 and *DD and another v DF* [2020] 8 SSAR 95, we suggest that there could be a Schedule annexed to AMLA or MMDR on the nature of orders that the SYC can make on its own volition.

10. Comments on amendments to sections 35, 51 and 52 to clarify SYC’s jurisdiction and powers in respect of ancillary orders (optional)

<u>Section 35(2)</u>

It is understood that under the Guardianship of Infants Act 1934 (“GIA”), where the parent having care and control (“CC parent”) dies, the other parent has natural guardianship.

It is noted that SYC can only make an order giving care and control to surviving parent but not the grandparent. But what if the CC parent has, in his or her lifetime, relied on primary caregivers of the child, such as grandparents or other adults, but failed to appoint them as guardians in the event of the CC parent's death?

Should primary caregivers fight for CC in FJC under the GIA, or should this amendment extend SYC's jurisdiction regarding custody, care and control, access and maintenance to cover the instance where the CC parent dies but is survived by child's primary caregivers?

It is understood that under the current law, the grandparents have to fight for care and control in the FJC. The question is, will the case be treated as a fresh application under the GIA or regarded as a variation of a SYC order made in a divorce? There are different implications as in the former, no leave is required from the SYC because the SYC has no jurisdiction. However, leave is required for the latter. There needs to be clarity on this.

<u>Section 35(4)</u>

The amendment in Clause 8(b) qualifies children as "minor" but Clause 8(c) does not. Since children over 21 can still seek parental maintenance, should consistency be maintained to include the qualification of "minor" children in Clause 8(c)?

Proposed Section 35 / 52 (the inclusion of "care and control")

In *EN v EO* (2021) 8 SSAR 359, the Court held at paragraph [19] that "further, in practice, proceedings in the Syariah Court do not and will not deal with children's maintenance and whoever wishes to commence such proceedings shall be referred to FJC."

Whilst the member understands that the SYC ought to be seen as a court similar in stature with the FJC, the fact that the SYC declines to hear maintenance issues might create confusion. It would be better to remove "maintenance of children".

A differing view is that keeping the maintenance provision in the AMLA is an insurance policy in anticipation that the SYC would one day have the capacity and the machinery to handle the maintenance caseload. Hence, the question is whether the SYC would have the resources and intention to handle the maintenance cases.

Section 52(3)(c)

One member queried why the word "maintenance" is retained in section 52(3)(c) when the Court does not make orders in this regard. In any event, the SYC should hear maintenance of children as part of the orders or in a separate hearing if necessary, as this will prevent the hassle of running to two different courts. The parties can therefore obviate the need for a separate hearing at the FJC for a maintenance order but still avail themselves of the established enforcement machinery of the FJC in event of breach. In this regard, the issue of maintenance will be analogous to that of *nafkah iddah* and *mutaah* where the orders are made by the SYC but enforced at the FJC.

We understand that this issue may require more time as feasibility studies will have to be undertaken. We will be happy to engage in further discussion if and when required.

Any Other Comments

11. Other comments on proposed amendments (optional)

Comment 1: In *ER v RS* (2021) 8 SSAR 389, the Appeal Board (AB) at paragraph 22 determined that the SYC does not have powers to grant a Mareva injunction. As the SYC is already empowered to determine division of assets, and without any financial limit (as contrasted to the FJC's $5 million limit), it is an anomaly that the SYC does not have the power to grant an Anton Piller order or make an injunction which is related to the issue of assets. The profile of cases in the SYC are starkly different from those occurring when the AMLA was enacted. More foreigners are living in Singapore and come without the habitual residence requirement. They could be assets between the parties that potentially are likely to be removed or dissipated, to the prejudice of the other. Accordingly, it is urged that consideration be given for the SYC to be empowered to make Anton Piller orders and Mareva injunctions. The profile of the SYC judiciary today indicates that it is an area which is within the capability of the SYC.

Considering *TMO v TMP* [2016] SLR 1198, parties can only go to the SYC to determine issues of *nafkah iddah* and *mutaah* whilst the other issues (for example, division of matrimonial home) have to be heard before the FJC pursuant to section 121 of the Women's Charter 1961. The SYC ought to be empowered to make decisions on these other issues to so as to prevent Muslim families having to go to two different Courts.

In the FJC where a normal divorce is filed, the matter is fixed for a case conference. There, the DJ considers the issues at divorce and directs parties to exchange documents and proposals before the first mediation session. The SYC could consider this too with a view to having more amicable resolutions at mediation.

Comment 2: Power of the Appeal Board to Remit a case of order for it to be reheard:

In OS number 54398, a voluntary GD, the Senior President stated that the while the Appeal Board has the powers to order a retrial, it does not have powers to remit a case. Why has this not been dealt with in these amendments as many Syariah cases are heard in chambers instead of a trial? In the interests of justice, the Appeal Board should be allowed to remit a case back to the SYC and/or order a case to be retried or reheard.

Feedback from the Law Society's Muslim Law Practice Committee
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