

STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA HAJI SAKARAN BIN DANDAI,
Yang di-Pertua Negeri.

29 DECEMBER 2000.

No. 7 of 2000

An Enactment to establish the Sabah Biodiversity Council and the Sabah Biodiversity Centre and for purposes incidental thereto.

ENACTED by the Legislature of the State of Sabah as follows:

PART I

PRELIMINARY

Short title and commencement.

1. This Enactment may be cited as the Sabah Biodiversity Enactment 2000, and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.
[01-05-2002]

Interpretation.

2. In this Enactment, unless the context otherwise requires –

"access" means access to a biological resource or associated relevant knowledge set out in section 2A;

"access licence" means a licence granted by the Council to any User for access to biological resources or associated relevant knowledge;

“advertise” means to describe, make reference to or allude in any way, by any means or in any form,-

- (a) whether directly or indirectly; or
- (b) whether orally, in writing, diagrammatically, pictorially, by the use of symbols or photographs, or in any combination thereof;

“animal” includes –

- (a) any mammal (other than man), bird, reptile, amphibian, arthropod, or other vertebrate or invertebrate, whether alive or dead, and the egg, young or immature form derived from them;
- (b) any readily recognisable part or derivative of an animal;
- (c) wildlife as defined under the Wildlife Conservation Enactment 1997 [No.6 of 1997];
- (d) fish as defined in the Fisheries Act 1985 [Act 317]; and
- (e) marine and other aquatic ecosystem life forms;

"associated relevant knowledge" means any innovation or individual or collective practice with actual or potential value associated with biological resources contained therein;

"biodiversity" means biological diversity, being the variability among living organisms from all sources, including plant and animal, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part of, and the diversity within species, between species and ecosystems, and includes biological resources or associated relevant knowledge;

"Biodiversity Centre" means the Sabah Biodiversity Centre established under section 9;

“biological diversity” means the variability among living organism from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; includes diversity within species, between species and of ecosystems;

"biological resources" includes-

- (a) the genetic resources, organisms, microorganisms, derivatives and parts of the genetic resources, organisms, microorganisms or derivatives;

- (b) the populations and any other biotic component of an ecosystem with actual or potential use or value for humanity; and
- (c) any information relating to paragraphs (a) and (b);

"biotechnology" means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or to modify products or processes for specific use;

"Council" means the Sabah Biodiversity Council established under section 3;

"derivatives" includes a naturally occurring biochemical compound derived, developed or synthesised, from a biological resource or resulting from the genetic expression or metabolism of the biological or genetic resource, or part, tissue or extract, whether it contains functional units of heredity or otherwise, and information in relation to derivatives;

"*ex situ* collection" includes biological resources or associated relevant knowledge that are housed, planted, stored, kept or found outside their natural habitats such as in herbariums, research institutions, universities, botanical gardens, private collections and any other similar conservation centres;

"genetic resource" means any material of plant, animal, microorganism, fungi or other origin that contains functional units of heredity and that has actual or potential value for humanity;

"Government" means the Government of the State of Sabah;

"local community" means a group of individuals who have settled together and continuously inherit production processes and culture or a group of individuals settled together in a village or area and under an eco-cultural system;

"Minister" means the Minister for the time being responsible for matters relating to natural resources;

"native" means a group of individuals comprising native as defined in the Interpretation (Definition of Native) Ordinance (*Cap.64*);

"plant" includes-

- (a) any species of plant or any part of such species whether alive or dead and includes the stem, branch, tuber, bulb, corm, stock, budwood, cutting, layer, slip, sucker, root, leaf, flower, fruit, seed or any other part or product whatsoever of a

plant whether severed or attached; and

(b) any readily recognisable part or derivative of a plant;

"premises" includes any hut, shed, structure, platform, house, building, conveyance and land whether or not enclosed or built upon;

"propagating material" means any biological resource material including material of plant or animal origin or any part of the biological resource material, used for multiplication or reproduction;

"research and development" includes the study or systematic investigation or technology application by analysing , sampling, bioassaying and inventorising or other methods for any purpose including taxonomic research, and potential commercial product development;

"resource provider" includes –

- (a) the Council;
- (b) a government department or agency holding a biological resource or associated relevant knowledge away from its natural environment, whether in a collection or otherwise;
- (c) a private landowner, where the resource is on private land;
- (d) the native and local community, where the resource is on land to which they have a right;
- (e) the native and local community, where they are the holders of the associated relevant knowledge;
- (f) an individual, where the genetic resource is found within that individual;

"Secretary" means the Secretary of the Council who is to be appointed by the Minister;

"take" includes –

- (a) in relation to an animal, to harvest, catch, capture, trap and kill or obtain in any other way;
- (b) in relation to a plant specimen, to collect, harvest, pick, gather and cut or obtain in any other way;
- (c) in relation to other biological resources or associated relevant knowledge including microorganisms, to collect, pick or obtain in any other way; or
- (d) to obtain a biological resource or associated relevant knowledge in any other way;

“User” means any individual, a group of individuals, educational and research institution or corporate entity seeking access to biological resources or the associated relevant knowledge and where the context so requires, the aforementioned to whom the access licence is granted.

Access to a biological resource or associated relevant knowledge

2A. (1) A person is said to have access to a biological resource or associated relevant knowledge if –

- (a) the taking of a biological resource or associated relevant knowledge from its natural habitat or place where it is kept, grown or found including in the market for the purpose of research and development; or
- (b) there is a reasonable prospect as determined by the Council that a biological resource or associated relevant knowledge taken by the person will be subject to research and development.

(2) Access to a biological resource or associated relevant knowledge shall not include the following activities:

- (a) fishing for commerce, recreation or game;
- (b) taking animals or plants for food;
- (c) taking biological resource or associated relevant knowledge that has been cultivated or tended for any purpose other than the purpose of research and development;
- (d) taking natural produce including oils and honey for any purpose other than the purpose of research and development;
- (e) collecting plant reproductive material for propagation for any purpose other than the purpose of research and development;
- (f) carrying out commercial forestry;
- (g) in relation to native and local communities, for the use and exchange of the biological resource or associated relevant knowledge among themselves in the exercise of their traditional and customary practices;
- (h) taking of a biological resource or associated relevant knowledge by any person that is –

- (i) a living modified organism as defined in the Biosafety Act 2007 [Act 678] for which intellectual property rights have been granted and subsist; or
 - (ii) a plant variety for which a breeder's right has been granted and subsists under the Protection of New Plant Varieties Act 2004 [Act 634]; and
- (i) access to a biological resource or associated relevant knowledge exempted under section 36A.

Small farmers' rights

- 2B.** (1) Nothing in this Enactment shall be interpreted to limit the right of a small farmer-
- (a) to save, use, exchange and, sell farm-saved seed or propagating material; and
 - (b) to undertake conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping.
- (2) For the purpose of this section, "small farmer" means a farmer whose farming operations do not exceed the size of holding as prescribed by the Minister.

PART II

ESTABLISHMENT OF SABAH BIODIVERSITY COUNCIL

Sabah Biodiversity Council

- 3.** (1) There shall be established for the purpose of this Enactment a body by the name of the Sabah Biodiversity Council.
- (2) The Council shall consists of the following members:
- (a) a Chairman who shall be the State Secretary;
 - (b) the State Attorney-General or his alternate representative;
 - (c) the Secretary of Natural Resources or his alternate representative;
 - (d) the Chief Conservator of Forests or his alternate representative;

- (e) the Director of Sabah Parks or his alternate representative;
- (f) the Director of Wildlife Department or his alternate representative;
- (g) the Director of Environment Protection Department or his alternate representative.
- (h) the Director of Water Resources or his alternate representative;
- (i) the Director of Sabah Agriculture Department or his alternate representative;
- (j) the Director of Sabah Fisheries Department or his alternate representative;
- (k) not more than five other members who shall be persons having extensive experience and expertise in biodiversity, conservation and management and all of whom shall be appointed by the Minister.

(3) The Minister shall appoint a Secretary to the Council who shall be a member of the State Public Service and the Secretary shall be entitled to attend all meetings of the Council but has no right to vote at such meeting.

Functions and powers of the Council

3A. (1) The Council shall have the following functions and powers:

- (a) to advise the State Government on matters relating to the conservation and sustainable use of biological resources or associated relevant knowledge;
- (b) to advise on strengthening of the management of biological resources or associated relevant knowledge of the State;
- (c) to monitor the State policy with regards to biotechnology and application of biotechnology;
- (d) to co-ordinate local, state and national activities relating to conservation research and sustainable use of biological resources or associated relevant knowledge and biodiversity;
- (e) to co-ordinate preparations for regional and international activities relating to the conservation, research and sustainable use of

biological resources or associated relevant knowledge and biodiversity;

- (f) to support fair and equitable sharing of benefits to access and benefit sharing in relation to a biological resources or associated relevant knowledge;
- (g) to support customary laws and practices of native and local communities, and the development of community protocols and procedures by the native and local communities, as the case may be;
- (h) to approve and issue access and transfer licence;
- (i) to regulate the access to the biological resources or associated relevant knowledge of the State including the removal of any biodiversity from the State;
- (j) to manage the Biodiversity Centre or to appoint any person or body to manage the same on its behalf;
- (k) to receive donations, grants, gifts of movable or immovable property from any source or to raise funds by any lawful means; and
- (l) to do such other things as it deems fit to enable it to perform its functions and powers effectively or which are incidental to the performance of its functions and powers.

(2) The Council shall have the powers to do all things necessary or expedient for or in connection with the performance of its functions under this Enactment.

Duration of office and eligibility for reappointment.

4. Every appointed member of the Council shall unless he sooner resigns or his appointment is revoked, hold office for a term not exceeding three years and shall be eligible for reappointment.

Disqualification from membership.

5. (1) The following persons shall be disqualified from being appointed as, or if appointed, remaining a member -

- (a) a person who is of unsound mind or otherwise incapable of performing his duties;

- (b) a person who is prohibited from being a director of a company under the provisions of any written law relating to companies;
 - (c) a person who has been convicted of any offence involving fraud, dishonesty or moral turpitude; or
 - (d) a person who is a bankrupt or who has made an arrangement with his creditors.
- (2) An appointed member of the Council shall be deemed to have vacated the office:
- (a) upon his death;
 - (b) upon his resignation;
 - (c) upon his failure to attend three consecutive meetings of the Council without the permission from the Minister; or
 - (d) if he becomes disqualified under subsection (1),

and a new member shall be appointed in his place for the unexpired period of his terms in accordance with the provision of this Enactment.

Calling of meeting, quorum, voting, procedure and minutes.

6. (1) The Council shall meet once during every four months of the year and shall, in addition, meet as and when convened by the Chairman.
- (2) Seven members shall be a quorum at any meeting of the Council of which two of such members are members appointed in paragraph 3(2)(k).
- (3) Decisions of the Council shall be taken by the votes of the majority of the members present and voting thereon.
- (4) If on any question to be determined by the Council there is an equality of votes, the Chairman or if the Chairman is absent the presiding member shall have a casting vote in addition to his deliberative vote.
- (5) Subject to this Enactment, the Council shall determine its own procedure.
- (6) Minutes shall be kept of all proceedings of the Council.
- (7) The Minister may invite or request a person, who is not a member of the Council, to attend any meeting of the Council for the purpose of advising it on a matter

under discussion but the person so attending has no right to vote at the meeting.

Presiding at meetings of Council.

7. (1) The Chairman of the Council shall preside at all meetings of the Council.

(2) If, owing to absence or inability to act due to illness or any other cause, the Chairman of the Council is unable to preside at any meeting the members present shall elect one of their number to preside at that meeting.

(3) No business shall be transacted at any meeting of the Council in the absence of the Chairman until a member has been elected to preside over that meeting.

8. [Deleted]

Sabah Biodiversity Centre.

9. (1) There shall be established for the purpose of this Enactment a centre by the name of the Sabah Biodiversity Centre (hereinafter called "the Centre") to be managed and maintained by the Council for the purpose of:

- (a) providing the Government and other institutions approved by the Government with accurate information or data on the status, magnitude, distribution, usage and value of the biodiversity in the State;
- (b) managing and sustaining utilisation of the biodiversity of the State, including determining policies and guidelines for scientific research or experiment related to the access to and use of biological resources or associated relevant knowledge in the State for pharmaceutical, medicinal and other specific purposes;
- (c) carrying such activities in association or collaboration or in joint venture with other bodies or persons including the departments or agencies of the Government or the Federal Government for the improvement and enhancement of conservation and management of biological resources or associated relevant traditional knowledge in the State;
- (d) formulating programmes for systematic surveys of biodiversity and the collection and analysis of data thereto;

- (e) identifying the priorities for research on biodiversity in order to enhance undertaking, conservation and sustainable utilisation of biodiversity and biological resources or associated relevant knowledge, including ethnobotany, taxonomy and traditional uses;
- (f) promoting the identification of new natural and biotechnological products derived from the biodiversity and biological resources or relevant traditional knowledge in the State;
- (g) planning and initiating programmes for the utilisation, conservation, protection and sustainable development of biological resources or associated relevant knowledge;
- (h) establishing a database system of all exhibits, published and written records regarding the use, cultivation and management of biological resources or relevant traditional knowledge in the State;
- (i) establishing a network of researchers in institutions of higher learning, research institutes, libraries and documentation centres to assist in building or be part of the system of recording such knowledge;
- (j) establishing or caused to be established a system for the protection of biological resources or associated relevant knowledge so that the native and local communities shall, at all times and in perpetuity, be the legitimate creators, users and custodian of such knowledge, and shall collectively benefit from the use of such knowledge;
- (k) establishing linkages with other institution or bodies, within or outside the State, with a view to enhancing the management, protection, preservation, research and utilisation of the biodiversity and traditional knowledge of the native or local community of the State;
- (ka) to create awareness and to provide training, education and information relating to access and benefit sharing in relation to a biological resources or associated relevant knowledge;
- (kb) to support customary laws and practices of native and local communities, and the development of community protocols and procedures by the native and local communities, as the case may be;
- (kc) to deal with all the applications for access to a biological resource or associated relevant knowledge and the sharing of benefits arising

room the utilisation of the biological resource or associated relevant knowledge;

- (kd) to maintain a record of all access applications and decisions relating to such application, including the licence issued;
- (l) carrying on of all activities of which appears to the Council to be necessary, advantages or convenient for or in connection with the discharge of its duties; and
- (m) generally to promote education and knowledge of the biodiversity of the State.

(2) There shall be such number of other officers as may be necessary and expedient for the due administration of this Enactment who shall be appointed by the Minister from amongst the members of the State Public Service.

Directions of the Minister.

10. (1) The Minister may give the Council such directions, not inconsistent with the provisions of this Enactment, as he thinks fit, as to the exercise and performance by the Council of its powers, duties and functions under this Enactment, and the Council shall give effect to any direction so given.

(2) The Council shall furnish the Minister with such information with respect to its property and activities as he may from time to time require.

Appointment of committee and advisers.

11. (1) The Council may, at its discretion appoint from among its own members or other persons who are not members of the Council one or more committees consisting of persons who may or may not be members of the Council for purpose which in the opinion of the Council, would be better regulated and managed by means of such committees.

(2) The Council may appoint any person with the requisite experience, expertise and knowledge in biological resources or associated relevant knowledge, as adviser or consultant for the Council, and may form a Panel of Advisers or Consultants to advise the Council on the discharge of its functions or duties.

Delegation of functions and powers.

12. (1) The Council may, subject to such conditions or restrictions as it thinks fit,

delegate to any committee referred to in section 11(1) or the Chairman of the Council thereof or the secretary all or any of the functions and powers vested in the Council by this Enactment, (other than the power to delegate conferred by this section) and any function or power so delegate may be exercised or performed by the committee or the Chairman thereof or the secretary in the name and on behalf of the Council:

Provided that nothing in this section shall authorise delegation of any power to make subsidiary legislation.

(2) The Council may continue to exercise and perform any function or power under this Enactment, notwithstanding the delegation of that functions or powers under this section.

Protection from personal liability.

13. No action; suit, prosecution or proceeding shall be brought or instituted against any member of the Council in respect of any act done *bona fide* in pursuance or execution or intended execution of this Enactment.

PART III

ESTABLISHMENT OF THE FUND

Biodiversity Centre Fund.

14. (1) For the purpose of this Enactment, there shall be established a fund known as "the Biodiversity Centre Fund".

(2) The Fund shall consist of –

- (a) such sums as may be provided by the State Legislative Assembly from time to time;
- (b) grants from the Federal Government;
- (c) donations and contributions paid into the Fund by any statutory body, body corporate, associated or individual person; and
- (d) collections from the public.

(3) The Fund shall be operated in accordance with the Financial Procedure Act 1957 [Act. 61.] and any subsidiary legislation made thereunder.

- (4) The Fund shall be expended for the purpose of -
- (a) the payment of the expenses of, or connected with, the administration of the Council;
 - (b) the administration, management and operation of the Biodiversity Centre; and
 - (c) the payment of all expenses necessary for carrying out the purpose of this Enactment.

PART IV

ACCESS APPLICATION

Access licence.

15. (1) Any User who intends to obtain access to biological resources or associated relevant knowledge for biodiversity related to research purposes shall apply in writing to the Council for an access licence.

(2) Provided that this section shall not apply to public officers obtaining access to biological resources or associated relevant knowledge as part of their prescribed duties and responsibilities in their respective organisation and as provided for in their respective Ordinance or Enactment which do not involve any collaboration with the second and third party.

(3) [Deleted]

Application for an access licence.

16. (1) An application for an access licence shall be in respect of access to biological resources or associated relevant knowledge found on:

- (a) State lands;
- (aa) alienated land;
- (b) any reserves, natives customary lands or any other sites over which native and local communities exercise community-based or customary rights; or
- (c) any other areas, including rivers, tributaries, waterways or areas covered by water, marine parks or territorial waters of the State, and shall also include any *ex situ* collections in the State .

(2) Notwithstanding subsection (1), an application for an access licence for commercial or potential commercial purposes shall enter into a benefit sharing agreement under section 24A.

Information for the application for an access licence.

17. The application for an access licence shall include the following information:

- (a) the identity of the User and the documents which testify to his legal capacity to contract;
- (b) the details of the User's proposed access activity, which shall include:
 - (i) the biological resources or associated relevant knowledge to which access is sought, including the intended uses;
 - (ii) the purpose for which access is requested, including the intention to commercialise any information resulting from the access activity, and the type and extent of such commercial use;
 - (iii) the name of Sabah institution that will collaborate in the collection, research and development and other activities in relation to the resource concerned, as the local collaborator;
 - (iv) where appropriate, the name of the institution that will act as the sponsor organisation to be responsible for the action of User with regard to the access activity;
 - (v) the precise sites where the access activity is to be undertaken or where the resource is located, including where relevant the status of the land according to the categorisation as specified in section 16, as well as, the places where the proposed research and development activities will be carried out;
 - (vi) the time when the access activity is proposed to be carried out;
 - (vii) the primary destination of resource and its probable subsequent destinations;
 - (viii) the benefits, whether economic, technical, scientific, environmental, social or otherwise, that may derive to the state and the concerned communities and proposed mechanisms or arrangements for benefit sharing;

- (ix) description of any biological resources or associated relevant knowledge;
and
- (x) environmental and socio-economic impact assessment covering the likely long term impacts, where appropriate;

Application fee.

18. The application shall be submitted to the Council together with an application fee, the amount of which shall be prescribed by the Council.

Costs.

19. The User shall bear the following costs and expenses incurred:

- (a) in making an application for the access licence;
- (b) in complying with the conditions imposed by the Council; and
- (c) in meeting or fulfilling any other requirements or conditions as may be imposed by the provision of this Enactment.

Evaluation of the application of an access licence.

20. The Council shall evaluate the application for the access licence, taking into account, *inter alia*, the following matters:

- (a) the contribution of the access activity to the conservation and sustainable use of biological resources or associated relevant knowledge;
- (b) the impact of the access activity on biological diversity and the environment, including any adverse impacts, risks and dangers to any component of biological diversity and its sustainable use; and
- (c) the impact of the access activity on native and local communities, their lifestyles and livelihoods.

Decision making procedure.

21. (1) Upon evaluation of the application, the Council shall inform the User in writing of its decision that the application for access licence has been:

- (a) approved, with or without such conditions as it may specify; or
- (b) rejected.

(2) The Council may request for further information as it may deem necessary before making its decision.

Appeals.

22. Any person aggrieved by any decision of the Council may, at any time within the period of three (3) months beginning from the date of receipt of the decision, appeal to the Minister .

Conditions of approval for an access licence.

23. (1) The Council shall, as a condition for approval of an access licence, require the User to:

- (a) identify a Sabah institution, as the local collaborator that will collaborate and participate in the collection, research and development and other activities in relation to the biological resources or associated relevant knowledge concerned; and
- (b) identify the foreign institution that will act as the sponsor organisation, responsible for the actions of the User with regard to the access activity, where appropriate.

(2) The Government may impose or attach any other conditions to the approval of the application as it deems fit.

Terms of access licence.

24. In approving an application for an access licence, the Council shall issue an access licence which shall be in the prescribed form and shall be subject to such terms and conditions as may be specified therein or as may be prescribed by the Council.

Benefit sharing agreement

24A. (1) An applicant for a licence for access to a biological resource or associated relevant knowledge, for commercial or potential commercial purposes shall enter into a benefit-sharing agreement with the resource provider.

(2) A benefit-sharing agreement shall be based upon mutually agreed terms and provide for fair and equitable benefit sharing.

(3) Any such monetary benefits shall be deposited into a fund established by the State Government.

(4) The Council shall use any payment or any part thereof received under this section towards the conservation of biological diversity and the sustainable use of its components and for such other incidental expenses.

Requirement for prior informed consent and mutually agreed terms, etc.

24B. (1) The prior informed consent of the relevant native or local community shall be obtained for any access to:

- (a) a biological resource on land to which such native and local community have a right as established by law; and
- (b) associated relevant knowledge that is held by such native and local community.

(2) The prior informed consent of native and local community shall be obtained in accordance with customary laws and practices, protocols and procedures, of native and local community, as the case may be.

(3) Any person who intends to access the biological resource or associated relevant knowledge in subsection (1) for commercial or potential commercial purposes shall enter into a benefit sharing agreement under section 24A with the relevant native and local community.

(4) Any prior informed consent shall be obtained from and benefit sharing agreement entered into with;

- (a) the representative, organisation or body identified in accordance the customary laws and practices, protocols and procedure of the native and local community; or
- (b) where no such representative or organisation of the associated relevant knowledge can be identified –

- (i) with the holders of the associated relevant knowledge within the native and local community; or
- (ii) with the State Government, if the holders of the associated relevant knowledge cannot be identified.

(5) Any monetary benefit obtained from the benefit sharing agreement entered under paragraph 4(b)(ii) shall be deposited into a fund as may be established by the State Government and any benefit, including where applicable non-monetary benefit, shall be applied for the interest of native and local community.

(6) Where the same associated relevant knowledge is shared by more than one native or local community –

- (a) the applicant shall obtain the prior informed consent of and enter into benefit sharing agreement with the duly identified representative or organization of all the holders of the associated relevant knowledge; or
- (b) where it is not practicable in all the circumstances of the case to ascertain all such holders, and this is proven to the satisfaction of the Council, the applicant shall obtain the prior informed consent of, and enter into the benefit sharing agreement with the duly identified representatives or organisation of such of the holders as the applicant may ascertain.

(7) In the event that there is a claim by any native and local community that it is the rightful holder of the associated relevant knowledge after the application is approved, the Council shall –

- (a) determine the claim in consultation with the native and local community whose prior informed consent has been obtained and benefit sharing agreement entered into;
- (b) if the claim is proven to the satisfaction of the Council, declare that the said native and local community is entitled to share the benefits due to the native and local community under the benefit sharing agreement; and

- (c) determine the quantum or nature of benefits to which the native and local community is entitled under paragraph (b), in consultation with all the native and local community concerned.

Review of decision made by the Council.

25. (1) Any approval given may be subjected to further conditions in addition to those originally imposed, or restrictions on, access activities, including in case of:

- (a) adverse effects on the conservation of biological diversity, including where the access activity affects endangered taxa, endemism or rarity;
- (b) adverse effects upon the quality of life or the cultural values of the native and local communities;
- (c) environmental impacts which are undesirable or difficult to control;
- (d) danger of erosion of genetic diversity and ecosystem, their resources or their components because of undue or uncontrolled collection of biological resources or associated relevant knowledge;
- (e) adverse effects upon human, animal and plant health; and
- (f) use or potential use of resource for purposes contrary to the interest of the State.

(2) The Council may withdraw its consent and terminate the access licence and further use of the biological resources or associated relevant knowledge where it is apparent that the User has violated any of the provision of this Enactment or the regulations thereto, or any other agreed terms under the access licence if public interest so demands.

(3) In the event of any revocation of the access licence, the Council shall not be subject to any claim for any loss, damage or compensation arising from the revocation of the access licence.

PART V

LEGAL PROCEEDINGS, OFFENCES AND PENALTIES

Offences.

26. Any person who:

- (a) in contravention of the provisions of this Enactment engages in, carries out, or undertakes any access activity without having an access licence;
- (b) fails to provide or wilfully withholds any information required under the provisions of this Enactment;
- (c) removes any biological resources or associated relevant knowledge out of the State without the prior written authorisation of the Council; and
- (d) publish or advertise any biological resources or associated relevant knowledge without prior written authorisation of the Council.

shall be guilty of an offence and shall, upon conviction, be liable to a fine not less than thirty thousand ringgit and not more than one hundred thousand ringgit or to imprisonment for a term not less than six months and not more than five years or to both.

Unauthorised taking of exhibits, data, resources from the Biodiversity Centre.

27. Any person who by any act or by neglect, takes away, removes from or makes use of any biological resources or associated relevant knowledge, exhibit, data, material or information kept, stored or maintained in the Biodiversity Centre shall be guilty of an offence and shall, on conviction, be liable to a fine not less than thirty thousand ringgit and not more than one hundred thousand ringgit or to imprisonment for a term not less than six months and not more than five years or to both .

Prohibition against export of biological resources or associated relevant knowledge .

28. No export for research purposes of any biological resources or associated relevant knowledge collected from alienated land, conservation area, forest reserve, parks area, protected areas, State land, water protection areas or water conservation areas, wildlife area, rivers, tributaries, waterways, marine parks or territorial waters under the State, without a licence issued by the Council.

Powers of entry and investigation.

29. The Secretary, any police officer or customs officer or any other officer authorised in writing in that behalf by the Secretary may without warrant enter any land or premises upon which any access activity is being carried out on biological resources or associated

relevant knowledge in the State with a view to ascertaining whether the provisions of this Enactment are being complied with, and may make such investigation and inspection of the land or premises or the activities describes above, and call any person to produce such materials, books, records, reports or other documents or things and to furnish any information as the Secretary or such officer authorised by him or a police officer or customs officer may consider necessary for the purpose of conducting such investigation:

Provided that any person not in uniform purporting to exercise any powers under this section shall on demand produce his written authority to the owner or occupier of premises demanding the same.

Powers of search.

30. The Secretary, any police officer or customs officer or any other officer authorised to exercise the powers of entry or investigation under section 29 may, without warrant and with or without assistance, enter any land or premises if he considers it to be necessary if he has reason to believe that an offence under this Enactment has been committed and may search any place and any person whom he reasonably believes to be concerned in the control or management or use of such land or premises, or to be an employee, servant or agent of the owner or occupier thereof.

Powers of seizure.

31. (1) The Secretary, any police officer or customs officer or any other officer authorised to exercise the powers of entry or investigation under section 29 may seize, remove and detain any goods, tool, equipment, document, material or any other thing which is used or employed in relation to any collection, study, research or experiment being carried out on biological resources or associated relevant knowledge in the State, which he reasonably believes to be or has been used, in the commission of an offence or to contain evidence relating to such an offence under this Enactment.

(2) No claim or action shall lie against the Secretary, police officer, customs officer or any other officer authorised in writing by the Secretary in that behalf in respect of the entry, investigation, seizure, removal or detention of any such goods, tool, equipment, document, material or other thing under subsection (1).

(3) Any goods, tool, equipment, document, material or other thing seized, removed or detained under subsection (1) may be sold by the Secretary by public auction or otherwise, disposed of as the court may order, and the proceed thereof shall, after being applied to cover the costs of such seizure, removal or detention and sale, be returned to the rightful owner.

Powers of arrest.

32. (1) The Secretary, any police officer or customs officer or other officer authorised to exercise the powers of entry or investigation under section 29 may arrest without warrant any person whom he reasonably suspects of committing or attempting to commit or aiding any person to commit any offence under this Enactment and –

- (a) who refuses to furnish his name and address;
- (b) who furnishes a name or address reasonably suspected of being false or who furnishes an address outside Malaysia; or
- (c) who is reasonably suspected of being likely to abscond.

(2) Every person so arrested shall as soon as practicable be delivered into the custody of a police officer to be dealt with according to law.

Obstruction.

33. Any person who obstructs the Secretary, any police officer or customs officer or any other authorised officers lawfully exercising any powers conferred on him by or under this Enactment shall be guilty of an offence and shall, on conviction, be liable to a fine of ten thousand ringgit or to imprisonment for a term not exceeding one year, or to both.

Liability of director, etc.

34. Where an offence under this Enactment has been committed by a body of persons, corporate or unincorporate, any person who at the time of the commission of such offence was a director, manager, secretary or other similar officer of the body of persons or who was purporting to act in any such capacity, shall be deemed to be guilty of the offence unless he proves that the offence was committed without his consent or connivance, and that he exercised such diligence to prevent his commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Conduct of prosecution.

35. Any person authorised in writing by the Public Prosecutor pursuant to section 377 of the Criminal Procedure Code may conduct prosecuting for offences under this Enactment or the rules made thereunder.

Compounding of offences.

36. (1) The Secretary may in his discretion compound any offence committed by any person under this Enactment by making a written offer to the person suspected of committing the offence to compound the offence on payment to the Secretary of an amount of money not exceeding fifty percent of the amount of the maximum fine for that offence within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for its has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within any extended period as the Secretary may grant, prosecution for the offence may be instituted at any time after against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall after that be instituted in respect of the offence against the person to whom the offer to compound was made.

PART VI

Power to exempt

36A. The Minister may, upon recommendation of the Council, by order publish in the *Gazette*, exempt, subject to such terms and conditions as may be deemed fit to impose, any person or class of persons or any biological resource or associated relevant knowledge, including any use of a biological resource from all or any of the provisions of this Enactment.

Regulations.

37. (1) The Minister may, after consultation with the Council, make regulations generally for the purpose of carrying out the provision of this Enactment and, in particular, such regulations may provide for –

- (a) the payment of fees, honorarium, allowances and benefits to members of the Council, or adviser or consultants appointed under section 11;
- (b) the management and control of the Biodiversity Centre;

- (c) the terms and conditions for access to and use of the biological resources or the associated relevant knowledge in the State or such resources, data, exhibit, information or materials kept, stored or maintained in the Biodiversity Centre;
- (d) prescribing the terms and conditions including fees for the access licence to be issued under this Enactment;
- (e) prescribing the amount of security deposit for any licence issued under this Enactment or any of its subsidiary legislation;
- (f) the exercise of the Council's powers and functions under the provisions of this Enactment;
- (g) prescribing rewards to persons or body of persons for giving relevant information for the illegal activities that is being carried out;
- (h) prescribing incentives to persons or body of persons for carrying out measures which are necessary to protect and conserve natural resources for the protection and enhancement of the biodiversity;
- (i) prescribing the offence which may be compounded, the person who may compound, the limit of the sum of money to be collected for compounding such offences and the procedure and forms to be complied with in compounding;
- (j) prescribing rate of compensation that the Council may require any person to pay for damages caused to the biodiversity by the act, omission, neglect or default of that person;
- (k) prescribing the mode and manner of benefit sharing for access to biological resources or the associated knowledge;
- (l) prescribing the terms and conditions for the licence to export the biological resources or the associated relevant knowledge;
- (la) prescribing the terms and conditions for the licences to transfer the biological resources or the associated relevant knowledge;
- (lb) prescribing the fees payable in respect of licences and of any other thing done under the provisions of this Enactment or any of its subsidiary legislation;

- (lc) prescribing any forms to be used for the purposes of this Enactment or any of its subsidiary legislation; and
 - (m) such other purposes which may be considered to be necessary for carrying out the provisions of this Enactment.
- (2) The regulations made under subsection (1) may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties –
- (a) where such person is an individual, to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both; or
 - (b) where such person is a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Thursday, the 2nd day of November 2000.

DATUK FRANCIS T.N. YAP,
Deputy Speaker,
State Legislative Assembly.