

THE SUPREME HEAD OF THE MALAYSIAN FEDERATION

A: INTRODUCTION

When the Constitution of the Federation of Malaya was enacted¹ it created for the first time the office of the *Yang di-Pertuan Agong*.² Article 32(1) stated: "There shall be a Supreme Head of the Federation, to be called the *Yang di-Pertuan Agong*, who shall take precedence over all persons in the Federation..." The Malaysia Act³ has left the office of the *Yang di-Pertuan Agong* almost untouched though there has been some increase in his religious functions.⁴

The institution of the *Yang di-Pertuan Agong* is an original institution^{4a} and one with very few similarities⁵ either with the Monarch in England or the President in India (in spite of the fact that the rest of the constitutional institutions and provisions are modelled on the 1949 Indian Constitution).

The provisions of the Constitution which deal with the *Yang di-Pertuan Agong* are so numerous and varied that they occur not only in connection with the executive but also in relation to the legislature and judiciary. There is no doubt that a study of all these provisions will lead to a close analysis and appreciation of the Constitution as a whole. And it is with this thought in mind that the present study of the Supreme Head of the Federation has been undertaken.

The Federation of Malaya Constitutional Commission (The Reid

1. 31 August, 1957.
2. The literal translation of the words *Yang di-Pertuan Agong* is "one who is chief or head among the most prominent ones." The words are derived mainly from Sanskrit.
3. No. 26 of 1963, which amended the Constitution of the Federation of Malaya in order to provide for the admission of the former British colonies of North Borneo and Sarawak and the State of Singapore.
4. Malaysia Act, s. 7.
- 4a. See Groves, "Notes on the Constitution of the Federation of Malaya", *Papers on Malayan History*, (Singapore, 1962), at pp.268, 271, who suggests that the "inspiration for this office is from the Minang Kabau of Negri Sembilan, whose four territorial chiefs elected the *Yang di-Pertuan*." See also Winstedt, *The Malays, a Cultural History*, (London, 1950), at p. 87.
5. The way in which the *Yang di-Pertuan Agong* is elected is itself sufficient to make the institution unique and the fact that he must act as Constitutional monarch does not necessarily imply similarity to the Queen of England. Cf. Sheridan, *Malaya, Singapore and the Borneo Territories*, (The British Commonwealth Series, Vol. 9), at p. 49: "The position of the *Yang di-Pertuan Agong* is rather similar to that of the Queen of England."

Commission) was directed by its terms of reference to include provision for "a Constitutional Yang di-Pertuan Besar for the Federation to be chosen from among Their Highnesses the Rulers." In recommending the creation of the office of the *Yang di-Pertuan Agong* the Commission stated: "He will be a symbol of the unity of the country."⁶ And this is an important facet of the Constitution, for by allowing each of the nine Rulers⁷ the opportunity of assuming the office of the Supreme Head of the Federation, the Constitution tries to ensure that the people of the several States of the Federation identify themselves more closely with the Federation. It would therefore be unwise to enlarge the period of office of the *Yang di-Pertuan Agong* from the present period of five years to one for life.⁸ On the contrary, there may be good reason for suggesting that the *Yang di-Pertuan Negara* of Singapore and the Governors of Malaya, Penang, Sabah and Sarawak should also have the opportunity of being elected to the office of the *Yang di-Pertuan Agong*, though the present writers would be hesitant to make the suggestion in view of the many practical difficulties involved and also because it is felt that the strong bond of loyalty which exists between the people of the several States and their Rulers is not likely to exist in the case of the Governors who are appointed for a period of four years.

In order to be eligible to be elected to the office of the *Yang di-Pertuan Agong* a Ruler⁹ must be an adult, he must consent to be elected and he must be free from any physical or mental defect which might render him unsuitable for the office. He must also be the first on the election list and receive the support of at least four other Rulers.¹⁰

Once he is elected the *Yang di-Pertuan Agong* must, before he exercises his functions, take and subscribe before the Conference of Rulers and in the presence of the Lord President of the Federal Court the oath of office¹¹ set out in Part I of the Fourth Schedule. The executive authority of the Federation is then vested in the *Yang di-Pertuan Agong*,¹² though

6. The Report of the Federation of Malaya Constitutional Commission (1957), at p. 22.
7. The Governors of Penang and Malacca are not members of the Conference when they meet to elect the *Yang di-Pertuan Agong*. Neither are the Governors of Sabah and Sarawak nor the *Yang di-Pertuan Negara* of Singapore: See s. 6 of the Malaysia Act and the Fifth Schedule of the Constitution.
8. The suggestion that the period be enlarged was tentatively advanced by R. H. Hickling, "The First Five Years of the Federation of Malaya Constitution", (1962) 4 *Malaya L.R.* 183 at p. 186.
9. Since only the nine Rulers are elected to the office of the *Yang di-Pertuan Agong* it follows that the *Yang di-Pertuan Agong* must also be a male Malay and necessarily professing the Muslim religion.
10. These provisions will be discussed more fully when the election of the *Yang di-Pertuan Agong* is considered; e.g. do the words "for any other cause" in the Third Schedule, Part I, s. 1(1) give the Conference of Rulers an absolute unfettered discretion when a Ruler is otherwise suitable.
11. The English translation of the oath of office is set out in Part III of the Fourth Schedule.
12. Federal Constitution, art. 39.

it is *exercisable* not only by him but also *by the Cabinet or any Minister authorised by the Cabinet*.¹³

Although the term for which the *Yang di-Pertuan Agong* is elected is five years he may at any time resign his office. It is not necessary to obtain the approval of the Federal Parliament or even to inform them. All that is required is that the resignation must be in writing and that it must be addressed to the Conference of Rulers.¹⁴

By article 35(1) Parliament is required to provide a Civil List¹⁵ of the *Yang di-Pertuan Agong*. This Civil List is to be charged on the Consolidated Fund and it cannot be diminished during the *Yang di-Pertuan Agong's* continuance in office.¹⁶

B: ELECTION

The Constitution provides that the *Yang di-Pertuan Agong* shall be elected by the Conference of Rulers.¹⁷ When the Conference of Rulers meets for the purpose of electing the *Yang di-Pertuan Agong* it consists of the *Yang di-Pertuan Besar* of Negri Sembilan, the *Raja* of Perlis (the present *Yang di-Pertuan Agong*) and the seven *Sultans* of the other Malay States. It is further provided¹⁸ that the Conference of Rulers shall exercise its function of electing the *Yang di-Pertuan Agong* and the Deputy Supreme Head of the Federation in accordance with the provisions of the Third Schedule. An important feature of this election is the election list. For the first election held in 1957 the list comprised the States of all the Rulers in the order in which Their Highnesses then

13. The words in italics were added by s. 13 of the Constitution (Amendment) Act, 1962 (No. 14 of 1962), which was deemed to have come into force on Merdeka Day, *i.e.* 31st August, 1957.

14. Federal Constitution, art. 32(3).

15. In art. 160(2) "Civil list" is defined as the provision made for the maintenance of the *Yang di-Pertuan Agong*, his Consort, or Governor out of public funds.

16. By the Civil Lists Ordinance, 1957, the following sums are payable:—

- | | | | | |
|--|----|----|----|---|
| (a) The Privy Purse | .. | .. | .. | \$180,000 <i>per annum</i> . |
| (b) Entertainment | .. | .. | .. | \$ 36,000 <i>per annum</i> . |
| (c) Salaries of the Household and Court | .. | .. | .. | \$177,000 <i>per annum</i> . |
| (d) Expenses of the Household and Court | .. | .. | .. | \$158,000 <i>per annum</i> . |
| (e) Royal Bounty, Alms and Special Services. | .. | .. | .. | \$ 6,000 <i>per annum</i> . |
| (f) Cost of motor car | .. | .. | .. | \$ 52,000 (payable once during tenure of office). |

The *Raja Permaisuri Agong* receives an annual sum of \$30,000.

For remuneration of the Deputy Supreme Head see the Timbalan Yang di-Pertuan Agong (Remuneration) Ordinance, 1958 (No. 19 of 1958).

17. Federal Constitution, art. 32(3). See footnote 7 *supra*.

18. *Ibid.*, art. 38(2) (a).

recognised precedence among themselves.¹⁹ But for subsequent elections the list has been varied so that the State whose Ruler was elected was omitted from the list and after each election any States preceding on the list the State whose Ruler was elected were transferred (in the order in which they were then on the list) to the end of the list.²⁰ Whenever there is a change in the Ruler of a State on the list that State is transferred to the end of the list.²¹ When no State remains on the list because all the Rulers have been at some time the *Yang di-Pertuan Agong* or when no Ruler of a State then on the list is qualified for election or accepts office the list is to be reconstituted.²²

The purpose of the election list is to indicate to the Conference of Rulers who should be offered the office of the *Yang di-Pertuan Agong* and indeed section 2 of Part I of the Third Schedule states that

... the Conference of Rulers shall offer the office of *Yang di-Pertuan Agong* to the Ruler qualified for election whose State is first on the election list... and, if he does not accept the office, to the Ruler whose State is next on the list, and so on until a Ruler accepts the office.

But section 1 of Part I of the Third Schedule, after stating that a Ruler is not qualified to be elected *Yang di-Pertuan Agong* if he is a minor and if he has notified the keeper of the Rulers Seal that he does not desire to be elected, further states that the Conference of Rulers may by secret ballot resolve that a Ruler is not qualified to be elected *Yang di-Pertuan Agong* because he is "unsuitable by reason of infirmity of mind or body or for any other cause to exercise the functions of *Yang di-Pertuan Agong*"²³ (italics supplied). The words which have been italicized show very clearly the unnecessarily wide discretion given to the Conference of Rulers to exclude any of their number from the office of the *Yang di-Pertuan Agong* on any pretext whatever. The framers of the Constitution should have known exactly what they did or did not want to see in their *Yang di-Pertuan Agong* and indeed they went some of the way in stating some of the qualifications he must have, but then they added this very wide clause which makes acceptability to at least four other Rulers a requirement even though the Ruler concerned might be at the top of the election list. This clause then casts a reflection on the usefulness of the election list because it allows any five Rulers to go from the top of the list to the very bottom, disqualifying on the way any Ruler they wish "for any other cause." The only requirement is that they start at the

19. *Ibid.*, Third Schedule, Part I, s. 4(1) (a). The order of precedence was based on the dates of accession to the thrones of the several States. The 1957 list was as follows:— Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak.
20. *Ibid.*, Third Schedule, Part I, s.4(2) (a).
21. *Ibid.*, Third Schedule, Part I, s. 4(2) (b) — this is in accordance with the principle upon which the first election list was compiled, *i.e.* that the date of accession to the throne of a State determines the priority on the list.
22. According to the provisions in the Third Schedule, Part I, s. 4(3), (4). The writers have been unable to obtain the present election list as the Keeper of the Rulers Seal has indicated that it is available only to the Conference of Rulers.
23. Federal Constitution, Third Schedule, Part I, s. 1(1) (c).

top.²⁴ It is also possible (though happily a very slim possibility) that any five Rulers could decide that they would keep the office of the *Yang di-Pertuan Agong* to themselves exclusively. This would be against the wishes of the framers of the Constitution who intended the office of the *Yang di-Pertuan Agong* to rotate among *all* the Rulers of the several States. But there would be no redress for the Rulers who are excluded, because the Constitution provides that “the members of the Conference of Rulers may act in their discretion in any proceedings relating to ... the election or removal from office of the *Yang di-Pertuan Agong* or the election of the Deputy Supreme Head of the Federation.”²⁵

The election of the Deputy Supreme Head of the Federation (known as the *Timbalan Yang di-Pertuan Agong*) is also conducted by the Conference of Rulers.²⁶ Once he is elected the *Timbalan Yang di-Pertuan Agong* exercises the functions and has the privileges of the *Yang di-Pertuan Agong* during any vacancy in the office of the *Yang di-Pertuan Agong* and during any period during which the *Yang di-Pertuan Agong* is unable to exercise the functions of his office owing to illness, absence from the Federation or for any other cause.²⁷ The *Timbalan Yang di-Pertuan Agong* cannot exercise the functions of the *Yang di-Pertuan Agong* when the absence is for a period less than fifteen days.²⁸ The *Timbalan Yang di-Pertuan Agong* is elected for a term of five years, if he is elected at the same time as the *Yang di-Pertuan Agong*. However, if he is elected during a term of a *Yang di-Pertuan Agong*, he can only be elected for the remainder of that term. If during the term of the *Timbalan Yang di-Pertuan Agong* a vacancy occurs in the office of the *Yang di-Pertuan Agong*, the term of the *Timbalan* expires as soon as a new *Yang di-Pertuan Agong* is elected.²⁹ The Constitution provides that Parliament may entrust to a Ruler the exercise of the functions of the *Yang di-Pertuan Agong* either when there is no *Timbalan Yang di-Pertuan Agong* or when the *Timbalan* is ill, absent from the Federation or cannot otherwise exercise the functions of the *Yang di-Pertuan Agong*.³⁰ By virtue of this provision Parliament enacted the *Yang di-Pertuan Agong* (Exercise of Functions) Ordinance, 1957.³¹ Under this enactment the functions of the *Yang di-Pertuan Agong* are to be exercised by the Ruler who is first on the election list if he is able and willing to exercise such functions. If he is not able and willing then the functions are to be exercised by the Ruler next on the list and so on.³² The Conference of Rulers however can at the next meeting, by resolution,

24. *Ibid.*, Third Schedule, Part I, s. 2.

25. *Ibid.*, art. 38(6) (a).

26. *Ibid.*, art. 33(2).

27. *Ibid.*, art. 33(1).

28. *Ibid.*

29. Federal Constitution, art. 33(3).

30. *Ibid.*, art. 33(5).

31. No. 72 of 1957.

32. *Ibid.*, s. 3. This is one place where priority on the election list may mean something. But who is to determine if a Ruler is “able”?

appoint any Ruler to exercise the functions of the *Yang di-Pertuan Agong*.³³

Must a *Timbalan Yang di-Pertuan Agong* be automatically elected to the office of the *Yang di-Pertuan Agong*? Obviously there will be cases where a Ruler who would be first entitled to be offered the office of *Yang di-Pertuan Agong* on the death of the *Yang di-Pertuan Agong* last elected, might decline the office of *Timbalan Yang di-Pertuan Agong* and therefore the Ruler next on the election list would be offered the office of *Timbalan*. In such a case the Ruler who has declined the office of *Timbalan* will still be first on the election list and perhaps prepared to accept the office of *Yang di-Pertuan Agong* if offered, even though he declined the office of *Timbalan*. In this case automatic succession of the *Timbalan* to the office of the *Yang di-Pertuan Agong* cannot be justified. But there may equally well be a case (and these will occur more often) where a Ruler, who would be first entitled to be offered the office of *Yang di-Pertuan Agong* on the death of the *Yang di-Pertuan Agong* last elected, will be offered the office of *Timbalan* and accepts it. In this case, unless the Ruler is removed³⁴ from the office of *Timbalan* before the election for the office of *Yang di-Pertuan Agong*, it can be said, that the Conference of Rulers are acknowledging that he has all the qualifications for being *Yang di-Pertuan Agong* because a Ruler is not qualified to be the *Timbalan*, unless he is qualified to be elected *Yang di-Pertuan Agong*.³⁵ In these circumstances it is submitted, the *Timbalan* should be automatically elected to the office of the *Yang di-Pertuan Agong* and an exception should be made to the wide discretionary powers conferred on the members of the Conference of Rulers.³⁶

While on the subject of election to the office of the *Yang di-Pertuan Agong*, we might speculate on the implications of the entry of the State of Brunei into the Malaysian Federation. As a hereditary Ruler the *Sultan* of Brunei would be entitled to be a member of the Conference of Rulers and to be elected *Yang di-Pertuan Agong*. What is not certain however is the place he will receive on the election list. It is possible that he may be placed at the end of the list as the newest entrant to the Malaysian Federation. It is equally possible that his date of accession to the Sultanate of Brunei might be taken into consideration and then he will receive the appropriate priority. What is certain however is that in so far as Brunei's entry may affect future elections for the office of the *Yang di-Pertuan Agong* or otherwise affect the position of the Rulers, the consent of the Conference of Rulers would have to be obtained for any law providing for entry.³⁷ The Constitution declares that "No law

33. *Ibid.*, s. 5. The discretionary power of the Conference of Rulers is here re-asserted.
34. This point loses some if its validity if the Conference of Rulers concedes that it has no power to remove a *Timbalan Yang di-Pertuan Agong* from office. See *infra*.
35. Third Schedule, Part II, s. 5(a).
36. By art. 38(6) (a) of the Federal Constitution.
37. For a discussion of the constitutional requirements for an amendment to the Constitution admitting new States, see *The Government of the State of Kelantan v. The Government of the Federation of Malaya and Tunku Abdul Rahman Putra Al-Haj* (1963) 29 M.L.J. 355.

directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers.”³⁸ And whatever the political implications of the entry of the State of Brunei into the Federation might be, there is no doubt that the position of Their Highnesses will in some way be affected by the entry of the *Sultan* of Brunei into membership of the Conference of Rulers and therefore the consent of the Conference of Rulers will have to be obtained before the State of Brunei can be admitted into the Malaysian Federation.

C: REMOVAL

The *Yang di-Pertuan Agong* may be removed from office by the Conference of Rulers.³⁹ This may be effected at any time and for any reason and the decision cannot be questioned, because the Constitution provides that the members of the Conference of Rulers may act in their discretion in effecting the removal from office of the *Yang di-Pertuan Agong*.⁴⁰ All that is required is that a resolution of the Conference of Rulers to remove the *Yang di-Pertuan Agong* must have the support of at least five members of the Conference.⁴¹ It is regrettable that removal from so high an office is not hedged with adequate safeguards. In no other Constitution known to the writers, can the Supreme Head of the State be removed by a simple majority,⁴² without the necessity of even stating a reason for removal,⁴³ particularly when one of those removing the Supreme Head of the State will be entitled to succeed to the office of Supreme Head. There is something to be said for restricting the discretionary power of the members of the Conference of Rulers when they are removing the *Yang di-Pertuan Agong* from office. The Constitution also provides that the *Yang di-Pertuan Agong* must cease to hold office if he ceases to be a Ruler.⁴⁴

Although the *Timbalan Yang di-Pertuan Agong* must cease to hold the office of *Timbalan* on ceasing to be a Ruler,⁴⁵ there is no provision in the Constitution for the removal of the *Timbalan Yang di-Pertuan Agong* from office. There seems to be no good reason why provision should not have been made in the Constitution for the removal of the *Timbalan* from office in the same way as the provisions which exist in the Constitution for the removal of the *Yang di-Pertuan Agong* from office. The argument that the *Timbalan* will be exercising the functions of the *Yang*

38. Federal Constitution, art. 38(4) and see also art. 159(5).

39. *Ibid.*, art. 32(3).

40. *Ibid.*, art. 38(6) (a).

41. *Ibid.*, Third Schedule, Part III, s. 8.

42. Five out of nine Rulers.

43. See the elaborate provisions for removal by impeachment of the Indian President: art. 61 of the Indian Constitution, 1949. And for the impeachment of the President of Pakistan, art. 35 of the Pakistan Constitution, 1956 and art. 14 of the Pakistan Constitution, 1962.

44. Federal Constitution, art. 32(3).

45. *Ibid.*, art. 33(2).

di-Pertuan Agong for extremely short periods and therefore a *Timbalan* even with a disqualification will not bring all that much discredit to the office of the *Yang di-Pertuan Agong* is in our view completely unacceptable for several reasons. First of all, the *Timbalan* will not be able to assume the office of the *Yang di-Pertuan Agong* unless the absence is for a period of more than fifteen days.⁴⁶ The framers of the Constitution envisaged the possibility of a longer absence but they did not, it seems, envisage the possibility of disqualifications attaching to a *Timbalan* after his election and did not provide for his removal from office. Secondly, while a *Timbalan* (even with a disqualification) is in office, a second *Timbalan* cannot be elected because there no provision in the Constitution for two *Timbalans*. It is true that the *Yang di-Pertuan Agong* (Exercise of Functions) Ordinance, 1957 provides⁴⁷ that the Ruler, whose State is first on the Election List, can exercise the functions of the *Timbalan* when the *Timbalan* himself cannot exercise those functions due to illness, absence from the Federation for more than fifteen days or to "any other cause." But it is not stated who will determine when the *Timbalan* cannot exercise the functions of the *Yang di-Pertuan Agong* due to "any other cause" and indeed the decision seems to be left to the *Timbalan* himself because section 7⁴⁸ states: "A Ruler who is exercising the sovereign functions under this Ordinance shall cease to exercise such functions as soon as the *Yang di-Pertuan Agong* or the Deputy Supreme Head resumes or assumes such functions." The discretion here is apparently left to the *Yang di-Pertuan Agong* and to the *Timbalan Yang di-Pertuan Agong*. Finally we should like to suggest that it would be wrong to let a *Timbalan* continue in office if it is found, after he is elected, that he has some disqualification which will prevent him from being elected *Yang di-Pertuan Agong*. The Constitution declares:⁴⁹ "A Ruler is qualified to be elected Deputy Supreme Head unless ... he would not be qualified to be elected *Yang di-Pertuan Agong*." There is no reason why a disqualification which would prevent a Ruler from being *elected Timbalan* should not prevent him from *continuing in the office of Timbalan*, and the following amendments to the Constitution are suggested, in order to allow for the removal of the *Timbalan Yang di-Pertuan Agong*. After the words "addressed to the Conference of Rulers" in article 33(2) the words "or be removed from office" should be added. And after the words "or the election" in article 38(6) (a) the words "and removal" should be added. These additions may be very slight indeed, but they will have the effect of permitting the removal of the *Timbalan Yang di-Pertuan Agong* from office if it is ever found necessary, and of resolving any ambiguity that may arise when it is found, after the election of a *Timbalan*, that he is unsuitable to assume the office (albeit temporarily) of the *Yang di-Pertuan Agong*.

46. *Ibid.*, art. 33(1).

47. No. 72 of 1957, s. 3.

48. *Ibid.*

49. Federal Constitution, Third Schedule, Part II, s. 5.

D: IMMUNITY

The Constitution of the Federation of Malaysia states that the *Yang di-Pertuan Agong* shall not be liable to any proceedings whatsoever in any court.⁵⁰ When the *Timbalan Yang di-Pertuan Agong* is exercising the functions of the *Yang di-Pertuan Agong* he is entitled to all the privileges of the *Yang di-Pertuan Agong*⁵¹ and therefore entitled to this complete immunity from legal process during any period in which he assumes the office of the *Yang di-Pertuan Agong*. The immunity which has been granted to the Indian President by the Indian Constitution of 1949 is rather less complete.⁵² Though the Indian President is completely immune from any criminal proceedings during his term of office⁵³ and cannot be arrested or imprisoned during his term of office⁵⁴ yet civil proceedings in respect of any act done or purported to be done by him in his personal capacity can be instituted against him after two months notice in writing has been given to him.⁵⁵ In the Malaysian Constitution no distinction has been made between acts done in an official or personal capacity or between criminal and civil proceedings. The wording of article 32(1) suggests that the immunity from legal process of the *Yang di-Pertuan Agong* is complete and unqualified and applies to both civil and criminal proceedings and to acts done both in an official and in a personal capacity.^{55a}

E: DISABILITIES

During any period that a Ruler holds the office of the *Yang di-Pertuan Agong* he is not permitted to exercise his functions as Ruler of his State except those of Head of the Muslim religion.⁵⁶ He is allowed however to exercise as Ruler of his State any power vested in him to amend the Constitution of his State, and to appoint a Regent or a member of a Council of Regency in case the Regent or a member of the Council of Regency dies or becomes incapable of performing his duties.⁵⁷ The *Yang di-Pertuan Agong* cannot receive any emoluments of any kind from the State of which he is the Ruler,⁵⁸ but provision is made in pursuance of article 35 of the Malaysian Constitution for the maintenance of the

50. *Ibid.*, art. 32(1).

51. *Ibid.*, art. 33(1).

52. The provisions granting immunity to the Indian President are to be found in art. 361 of the Indian Constitution of 1949.

53. Indian Constitution, art. 361(2).

54. *Ibid.*, art. 361(3).

55. *Ibid.*, art. 361(4).

55a. But note that any Ruler of a State is immune from judicial proceedings brought against him in his *personal* capacity. See Federal Constitution, art. 181(2).

56. Federal Constitution, art. 34(1).

57. *Ibid.*, art. 34(8) (a) (b).

58. *Ibid.*, art. 34(4).

Yang di-Pertuan Agong out of public funds.⁵⁹ The Constitution also states that the *Yang di-Pertuan Agong* shall not hold any office of profit.⁶⁰ By section 5 of the Malaysia Act the term "office of profit" has been given a new definition⁶¹ and this definition substitutes the old definition which was to be found in clause (2) of article 160 of the 1957 Federation of Malaya Constitution. The Indian President is not permitted to hold any *other* office of profit⁶² and so the office of the Indian President is itself regarded as an office of profit unlike the office of the *Yang di-Pertuan Agong*. Another disability that attaches to the *Yang di-Pertuan Agong* is that he cannot "actively engage in any commercial enterprise."⁶³ Although this disability has not been clearly defined it has been suggested⁶⁴ that "a possible analogy is the rule as applied to members of the English bar." It is doubtful if the analogy is quite accurate because members of the English bar can assume directorships in companies,⁶⁵ a position which quite obviously the *Yang di-Pertuan Agong* is incapable of assuming by virtue of article 34(3) of the Malaysian Constitution. The disability would seem to preclude the participation of the *Yang di-Pertuan Agong* in any business activity though passive participation as a shareholder would not seem to be ruled out. In this connection it may be mentioned that as a matter of practice, Presidents of the United States of America hand over all their monetary assets^{65a} to an investing committee as soon as they assume office. The investing committee then invests these assets in enterprises the identity of which is not disclosed to the President until he relinquishes his office. This practice might well be emulated by those Rulers who have the honour of being elected to the office of *Yang di-Pertuan Agong*. Finally, the *Yang di-Pertuan Agong* cannot be absent from the Federation without the consent of the Con-

59. Civil List Ordinance, 1957.

60. Federal Constitution, art. 34(2).

61. "Office of Profit" means any whole time office in any of the public services, and includes:

- (a) the office of any judge of the Federal Court or of a High Court; and
- (b) the office of Auditor-General; and
- (c) the office of a member of the Election Commission, of a member (other than an *ex officio* member) of a Commission to which Part X applies, or of a member (other than an *ex officio* member) of any corresponding Commission established by the Constitution of a State; and
- (d) any other office not specified in clause (3) of art. 132 which may be declared by Act of Parliament to be an office of profit.

62. Indian Constitution, 1949, art. 59(2).

63. Federal Constitution, art. 34(3).

64. By L. A. Sheridan, *Federation of Malaya Constitution*, (Singapore, 1961), at p. 43.

65. See W. M. Boulton, *Conduct and Etiquette at the Bar*, (3rd ed. 1961), at p. 13, where he says "there is no objection to a practising barrister acting as an ordinary director of companies of good standing carrying on a business which is free from anything of a derogatory nature."

65a. These assets are generally holdings of stocks and shares in companies which might be able to secure financial advantage through Presidential favour.

ference of Rulers for more than fifteen days, unless he is on a State visit to another country.⁶⁶

If the *Timbalan Yang di-Pertuan Agong* or any other Ruler exercises the functions of the *Yang di-Pertuan Agong* for more than fifteen days, he is subject to all the disabilities to which the *Yang di-Pertuan Agong* is subject.⁶⁷ The only disability to which the *Raja Permaisuri Agong* is subject is that she cannot hold any office under the Federation or any State.⁶⁸

F: FUNCTIONS

With the advice of the Cabinet

In exercising his functions under the Malaysian Constitution or federal law the *Yang di-Pertuan Agong* must act with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet.⁶⁹ There are of course some functions which he exercises in his discretion⁷⁰ or after consultation with or on the recommendation of some person or body of persons other than the Cabinet,⁷¹ but for the exercise of a vast majority of his functions the *Yang di-Pertuan Agong* must act as a constitutional monarch and seek the advice of his Cabinet. The *Yang di-Pertuan Agong* can appoint the Cabinet⁷² which will advise him in the exercise of his functions, and he is entitled to receive any information concerning the government of the Federation which is available to the Cabinet.⁷³ When the Conference of Rulers deliberates on matters of national policy the *Yang di-Pertuan Agong* must be accompanied by the Prime Minister and the deliberations shall be among the functions exercised by the *Yang di-Pertuan Agong* in accordance with the advice of the Cabinet.⁷⁴

In his discretion

The Malaysian Constitution provides that the *Yang di-Pertuan Agong* may act in his discretion in the appointment of a Prime Minister.⁷⁵ As the Prime Minister must be a member of the House of Representatives

66. Federal Constitution, art. 34(5).

67. *Ibid.*, art. 34(7).

68. *Ibid.*, art. 34(6).

69. *Ibid.*, art. 40(1).

70. See art. 40(2), discussed *infra*.

71. Federal Constitution, art. 40(3) — see in this connection art. 42(4) (a).

72. The way the Cabinet (or *Juma'ah Mentri*) is appointed is indicated in art. 43(2).

73. Federal Constitution, art. 40(1).

74. *Ibid.*, art. 38(3).

75. *Ibid.*, art. 40(2) (a).

who is "likely to command the confidence of the majority of the members of that House,"⁷⁶ this discretion will only be important when the majority party has no established leader.⁷⁷ The *Yang di-Pertuan Agong* may also act in his discretion in the withholding of consent to a request for the dissolution of Parliament.⁷⁸ This may not seem an important function but if the Prime Minister ceases to command the confidence of the majority in the House of Representatives and the *Yang di-Pertuan Agong* refuses to accede to the request of the Prime Minister to dissolve Parliament, then the Prime Minister must tender the resignation of the Cabinet⁷⁹ and the *Yang di-Pertuan Agong* can appoint a new Prime Minister. The *Yang di-Pertuan Agong* may also act in his discretion in determining when a meeting of the Conference of Rulers will be held. But this only applies to meetings concerned solely with the privileges, position, honours and dignities of Their Highnesses.⁸⁰ The Constitution ensures that Federal law will not usurp or qualify the discretionary functions of the *Yang di-Pertuan Agong*.⁸¹ Finally the *Yang di-Pertuan Agong* in his discretion appoints members of the Public Services Commission⁸² and the Railway Service Commission⁸³ and can in his discretion appoint a member of the Commissions constituted under Part X of the Constitution for a term shorter than the normal five year term.⁸⁴

Assent

For a Bill to become law it is necessary that it be passed by both Houses of Parliament⁸⁵ and be assented to by the *Yang di-Pertuan Agong*.⁸⁶ The *Yang di-Pertuan Agong* signifies his assent to a Bill by causing the Public Seal⁸⁷ to be affixed to the Bill.⁸⁸ There is an air of

76. *Ibid.*, art. 43(2) (a).

77. Two such occasions have occurred recently in England. In 1956 the Queen chose Mr. Harold MacMillan as Prime Minister on the resignation of Mr. Anthony Eden, there being no clear leader. And more recently in 1963 the Queen chose Sir Alex Douglas-Home when Mr. Harold MacMillan resigned and left no obvious successor.

78. Federal Constitution, art. 40(2) (b).

79. *Ibid.*, art. 43(4).

80. *Ibid.*, art. 40(2) (c).

81. *Ibid.* art. 40(3) (a).

82. *Ibid.* art. 139(4) — but the *Yang di-Pertuan Agong* must consider the advice of the Prime Minister and consult the Conference of Rulers.

83. *Ibid.*, art. 141(2) — again the *Yang di-Pertuan Agong* must consider the advice of the Prime Minister and consult the Conference of Rulers.

84. Art. 143(1) (a) — the *Yang di-Pertuan Agong* must in this case consider the advice of the Prime Minister.

85. Except in the case of Money Bills. See art. 68 of the Federal Constitution.

86. Federal Constitution, art. 66.

87. *Ibid.*, art. 36 requires the *Yang di-Pertuan Agong* to keep and use the Public Seal of the Federation.

88. *Ibid.*, art. 66(4).

unreality which surrounds the assent of the *Yang di-Pertuan Agong* because the assent can never be withheld. This aspect of the Constitution was severely criticised by Mr. Justice Abdul Hamid in his note of dissent to the proposals of the Reid Commission where he said:

If this article is allowed to remain in the draft as it stands the Yang di-Pertuan (Besar) Agong will have no choice in the matter of assent. He shall be bound to assent to the Bill passed by the two Houses. In other words a Bill passed by the two Houses shall become law. If this is the intention, it is far better to approach this subject direct by saying... that a Bill passed by the two Houses shall become law. No mention of assent is necessary at all. But if assent is to be mentioned the Constitution should give the power to the Yang di-Pertuan (Besar) Agong to accord assent or to withhold assent. In all constitutions the power to accord assent goes with the power to withhold assent.⁸⁹

In England the Royal Assent may be refused, though the last time this was done was by Queen Anne in 1707.⁹⁰ And in India, the Constitution specifically provides that in relation to a Bill presented for his assent the President "shall declare either that he assents to the Bill, or that he withholds assent therefrom ..."⁹¹

In relation to Parliament

Although the *Yang di-Pertuan Agong* is one of the constituent parts of Parliament,⁹² there are certain functions which he exercises in relation to Parliament as a whole and in relation to the Houses of Parliament separately. He can summon, prorogue or dissolve Parliament.⁹³ And he may address either House of Parliament or both Houses jointly.⁹⁴ The *Yang di-Pertuan Agong* is also entrusted with the task of appointing thirty-two Senators.⁹⁵ Although the choice of Senators is not specifically left to the discretion of the *Yang di-Pertuan Agong* by the Constitution, it is arguable that this is what was intended because article 45(2) of the Constitution indicates that the Senators shall be persons who in the opinion of the *Yang di-Pertuan Agong* have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, etc. The *Yang di-Pertuan Agong* can remove a disqualification for membership of either House of Parliament⁹⁶ which has been incurred

89. Report of the Federation of Malaya Constitutional Commission (1957), at p. 102.

90. See Hood Phillips, *Constitutional and Administrative Law*, (3rd ed., 1962), at p. 105.

91. Constitution of India, 1949, art. 111.

92. Federal Constitution, art. 44.

93. *Ibid.*, art. 55(1), (2).

94. *Ibid.*, art. 60.

95. *Ibid.*, art. 45(1) (b) — the number was first increased from fifteen to twenty-two by s. 8 of the Malaysia Act, and then again increased to the present figure by s. 6 of the Constitution (Amendment) Act, No. 19 of 1964.

96. *Ibid.*, art. 48(3).

because of an election offence⁹⁷ or because of a conviction for any other offence.⁹⁸ Finally, it is the *Yang di-Pertuan Agong* who appoints the Clerk to the Senate and the Clerk to the House of Representatives.⁹⁹

In relation to the public services and other commissions

Article 132 of the Federal Constitution states that for the purposes of the Constitution the public services are:

- (a) the armed forces;
- (b) the judicial and legal service;
- (c) the general public service of the Federation;
- (d) the police force;
- (e) the railway service;
- (f) the joint public services mentioned in Article 133;
- (g) the public service of each State.

The *Yang di-Pertuan Agong* exercises certain functions in relation to nearly all these services and, subject to the provisions of Federal law, he can regulate the qualifications for appointment and conditions of service of persons in the public services.¹

Apart from being the Supreme Commander of the armed forces of the Federation,² the *Yang di-Pertuan Agong* is also responsible for appointing most of the members of the Armed Forces Council including the Chief of the Armed Forces Staff.³ The Armed Forces Council is responsible under the general authority of the *Yang di-Pertuan Agong* for the command, discipline and administration of the armed forces.⁴ The *Yang di-Pertuan Agong* is also empowered to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial.⁵

In relation to the judicial and legal service, the *Yang di-Pertuan Agong* is responsible for appointing one or more members of the Judicial

97. *Ibid.*, art.48(1) (d).

98. *Ibid.*, art. 48(1) (e).

99. *Ibid.*, art. 65(2).

1. Federal Constitution, art. 132(2) — except of those persons in the public service of each State.

2. *Ibid.*, art. 41.

3. *Ibid.*, art. 137(3) (c), (e), (f), (g), (h).

4. *Ibid.*, art. 137(1).

5. *Ibid.*, art. 42(1).

and Legal Service Commission.⁶ This Commission which was established by article 138 of the 1957 Constitution was abolished by section 20 of the Constitution (Amendment) Act, 1960, (No. 10 of 1960), and again established in a reconstituted form by section 52 of the Malaysia Act.⁷ The jurisdiction of the Commission extends to all members of the judicial and legal service.

The *Yang di-Pertuan Agong* is responsible for appointing the members of the Public Services Commission.⁸ Although he appoints the chairman, deputy chairman and other members⁹ in his discretion, the *Yang di-Pertuan Agong* must consider the advice of the Prime Minister and consult the Conference of Rulers.¹⁰

In relation to the Police Force Commission which is responsible for the appointment, confirmation, emplacement on the permanent or pensionable establishment, promotion, transfer and exercise of disciplinary control over members of the police force,¹¹ the *Yang di-Pertuan Agong* is required to appoint three members to serve the Commission, one of whom must also be a member of the Public Services Commission.¹²

The Railway Service Commission whose jurisdiction extends to all persons who are members of the Railway service is established by article 141 of the Federal Constitution. The *Yang di-Pertuan Agong* is required to appoint the chairman, deputy chairman and other members¹³ in his discretion but again he must consider the advice of the Prime Minister and consult the Conference of Rulers.¹⁴

Each of the Commissions which have just been mentioned must make an annual report on its activities to the *Yang di-Pertuan Agong* and this report must be laid before both Houses of Parliament.¹⁵ It is also provided in the Constitution that the *Yang di-Pertuan Agong* may designate as special posts any post held by the head or deputy head of a department or by an officer who in his opinion is of similar status and as soon as this is done, the Commission usually concerned with such appointments will not make the appointment to such a post but the appointment will be made by the *Yang di-Pertuan Agong* after considering the advice of the

6. *Ibid.*, art. 138(2) (c).

7. *Ibid.*, art. 138.

8. *Ibid.*, art. 139(4).

9. *Ibid.*, — not less than four nor more than ten.

10. *Ibid.*

11. Federal Constitution, art. 140(1).

12. *Ibid.*, art. 140(3) (d), (e).

13. *Ibid.*, art. 141(2) — not less than two nor more than six.

14. *Ibid.*

15. *Ibid.*, art. 146(1).

Prime Minister and on the recommendation of the appropriate Commission.¹⁶ If an appointed member of a Commission has been granted leave of absence by the *Yang di-Pertuan Agong* or is unable, owing to his absence from the Federation, illness or any other cause to discharge his functions as a member, then the *Yang di-Pertuan Agong* may appoint, to exercise his functions during that period, any person who would be qualified to be appointed in his place.¹⁷

Finally let us look at the functions which the *Yang di-Pertuan Agong* exercises in relation to the Election Commission, which is responsible for the conduct of elections to the House of Representatives and the Legislative Assemblies. The Election Commission consisting of a chairman and three other members is appointed by the *Yang di-Pertuan Agong* after consultation with the Conference of Rulers.¹⁸ Members of the Commission may resign¹⁹ by writing to the *Yang di-Pertuan Agong* and may be removed by the *Yang di-Pertuan Agong* under certain conditions.²⁰ The *Yang di-Pertuan Agong* must approve the terms and conditions of service of those employed by the Election Commission²¹ and must select two officers with special knowledge of the topography of, and the distribution of the population of the unit of review for the Federal elections.²²

In relation to the Judiciary

The Lord President of the Federal Court, the Chief Justices of the High Courts and the other judges of the Federal Court and of the High Courts are appointed by the *Yang di-Pertuan Agong*, acting on the advice of the Prime Minister, after consulting the Conference of Rulers.²³ When a judge of one High Court is being transferred to another High Court, the *Yang di-Pertuan Agong* can make the transfer on the recommendation of the Lord President of the Federal Court, after consulting the Chief Justices of the two High Courts. There is no need in such a case to seek the advice of the Prime Minister.²⁴ The *Yang di-Pertuan Agong* can extend the tenure of office of a judge of the Federal Court beyond the age of sixty-five years but for not more than six months beyond that age.²⁵ A judge of the Federal Court may resign his office by writing to the *Yang*

16. *Ibid.*, art. 144(3) — this provision does not apply to the judicial and legal service.

17. *Ibid.*, art. 142(4) (a).

18. *Ibid.*, art. 114(1).

19. *Ibid.*, art. 114(3).

20. See *ibid.*, art. 114(4).

21. *Ibid.* art. 115(1).

22. *Ibid.*, art. 115(2).

23. *Ibid.*, art. 122B(1) — s. 17(1) Malaysia Act.

24. *Ibid.*, art. 112C.

25. *Ibid.*, art. 125(1).

di-Pertuan Agong,²⁶ but the *Yang di-Pertuan Agong* cannot remove a judge from office unless a tribunal appointed by the *Yang di-Pertuan Agong* under article 12(3) & (4) of the Federal Constitution recommends that he remove the judge from office. Pending the report of the tribunal, the *Yang di-Pertuan Agong* may on the recommendation of the Prime Minister and in the case of any other judge after consulting the Lord President, suspend a judge of the Federal Court from the exercise of his functions.²⁷

The *Yang di-Pertuan Agong* is entitled to refer to the Federal Court for its opinion any question as to the effect of any provision of the Constitution, and the Federal Court must pronounce in open court its opinion on any question so referred to it.²⁸ The *Yang di-Pertuan Agong* is responsible for making arrangements with the Queen of England for the reference to the Judicial Committee of the Privy Council of appeals from the Federal Court.²⁹ Finally, the *Yang di-Pertuan Agong* is allowed to determine at what place in the Borneo States the High Court in Borneo will have its principal registry,³⁰ and he is given the authority to appoint a judicial commissioner for the despatch of business of the High Court in Borneo in an area in which a judge of the court is not for the time being available to attend to business of the Court.³¹

In relation to the Muslim religion

Islam is the religion of the Federation.³² Although each Ruler is Head of the Muslim religion in his own State, he can authorise the *Yang di-Pertuan Agong* to represent him in any acts, observances or ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole.³³ The Federal Constitution requires the Constitutions of the States of Malacca, Penang and Singapore to make provision for conferring on the *Yang di-Pertuan Agong* the position of Head of the Muslim religion in those States.³⁴ This has been done

26. *Ibid.*, art. 125(2).

27. *Ibid.*, art. 125(5).

28. *Ibid.*, art. 130.

29. *Ibid.*, art. 131(1) — the arrangements have been made and are set out in an Agreement between the Queen and the *Yang di-Pertuan Agong*, concluded on March 4, 1958, the text of which appears in the *Federal Government Gazette* of April 10, 1958 (Notification No. 1254). See also the Courts of Judicature Act, 1964. (No. 7 of 1964) and Agreement dated the 10th December, 1963 made between the Queen and the *Yang di-Pertuan Agong* (Malaysia L.N. 30 of 1964).

30. *Ibid.*, art. 121(1) (b).

31. *Ibid.*, art. 122A(3). The *Yang di-Pertuan Agong* must act on the advice of the Lord President of the Federal Court.

32. *Ibid.*, art. 3(1).

33. *Ibid.*, art. 3(2) — by virtue of s. 7(3) of the Malaysia Act, Sabah and Sarawak are excluded from “the Federation as a whole” for the purpose of this article.

34. *Ibid.*, art. 3(3) — These three States are States which do not have a Ruler. Sabah and Sarawak also do not have Rulers but there seems to be no provision conferring the office of Head of the Muslim religion in those States on the *Yang di-Pertuan Agong*.

by article 5(1) of the Malacca Constitution,³⁵ by article 5(1) of the Penang Constitution³⁶ and by article 6(1) of the Singapore Constitution.³⁷ The Federal Constitution also provides that the power to grant pardons, reprieves and respites in respect of, or to remit, suspend or commute sentences imposed by any Court established under any law regulating Muslim religious affairs in the State of Malacca, Penang or Singapore shall be exercisable by the *Yang di-Pertuan Agong* as Head of the Muslim religion in the State.³⁸ Finally, as we mentioned earlier, although the *Yang di-Pertuan Agong* is precluded from exercising any functions in his own State while he is the *Yang di-Pertuan Agong*, an exception is made in the case of his functions in relation to the Muslim religion, and he is allowed to remain the Head of the Muslim religion in his own State.³⁹

In relation to the special position of Malays

Article 153(1) of the Federal Constitution states that it is the responsibility of the *Yang di-Pertuan Agong* to safeguard the special position of the Malays and the legitimate interests of other communities in accordance with the provisions of that article. The *Yang di-Pertuan Agong* is required to exercise his functions under the Constitution and federal law in such a way as to safeguard the special position of the Malays and is required to ensure that a reasonable proportion of positions in the public service and of scholarships and other educational privileges accorded by the Federal Government is reserved for Malays. He is also required to ensure that a reasonable proportion of any permits or licenses which may be required by federal law for the operation of any trade or business is issued to Malays.⁴⁰ In exercising these functions however the *Yang di-Pertuan Agong* must not do anything which violates article 8 of the Federal Constitution. It is interesting that in a recent case in the High Court at Ipoh Ong J. ruled that the entry on a taxi licence that the vehicle can be driven only by a person of the Malay race was not a valid condition.⁴¹ The *Yang di-Pertuan Agong* may give general directions to any authority or Commission to ensure that an adequate number of scholarships, exhibitions *etc.*, and positions in the public service is reserved for Malays when that authority or Commission is making its

35. Notification No. 887 (New Series).

36. Notification No. 886 (New Series).

37. No. 1493 of 1963.

38. Federal Constitution, art. 42(10) — see s. 4 of the Constitution (Amendment) Act, 1960, and s. 7(2) of the Malaysia Act, 1963.

39. *Ibid.*, art. 34(1).

40. *Ibid.*, art. 153(2).

41. See *Ghazali v. Public Prosecutor* (1964) 30 M.L.J. 156. The decision is on the ground that the Road Traffic Ordinance, 1958, did not authorise the licensing board to impose such a condition. But it is open to the licensing board to grant licences only to persons of the Malay race (see s. 118(5) of the Road Traffic Ordinance, 1958, (No. 49 of 1958)) until such time as there is "effective participation of Malays in the road transport industry."

awards or appointments. And the Commission or authority must duly comply with the directions of the *Yang di-Pertuan Agong*.⁴²

In an Emergency

If the *Yang di-Pertuan Agong* is satisfied that a grave emergency exists whereby the security or economic life of the Federation or of any part thereof is threatened, he may issue a Proclamation of Emergency.⁴³ If Parliament is not sitting when a Proclamation of Emergency is issued, the *Yang di-Pertuan Agong* can promulgate Ordinances having the force of law until such time as Parliament (which he must summon as soon as practicable) is sitting, and he must then lay before both Houses of Parliament the proclamation of emergency and any ordinance promulgated by him in the interim period.⁴⁴ The Houses of Parliament can annul the proclamation or ordinance but this will not affect anything previously done by virtue of the proclamation or ordinance neither will it affect the power of the *Yang di-Pertuan Agong* to issue a new proclamation of emergency or to promulgate any ordinance under article 150(2) of the Federal Constitution.

No citizen can be detained for a period longer than three months under preventive detention legislation made under Part XI of the Constitution unless an advisory board has considered representations made by him and then recommended that he be detained.⁴⁵ This advisory board which consists of a chairman and two other members is appointed by the *Yang di-Pertuan Agong* after consultation with the Lord President of the Federal Court.⁴⁶

Although the words used in article 150(1) of the Constitution are "if the *Yang di-Pertuan Agong* is satisfied that a grave emergency exists ..." etc., it is generally assumed that he must act on the advice of the Cabinet.⁴⁷ It is true that the words "in his discretion" have not been used but is this the only magic formula? It is reasonable however to assume that the *Yang di-Pertuan Agong* will generally act on the advice of the Cabinet and the observation that "the Cabinet's right to expect the President to act on its advice goes with the principle of ministerial responsibility"⁴⁸ is equally true of the Malaysian Constitution as it is of the Indian Constitution.

42. Federal Constitution, art. 153(3).

43. *Ibid.*, art. 50(1) — the words "whether by war or external aggression or internal disturbance" were deleted by s. 39(1) of the Malaysia Act. Such a Proclamation of Emergency was issued by the *Yang di-Pertuan Agong* on 3rd September, 1964 at a time when Indonesia was rapidly intensifying its "confrontation" activities against Malaysia: see Malaysia L.N. 271 of 1964.

44. *Ibid.*, art. 150(2), (3).

45. *Ibid.*, art. 151(1).

46. *Ibid.*, art. 151(2).

47. See L. A. Sheridan, *Federation of Malaya Constitution*, (Singapore, 1961), at p. 138.

48. K. K. Koticha "Presidential Intervention under Article 356 of the Constitution of India" (1959-60) 2 *Journal of the Indian Law Institute* 125.

Miscellaneous functions

The *Yang di-Pertuan Agong* is responsible for appointing an Attorney-General for the Federation. The appointment must be made on the advice of the Prime Minister.⁴⁹ The Attorney-General holds office during the pleasure of the *Yang di-Pertuan Agong*, he receives such remuneration as the *Yang di-Pertuan Agong* may determine and it is his duty to advise the *Yang di-Pertuan Agong* or the Cabinet or any Minister upon any legal matters that may be referred to him.⁵⁰

The Auditor-General is also appointed by the *Yang di-Pertuan Agong*.⁵¹ The terms and conditions of his service are to be determined by federal law and subject to the provisions of federal law by the *Yang di-Pertuan Agong*.⁵² The Auditor-General must audit and report on the accounts of the Federation. These reports are to be submitted to the *Yang di-Pertuan Agong* who must lay them before the House of Representatives.⁵³

The *Yang di-Pertuan Agong* can appoint Ministers from among the members of either House of Parliament. The Ministers must be appointed on the advice of the Prime Minister.⁵⁴ Before a Minister exercises the functions of his office he must take the oath of office and the oath of secrecy in the presence of the *Yang di-Pertuan Agong*.⁵⁵ Ministers hold office at the pleasure of the *Yang di-Pertuan Agong* and their appointment can be revoked by the *Yang di-Pertuan Agong* on the advice of the Prime Minister.⁵⁶ The *Yang di-Pertuan Agong* can also appoint Assistant Ministers on the advice of the Prime Minister. They also hold office at the pleasure of the *Yang di-Pertuan Agong* and their appointments can also be revoked by the *Yang di-Pertuan Agong* on the advice of the Prime Minister.⁵⁷

Any interest in land vested in the Federation may be disposed of by order of the *Yang di-Pertuan Agong*. The disposition shall be made conditional on the land being used for a federal purpose and every order of the *Yang di-Pertuan Agong* must be laid before both Houses of Parliament and does not take effect until it is approved by resolution of each House.⁵⁸

49. Federal Constitution, 145(1).

50. *Ibid.*, art. 145(2), (5).

51. *Ibid.* art. 105(1) — on advice of the Prime Minister and consultation with the Conference of Rulers.

52. *Ibid.*, art. 105(6).

53. *Ibid.*, art. 106(1), 107(1).

54. *Ibid.*, art. 43(2) (b).

55. *Ibid.*, art. 43(6).

56. *Ibid.*, art. 43(5).

57. *Ibid.*, art. 43A(1), (3).

58. *Ibid.*, art. 86(1), (2), (3).

If the *Yang di-Pertuan Agong* is satisfied that it is conducive to the national interest that a development plan be put into operation in any area or areas in one or more of the States, the *Yang di-Pertuan Agong* may, after publishing the plan, proclaim the area or areas as a development area. Before the *Yang di-Pertuan Agong* acts however there must be a recommendation from an expert committee and consultation with the National Finance Council, the National Land Council and the Government of any State concerned.⁵⁹

Finally, the *Yang di-Pertuan Agong* must cause a financial statement in respect of each financial year to be laid before the House of Representatives. This statement should be laid before the commencement of the year unless Parliament in respect of any year otherwise provides.⁶⁰

G: POWERS IN RELATION TO SABAH, SARAWAK AND SINGAPORE

There are not many provisions in the Constitutions of these three new States which accord any great measure of responsibility to the *Yang di-Pertuan Agong*. The *Yang di-Pertuan Agong* appoints the *Yang di-Pertuan Negara* of Sabah in his discretion but after consultation with the Chief Minister of Sabah.⁶¹ He appoints the Governor of Sarawak in his discretion but after consultation with the Chief Minister of Sarawak,⁶² and he appoints the *Yang di-Pertuan Negara* of Singapore in his discretion but after consultation with the Prime Minister of Singapore.⁶³ The *Yang di-Pertuan Agong* can remove the two *Yang di-Pertuan Negara* and the Governor in pursuance of an address by the Legislative Assembly (an address by the Council Negri in the case of the Governor) supported by the votes of not less than two-thirds of the total number of the members thereof.⁶⁴ Finally, only the Singapore Constitution declares that the *Yang di-Pertuan Agong* shall be the Head of the Muslim religion in the State.⁶⁵ The Constitution also requires the Legislature to make legal provision for regulating Muslim religious affairs and to set up a Council to advise the *Yang di-Pertuan Agong* in matters relating to the Muslim religion.⁶⁶

59. *Ibid.*, art. 92(1). The effect of proclaiming an area a development area is that Parliament can then legislate in respect of that area even on matters which are within the competence of the States.

60. *Ibid.*, art. 99(1).

61. Constitution of the State of Sabah. (1963), art. 1(1).

62. Constitution of the State of Sarawak (1963), art. 1(1).

63. Constitution of the State of Singapore (1963), art. 1(1).

64. Art. 1(2) of the respective State Constitutions.

65. Constitution of the State of Singapore (1963), art. 6(1).

66. *Ibid.*, art. 6(2).

H: TRANSITIONAL AND TEMPORARY PROVISIONS⁶⁷

Under the Malayan Constitution of 1957 the *Yang di-Pertuan Agong* was empowered to make, by order, such modifications in any existing law as appeared to him necessary or expedient for the purpose of bringing the provisions of that law into accord with the provisions of the Constitution.⁶⁸ That power was given to the *Yang di-Pertuan Agong* for a period of two years beginning with *Merdeka Day* and after that period the power of modification was given to the courts.⁶⁹

The Malaysia Act again gives the *Yang di-Pertuan Agong* the power to make modifications in any existing law and this time there is no time limit. Section 74(1) merely states that “the *Yang di-Pertuan Agong* may by order make such modifications as appear to him necessary or expedient in consequence of the passing of this Act in any present law relating to matters about which Parliament has power to make laws.”

The *Yang di-Pertuan Agong* can extend to a Borneo State or to Singapore any present law of the Federation relating to matters about which Parliament has power to make laws and can declare to be federal law any present law about any such matter.⁷⁰

The *Yang di-Pertuan Agong* can also make modifications in any present law of a Borneo State or of Singapore, but such modifications must be requested by the Governor and appear to him to be necessary or expedient in consequence of the passing of the Malaysia Act.⁷¹

Finally, any Act of Parliament or other law passed for the Federation before Malaysia Day which in the States of Malaya has effect as State law may by order or the *Yang di-Pertuan Agong* be extended to a Borneo State or Singapore with or without modification, so as to have effect as State law in that State, but before such a law comes into operation in the State, it must be adopted by an enactment of the State legislature.⁷²

I: CONCLUSION

Although the Malaysian Constitution leaves no doubt that the *Yang*

67. See s. 74 of the Malaysia Act. These transitional and temporary provisions are part of the Federal Constitution (art. 159A), see s. 71 of the Malaysia Act.
68. Federal Constitution, art. 162(4) — he could not make an order in relation to the Constitution of any State.
69. *Ibid.*, art. 162(4), (6) — see also *Surinder Singh v. Government of the Federation of Malaya* (1962) 28 M.L.J. 169.
70. S. 74(2) of the Malaysia Act, — see Modification of Laws (Internal Security Act, 1960) Order, 1963. (L.N. 284 of 24th October, 1963).
71. S. 74(4) of the Malaysia Act. See L.N. 231 of 1963.
72. S. 74(5) of the Malaysia Act. See Modification of Laws (Internal Security and Public Order) (Singapore) Order, 1963, (State of Singapore *Government Gazette* Sp. No. S. 4 of 27 September, 1963).

di-Pertuan Agong is a constitutional ruler, yet the originality of the institution makes a study of the Supreme Head of the Federation worthwhile. The election of a Ruler by Rulers is unique but when that election must take place according to an election list which can arbitrarily be discarded, there is no constitutional parallel. The discretionary functions of the *Yang di-Pertuan Agong* are not unimportant and the wording of some of the articles of the Constitution leaves some doubt as to whether the functions ought to be exercised in the discretion of the *Yang di-Pertuan Agong* or with the advice of the Cabinet.

As the institution of the *Yang di-Pertuan Agong* is only in its sixth year and considering that the first two holders of this office died after short terms in office, it may be premature to attempt a fairly accurate assessment of this unique and new institution. When one considers the nature of this society and the history of the nation, there is, it seems to the writers, every indication that the creation of this office will, in time to come, be proved to be a wise one. It would seem that the rotative and elective nature of the office provides the best solution to the Malay Rulers who once having enjoyed sovereignty in their States and having surrendered most of it upon federation, would still (not unnaturally) like to have a prominent place in the constitutional structure of the independent nation. Further, it has provided for the first time a living national symbol to a society whose peoples differ racially, culturally and linguistically. Monarchies as such may be frowned upon: a symbol of national pride — a character being fast acquired by the *Yang di-Pertuan Agong* — may, however, be welcome in a nation which has hitherto had symbols only of a parochial nature.

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