

CONSULTATION PAPER ON DRAFT ADMINISTRATION OF MUSLIM LAW ACT (AMENDMENT) BILL 2017

Aim

1 The Ministry of Culture, Community, and Youth (MCCY) invites the public to give feedback on the draft Administration of Muslim Law Act (Amendment) Bill.

Background

2 The Administration of Muslim Law Act (AMLA) provides for the establishment of the Islamic Religious Council of Singapore (MUIS), the Syariah Court (SYC) and the Registry of Muslim Marriages (ROMM), and the administration of mosques and wakafs (Muslim endowments). The Act has been regularly reviewed, with amendments put forth to ensure that it is robust and relevant, stays up-to-date with new programmes and processes, and above all, serves the needs of our local Muslim community. It was last amended in 2008 to enhance the governance of MUIS, SYC, and ROMM, as well as to strengthen the foundations of Muslim families.¹

Stakeholder Feedback

3 For this round of amendments, MCCY and partner Agencies – MUIS, SYC, ROMM, and the Ministry of Social and Family Development (MSF) – have taken into account feedback and recommendations from over the years, conveyed by community organisations, practitioners, and the public. We have also considered inputs from stakeholders like the Muslim Law Practice Committee of the Law Society of Singapore, the Singapore Muslim Women’s Association (PPIS), and the Muslim Financial Planners’ Association.

Scope of Proposed Amendments

4 MCCY proposes to amend the AMLA in three broad areas, while also introducing several technical amendments to update existing operational procedures:

- A. Reinforce Muslim institutions;
- B. Enhance the management of Muslim assets; and
- C. Strengthen Muslim families.

A. Reinforce Muslim Institutions

5 **Allow for revocable insurance nominations.** The proposed amendment seeks to give legal backing to a fatwa (religious decree) issued on 2 February 2012², which allows Muslim policyholders to make revocable insurance nominations on their own accord. Following amendments to the Insurance Act in 2009, some insurers have required Muslim policyholders to first obtain confirmation from MUIS that their proposed nominations were made in accordance with the school of Muslim law that they profess, before they are allowed to make a revocable nomination to their policy.

¹ Key changes during the 2008 round of amendments included (i) raising the minimum age for marriage from 16 to 18 years old; (ii) expanding the Mosque Building and Mendaki Fund to include upgrading of old mosques and financing religious education; and (iii) treating SYC orders as District Court orders for enforcement purposes.

² Fatwa link: [http://www.muis.gov.sg/officeofthemufti/Fatwa/revocable-insurance-nomination\(eng\).html](http://www.muis.gov.sg/officeofthemufti/Fatwa/revocable-insurance-nomination(eng).html).

6 Introduce domicile requirements for parties applying for divorce at the Syariah Court. The proposed amendment seeks to require either parties to be domiciled or habitually resident in Singapore (for a period of 3 years immediately preceding any application) before they begin any divorce proceedings at SYC. This is to make clear that SYC should not hear cases involving foreign parties with nil or negligible links to Singapore.

7 Allow men to apply for divorce as plaintiffs without pronouncing the talak³. Under current provisions, only women may apply for divorce, whereas men can only effect a divorce through uttering the talak. The proposed amendment is intended to discourage frivolous pronouncements of talak outside of SYC. It would also allow SYC to encourage couples to attend counselling (see also Para 16), to attempt to save the marriage if possible. This amendment does not affect the Muslim man's right to pronounce the talak if he still chooses to do so.

8 Clarify that couples must first seek ROMM's in-principle approval for their marriage to be registered if they wish for a wali to solemnise the marriage. With this, the Kadi or Naib Kadi will be able to verify that the appropriate wali⁴ has been appointed to solemnise the marriage. Also, where necessary, for the benefit of the couple, the Kadi or Naib Kadi can direct the couple to go through the respective processes set out in AMLA – for instance, the new requirements for parties to a minor marriage (being a marriage where either party is below 21 years old) to (a) attend a mandatory marriage preparation programme (see Para 13); and (b) seek the consent of their parents and/or guardian (see Para 14). This would help avoid the situation where, despite having gone through the solemnisation ceremony conducted by the wali, the couple is unable to register their marriage, as it contravenes AMLA.

B. Enhance the Management of Muslim Assets

9 Strengthen trustee management of wakafs, through the following:

- a. **Require prior approval by MUIS for any new trustee appointments.** To safeguard MUIS' responsibility to administer all wakafs vested in it (as per sections 58(2) and 59), this amendment voids any appointment of a new trustee to a wakaf unless MUIS' prior approval in writing has been obtained.
- b. **Require MUIS' consent before any court proceedings related to trustee appointment/removal are started.** In *Mohamed Shariff Valibhoy v. Arif Valibhoy* (2016), the High Court struck out an application brought by the plaintiffs (trustees of the Valibhoy Charitable Trust wakaf) for an order to remove and replace the defendant (also a trustee of the wakaf), as it held that jurisdiction to do so rested solely in MUIS. The proposed amendment seeks to ensure that MUIS is apprised of any trustee disputes, and where possible it may try to resolve these at the outset so that the continued management of the wakaf is not affected. MUIS may give its consent for parties to start court proceedings if attempts at negotiation fail, or if it may be more effective for a court to make a decision on the matter.

³ Under Muslim law, if the husband utters this Arabic term for divorce, the couple would be automatically divorced.

⁴ A "wali" means the lawful guardian according to the Muslim law for purposes of marriage of a woman who is to be married.

- c. **Expand the grounds on which a mutawalli⁵ can be removed.** The proposed amendment seeks to expand the grounds by which a trustee or MUIS-appointed mutawalli can be removed, as the current ground of “mismanagement” is broad and may make it difficult for early decisive action to be taken to save the wakaf. The additional grounds are thus as follows:
- i. The mutawalli has been convicted of an offence under section 64(11);
 - ii. The mutawalli has failed to comply with any provision of any rules made under section 64(12); or
 - iii. The mutawalli has failed to comply with any term or condition imposed by MUIS as part of his/her appointment.

10 Provide for the establishment of a separate sinking fund for wakafs. MUIS has observed that poor financial practices by some wakaf trustees have led to negligible funds available to maintain the physical properties belonging to the wakaf. This amendment thus empowers MUIS, as part of its administration of wakafs, to direct a portion of the net income of the wakaf towards a reserve, for the future upkeep and development of the wakaf, in one or more of the following purposes:

- a. Improve or maintain any immovable property belonging to that wakaf, including carrying out any building operation, repair, demolition, or installation work;
- b. Purchase any property or asset for that wakaf, to the benefit of the wakaf;
- c. Any such other purposes which may be prescribed in future, to the benefit of the wakaf.

The proportion of this contribution will be determined by MUIS according to the income level of the wakaf and the needs of its beneficiaries, but will not exceed 20% of the wakaf’s annual net income.

11 Clarify the grounds on which MUIS may remove a mutawalli of a mosque. The proposed amendment is intended to provide further clarity to section 74(4)⁶, by specifying that MUIS can remove a mutawalli of a mosque appointed by it (and, in turn, appoint another in his place) if it appears to MUIS that (a) the mosque has been mismanaged; or (b) it would be to the advantage of the mosque to appoint another mutawalli.⁷ For a mosque established by a wakaf, if the appointment of an individual as a trustee or mutawalli of the mosque is contingent on his appointment as a trustee or mutawalli of the wakaf, he will also be removed as a trustee or mutawalli of the mosque if he has been removed in his capacity as a trustee or mutawalli of the wakaf (see Para 9(c)).

⁵ A “mutawalli” means a person appointed to manage a wakaf or mosque, and includes a trustee.

⁶ Section 74(4): “The Majlis may at any time remove any mutawalli appointed by it and appoint another in his place.”

⁷ These grounds have been replicated from section 74(3), for consistency.

12 **Expand use of the Mosque Building and Mendaki Fund (MBMF)⁸.** The intent of this amendment is two-fold:

- a. Specify, for the avoidance of doubt, that the Fund can be directed towards the purchase of new or additional land, as well as lease of land or property, for existing and future mosques.
- b. Also clarify that the religious education component within the MBMF can be tapped for related premises and facilities. Our madrasahs are key institutions of the Muslim community, as they aim to provide strong foundations for future generations of asatizah (religious teachers).

C. Further Strengthen Muslim Families

13 **Minor couples to attend a marriage preparation programme.** Statistics indicate that the risk of divorce amongst minor couples (where either one party is below 21 years old) is high. Pre-marriage education is intended to help raise couples' awareness of potential challenges and adjustments in marriage (and to guide them on managing these), and to highlight the available post-marriage support programmes and resources. The amendment requires minor couples to have attended a marriage preparation programme together, before an application to ROMM for the solemnisation of their marriage can be made. MCCY further proposes that the Muslim Marriage and Divorce Rules be amended to specify the following:

- a. The marriage preparation programme refers to a pre-marriage programme approved by the Ministry of Social and Family Development;
- b. Participation in this programme would apply to all marriages where either one party is below 21 years old; and
- c. Exemptions can be granted in instances where either or both parties to the intended marriage suffers from any illness or disability.⁹

14 **Parental consent to a minor marriage.** The proposed amendment seeks to reinforce the importance of parents'/guardians' support in a minor marriage. This consent is separate from the role of the wali in a marriage contract¹⁰; an application cannot be made to ROMM for the solemnisation of the minor marriage if consent is not given. If consent is given, the wali can proceed to solemnise the marriage according to the Muslim law, as provided for in AMLA.

⁸ The Mosque Building Fund Scheme was launched in 1975, and enlarged into the MBMF in 1984. It enables Muslim employees to contribute to mosque building and Mendaki's programmes.

⁹ Refers to: (a) any critical or terminal illness which renders it impracticable or impossible for the party to the intended marriage to attend or complete the marriage preparation programme; and (b) any physical disability or infirmity (such as any visual, auditory or speech impairment) which renders it impracticable or impossible for the party to attend or complete the marriage preparation programme.

¹⁰ For example, there may be instances where the wali is not necessarily the guardian and hence might not be able to offer a fair deliberation of the minor's eligibility for marriage.

15 Enshrine a current administrative requirement for parties to be referred for counselling or a family support programme¹¹ at any stage of their divorce proceedings. The proposed amendment seek to instil a more “child-centric” approach during the proceedings, and include allowing SYC to (a) appoint a child representative to represent the interests of a child in any proceedings involving the child, including the custody and welfare of the child; and/or (b) order any counsellor, welfare officer, social worker or medical practitioner to submit any report or recommendation relating to any child of the parties, especially for the purposes of deciding the custody of the children. To ensure that these individuals can carry out their roles effectively, MCCY also proposes an accompanying amendment to provide them with immunity from being sued, as long as any relevant action undertaken (e.g. for examination or assessment) is done in good faith and does not involve any fraud or wilful misconduct.

16 Require parties to attend a specified activity before commencement of divorce proceedings. The proposed amendment allows SYC to ensure that couples who plan to seek a divorce first attend an activity or programme to (a) save the marriage if possible; and (b) if the marriage cannot be saved, propose care and living arrangements for any child of the marriage, with full regard for the child’s best interests. Since the introduction of SYC’s flagship Marriage Counselling Programme (MCP) in 2004, SYC has counselled over 33,000 couples, and saved almost half of these marriages. Where minor children are involved, couples in the MCP would also be required to prepare a “parenting plan”, to ensure that the interests of their children are not neglected.

17 Achieve fairer outcomes in matters related to ownership of household property and inheritances, through the following:

- a. **In the ownership of household property,** particularly to remove mention that the possessions of the husband and his wife/wives shall be held *prima facie* to belong to the husband when sought by his creditors.
- b. **In the granting of letters of administration to the estate of a Muslim dying intestate,** to eliminate differential treatment of the administration of a husband’s estate viz. a wife’s, and to specify that in both instances the court has discretion in granting the letters of administration to any next-of-kin of the individual, or any other beneficiary such as the Baitumal.

Technical Amendments

18 Remove the MUIS Secretary position, and to merge relevant roles with that of the Chief Executive (CE). No Secretary has been appointed since the appointment of the CE, and there is no intention to do so in future as the CE has already assumed the Secretary’s roles.

19 Specify that minutes of MUIS Council meetings need only be in the national language or in English, and not both. The provision for a “minute book” has also been removed, as the minutes are now maintained in soft copy.

¹¹ A family support programme is any programme or activity carried out for the purpose of addressing or resolving any relationship issue or relationship problem between spouses or former spouses, between siblings, or between parent and child.

20 **Composition of offences.** This is a technical amendment to provide that composition sums received by MUIS, as a Statutory Board, is paid into the Consolidated Fund and not retained by it.

21 **Remove need to update MBMF non-contribution every 12 months.** This administrative requirement removes the need for Muslim employees to inform their employer not to pay their contribution to the MBMF every 12 months, and to instead take the option as indefinite, until such a time as they wish to reinstate their contribution.

22 **Clarify the powers that SYC has to address contemptuous behaviour.** The amendments seek to specify the powers that SYC has to deal with contemptuous behaviour in court. They replace Division 1 of Part XXI of the Criminal Procedure Code, which is being repealed by the Administration of Justice (Protection) Act 2016.

23 **Streamline mention of the registrar of the SYC.** The amendment seeks to simplify reference to the “registrar of the Court” and “the Court” to just the latter, for provisions where there is no need to make a distinction between the two.

24 **Appointment of Deputy Registrars.** In view of SYC’s increased operational requirements and workload, to allow for the appointment of more than 1 Deputy Registrar to assist the Registrar.

25 **Deeming relevant officers as public servants.** In recognition of their public duties, the proposed amendment seeks to deem every President, Registrar, and Deputy Registrar of SYC as public servants for the purposes of the Penal Code.

26 **Extend the term of members on the Appeal Board to three years.** The amendment allows the President to nominate the panel of persons for the Appeal Board at least once in every three years (instead of two years). It has been recognised that a longer term ensures greater stability for the Board, and also allows for deeper experience to be gained.

27 **Clarify that officers and agents of the Appeal Board also have immunity from being sued.** This is a housekeeping amendment to provide the officers and agents of the Appeal Board with the necessary protection in the execution of their public duties.

28 **Electronic register of marriage certificates.** The Registrar of Muslim Marriages maintains a register of duly signed marriage certificates in book form. To overcome the challenge of storage of the physical marriage certificates that have accumulated over the decades, an amendment is proposed to facilitate the maintenance of an electronic register.

Summary

- 29 In summary, the proposed key amendments to the AMLA are as follows:
- a. Strengthen trustee management of wakafs;
 - b. Provide for the establishment of a separate sinking fund for each wakaf to support the future upkeep and development of the wakaf;
 - c. Require minor couples to attend a marriage preparation programme before marriage;
 - d. Require parental consent to a minor marriage;
 - e. Allow parties to be referred for counselling or a family support programme, at any stage of their divorce proceedings; and
 - f. Achieve fairer outcomes in matters related to ownership of household property, and the administration of estates.

References

30 Please refer to the draft Administration of Muslim Law Act (Amendment) Bill online on the REACH portal at www.reach.gov.sg.

Feedback

31 All interested members of the public are requested to submit their comments on the proposed amendments **no later than 6.00pm on 13 April 2017**, via the channels listed below. **Please indicate your name and the organisation you represent (if any) as well as contact details (email address and/or telephone number)** to enable us to follow up with you to clarify any points, if necessary.

- Email to: amlafedback@mccy.gov.sg,
- Post to: Ministry of Culture, Community, and Youth
Community Relations and Engagement Division
Level 2, Old Hill Street Police Station
Singapore 179369

Ministry of Culture, Community, and Youth
14 March 2017