

STATE OF SABAH

SABAH FOUNDATION ENACTMENT, 1966 (Sabah No. 8 of 1966)

LIST OF AMENDMENTS

<i>Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
16/1967	10 (1) (cc)	30-12-1967
3/1971	Long title, 2 (definition of "the Foundation"), 3 (d), (g), (h), (i), 5 (1) (c), 7 (1), 10 (1) (e) to (p), 15	16-9-1970
9/1975	5 (1) (c), 7 (1A), 17, 18	5-9-1975
Act 160	9 (3), 18	29-8-1975
4/1976	2, 5 (1), 7 (1A), (2) (f), (4), 10 (2)	17-6-1976
17/1976	15 (3)	27-8-1976
3/1978	3 (j), 17	18-2-1978
1/1988	3, 5 (1) (b), (c), (2)	1-1-1986 (except s.3 which came into force on 24-4-1990)

2/1994	15 (2), (3), (5)	19-5-1994
5/1995	17	20-7-1995

An Enactment to provide for the establishment of a Sabah Foundation for the purposes of improving, and furthering the progress of, education and educational facilities in Sabah and of encouraging and promoting a Malaysian consciousness therein and to assist and to promote a more equitable distribution of economic wealth amongst the peoples of Sabah and Malaysian citizens residing in Sabah and for giving aid to charitable institutions; for the establishment of a Fund and the appointment of Trustees for the carrying out of the purposes of the Foundation; and for matters connected therewith and incidental thereto.

[10th May, 1966.]

WHEREAS in a speech made at Mesapol on the ninth day of November, 1965, Tun Datu Mustapha bin Datu Harun, S.M.N., P.D.K., O.B.E., made certain proposals for the setting up of a non-political, non-profit making, Sabah Foundation for the promotion and provision of educational facilities for the youth of Sabah and the encouragement of a Malaysian consciousness among the peoples of Sabah;

AND WHEREAS it is desirable that the said Sabah Foundation should be duly constituted and provision made for the execution of its functions so that the said proposals may be carried into effect:

NOW THEREFORE be it ENACTED by the Legislature of the State of Sabah as follows:

Short title.

1. This Enactment may be cited as the Sabah Foundation Enactment, 1966.

Interpretation.

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

“the Board” means the Board of Trustees of the Sabah Foundation established under section 5 of this Enactment;

“the Chairman” means the Chairman of the Board;

“the Chief Minister” means the Chief Minister of the State of Sabah;

“the Director” means the Director of the Foundation appointed under section 11 of this Enactment;

“the Foundation” means the Sabah Foundation or in Bahasa Malaysia ‘Yayasan Sabah’ established by section 3 of this Enactment;

“the Fund” means the Sabah Foundation Fund established under section 4 of this Enactment;

“member of the Board” includes the Chairman.

Establishment and objects of the Foundation.

3. There is hereby established the Sabah Foundation and the charitable objects for which the Foundation is established are the advancement of education and the relief of poverty and other charitable purposes for the benefit of the peoples of Sabah and in particular (but if and so far only as the same are exclusively charitable) one or more of the following: -

- (a) actively to promote improvement of opportunity for education among all sections of the peoples of Sabah;
- (b) to widen the scope for the peoples of Sabah in any approved institution of learning throughout the world, but especially in Malaysian Universities;
- (c) to promote and encourage the provision in Sabah of facilities for higher learning;
- (d) to grant, and arrange for the award by other bodies of, scholarships or other educational assistance for the peoples of Sabah or any Malaysian citizen in Sabah whenever it deems fit to do so;
- (e) to establish and operate in all areas of Sabah (and especially in rural areas)

schools, colleges, and other centres for the purposes of providing the peoples of Sabah with both formal and informal education and training in vocational, technical and business skills and of encouraging among them the study of traditional music, arts and crafts with the aim of promoting self-reliance, racial harmony, tolerance and unity among the peoples of Sabah whilst preserving the individual cultures of such peoples;

- (f) to assist and improve, whenever possible, the standard of living of poor Malaysian citizens residing in Sabah;
- (g) voluntarily to give aid or assistance to the organisations and institutions which are organised and governed for scientific, medical, welfare, social, educational or other purposes (provided always that any such purpose is charitable);
- (h) to provide from its own resources on a voluntary basis ambulance service, a flying doctor service and other medical, welfare, social or educational services of a charitable nature;
- (i) to contribute to the relief of national emergencies or calamities such as flood, fire, drought and other acts of God;
- (j) to assist poor Malaysian citizens residing in Sabah by providing them with financial assistance whether in the form of cash payments or shares in investment trusts or otherwise, or material assistance whether in the form of accommodation, food, clothing or otherwise in every case in such manner and to such an extent as the Board may from time to time determine.

Establishment of the Fund.

4. (1) For the purposes of enabling the Foundation to carry out its objects, there shall be established a fund to be called the Sabah Foundation Fund.

(2) The Fund shall consist of: -

- (a) such sums as the Government may from time to time contribute to the Fund;

- (b) all other monies which may be donated, contributed, loaned or in any other manner paid into the Fund by any authority or person;
- (c) all interest received by the Board upon such portion of the monies of the Fund as may from time to time be invested or placed on deposit;
- (d) all revenues from any property held by the Board.

Establishment of Board of Trustees.

5. (1) For the purpose of managing the Foundation and administering and controlling the Fund, there shall be established a Board of Trustees, to be called the Board of Trustees of the Sabah Foundation and which shall consist of: -

- (a) a Chairman; and
- (b) eight members,

who shall be appointed by the Yang di-Pertua Negeri.

(2) No salary, fee, honorarium or commission shall be paid to any member of the Board, but the Board may reimburse members thereof in respect of any out-of-pocket expenses necessarily incurred by them in and about the business of the Board:

Provided that if the Director has also been appointed as a Trustee under section 5(1) of the Enactment, he shall not be debarred by the provision of this sub-section from receiving a salary, fee, honorarium or commission for services rendered in his capacity as Director.

Incorporation of the Board and use of seal.

6. (1) The Board shall be a body corporate with perpetual succession and a common seal and may from time to time break, alter, change and make anew such seal if the Board shall think fit.

(2) The Board may sue and be sued by the name of the Board of Trustees of the Sabah Foundation, and may for all purposes be described by that name.

(3) The common seal of the Board shall not be used except by the authority of the

Board, and every document requiring the seal of the Board shall be sealed with such seal in the presence of any two members of the Board each of whom shall sign such document, and such signing shall be sufficient evidence that the common seal was duly affixed by authority of the Board.

Term of appointment of Trustees.

7. (1) Subject to the provisions of subsection (2) of this section, a person appointed as a member of the Board shall vacate his seat at the expiration of five years from the date of his appointment but shall be eligible for re-appointment:

Provided that whenever the seat of a member becomes vacant under the said subsection, any person appointed to fill the vacancy thereby caused shall vacate his seat at the expiration of the original term of office of the person to whose place he is appointed.

(2) The seat of a member of the Board shall become vacant: -

- (a) upon his death; or
- (b) if he be declared an insolvent or a bankrupt or enters into any composition with his creditors; or
- (c) if he be declared to be of unsound mind; or
- (d) if he be sentenced to a term of imprisonment without the option of a fine by a court of competent jurisdiction; or
- (e) if, by writing under his hand addressed to the authority by whom he was appointed, he resigns his seat on the Board; or
- (f) if he is found guilty of an offence under the law relating to trustees.

(3) The Board may continue to act notwithstanding any vacancy in the number of its members.

(4) Notwithstanding the provisions of subsection (2), it shall be lawful for the relevant appointing authority to revoke in writing at any time any appointment made under this Enactment.

Procedure of Board.

8. (1) The quorum of the Board shall be five.

(2) At all meetings of the Board the Chairman, if present, shall preside, but in the absence of the Chairman the members present at any meeting shall elect one of their number to preside thereat.

(3) All questions arising or coming before a meeting of the Board shall be decided by a majority of the members present and voting thereon at that meeting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

(4) The Director shall be entitled to attend all meetings of the Board and to speak, but not to vote, on any matter under discussion:

Provided that the Chairman may require the Director to withdraw from any meeting if he considers that the Director should not be present during the discussion of any particular matter.

(5) Subject to the provisions of this section, the Board may make standing orders governing its procedure and the procedure of any committee appointed by it and specially with regard to the holding of meetings, the proceedings thereat and the keeping of minutes thereof, and may vary, suspend or revoke any such order.

(6) Sections 21 (1) and 25 (h) of the Interpretation and General Clauses Enactment, 1963 [En. 34/1963.], shall not apply to standing orders made under the provisions of subsection (5) of this section.

Interest of members.

9. (1) Save as hereinafter provided, if any member of the Board: -

(a) has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter; or

(b) is related within the second degree of consanguinity or affinity to any person to whom it is proposed that any scholarship should be granted or

other educational assistance should be given,

and is present at a meeting of the Board or a sub-committee at which such matter is the subject of consideration he shall, at such meeting and as soon as practicable after the commencement thereof, disclose the fact of his interest or relationship, as the case may be, and, when such matter comes up for consideration, such member shall withdraw from the meeting and shall take no further part in the proceedings in so far as such matter is concerned.

- (2) For the purposes of this section: -
- (a) the Director shall be deemed to be a member of the Board;
 - (b) a person shall not be deemed to have a pecuniary interest in any matter by reason only: -
 - (i) of membership of or employment under any public body; or
 - (ii) of membership of a company or other body if such person has no beneficial interest in any shares of such company or body;
 - (c) in the case of married persons living together, the interest of one spouse shall be deemed also to be an interest of the other spouse.

(3) Any person who contravenes or fails to comply with the provisions of subsection (1) of this section shall be guilty of an offence and shall be liable to a fine of one thousand ringgit and imprisonment for six months:

Provided that a prosecution for an offence under this subsection shall not be instituted without the consent in writing of the Attorney-General.

Powers of Board.

10. (1) The Board shall, in addition to any other powers conferred by this Enactment, have power: -

- (a) to acquire, take, hold and enjoy, whether as owner or by way of security, and may sell, convey, transfer, assign, re-convey, re-assign, surrender or

otherwise deal with or dispose of movable and immovable property of every description;

- (b) to enter into or modify any contracts or agreements which may be necessary for carrying out the objects of the Foundation;
- (c) subject to the provision of any written law relating to public collections, from time to time to raise public subscriptions or make public collections for the Fund;
- (cc) to apply for and acquire timber concessions and work the same either directly or through contracting out and to carry on other business which may seem to the Board capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value or render profitable any of the Board's property or rights;
- (d) generally to do all such things as a body corporate may by law perform and which are necessary for carrying out the objects of the Foundation;
- (e) to carry on all activities, particularly the development of commercial and industrial enterprises, the carrying on whereof appears to it to be requisite, advantageous or convenient for or in connection with the discharge of its duty, including the manufacturing, assembling, processing, packing, grading and marketing of products, research and training;
- (f) to promote the carrying on of any such activities bodies or persons and for that purpose to establish or expand or promote the establishment or expansion of other bodies to carry on any such activities either under the control or partial control of the Board, or independently, and to give assistance to such bodies or to other bodies or persons appearing to the Board to have facilities for the carrying on any such activities, including financial assistance by taking up of share or loan capital or by loan or otherwise;
- (g) to purchase, underwrite or otherwise acquire any stock and shares in any public or private company, and to dispose of the same on such terms and

conditions as the Board may determine;

- (h) to establish and maintain training institutions;
- (i) to do all acts which the Board considers desirable or expedient;
- (j) to borrow from time to time at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as the Board may approve any sums required by the Foundation for meeting any of its obligations or discharging any of its duties;
- (k) to enter into any transaction (whether or not involving expenditure, borrowing, granting of loans or investment of money in accordance with the provisions of this Enactment in that behalf, the acquisition, use and disposal of any movable or immovable property, including vehicles and vessels, or rights) which in the opinion of the Board is calculated to facilitate the proper discharge of its duty or is incidental or conducive thereto;
- (l) to become agent or to employ and pay agents and technical advisers including advocates, bankers, stockbrokers, surveyors, or valuers or other persons, to transact any business or to do any act required to be transacted or done in the execution of its duties or for the better carrying into effect the purposes of this Enactment;
- (m) to establish from time to time a corporation by such name as the Board may think fit to carry out and have the charge, conduct and management of any project, scheme or enterprise which has been planned or undertaken by the Board in execution of its duty or discharge of its functions in pursuit of the objects of the Foundation;
- (n) to make loans and any such loans may be granted subject to such terms and conditions as the Board may deem fit to impose in particular cases:
- (o) to carry on the business of carriers by air, sea, river, canal, railway, road and otherwise;

(p) to establish institutions of learning and to maintain them.

(2) The Board may delegate any of the powers and duties conferred or imposed upon it by any of the provisions of this Enactment to any sub-committee consisting of such person or persons appointed by the Board and the Director shall be entitled to attend the meetings of any such sub-committee and to speak, but not to vote, on any matter under discussion:

Provided that any such delegation shall be exercised by the sub-committee concerned subject to any general or special directions which may from time to time be given by the Board.

Appointment, etc., of Director and staff.

11. (1) The Board shall appoint a suitable person to be the Director of the Foundation, and may from time to time appoint such other officers, clerks and servants as may be necessary for conducting the business of the Foundation.

(2) Any appointment made under the provisions of subsection (1) of this section shall be on such terms and conditions as the Board may deem fit.

(3) The Director shall be the executive officer of the Foundation and shall exercise such powers and perform such duties and functions as the Board shall from time to time direct, and all other persons appointed under this section shall, subject to any general or special directions of the Board, exercise the powers and functions and perform the duties assigned to them by the Director.

Application of Fund.

12. (1) Subject to the provisions of subsection (3) of this section, the Board shall apply the capital and income of the Fund whencesoever derived to the carrying out of the objects for which the Foundation is established.

(2) Where any monies are applied to the grant of scholarships or the provision of other educational assistance, the Board may make such grant or provision upon such terms and conditions as it may think fit.

(3) All expenses incurred by the Board in the control and management of the Foundation or the Fund shall be defrayed out of the Fund and shall be a first charge on the assets thereof.

Investment of Fund.

13. (1) The Board: -

- (a) may invest any monies for the time being forming part of the Fund, or such part thereof as it shall from time to time think fit, in any securities in which trustees are for the time being authorised by law to invest trust funds;
- (b) shall deposit any such monies which may from time to time be uninvested with any bank either upon fixed deposit or upon current account:

Provided that the Board shall have power to vary investments from time to time and to employ the bankers of the Fund or any other agency to invest the monies of the Fund in such securities on its behalf.

(2) All investments made under this section shall be registered in the name of the Board.

Liability of members.

14. No member of the Board shall be liable for any loss arising from or contingent upon any investment made unless such loss has been occasioned by his negligence, fraud or dishonesty; and no member of the Board and no agent or person acting under authority of the Board shall be personally liable to any action or proceeding for or in respect of any action made or thing done or omitted to be done in good faith and in the proper exercise of any of the powers of the Board or of the members thereof.

Accounts and audit.

15. (1) The Board shall keep proper accounts and other records in respect of its activities and shall cause to be prepared a statement of account in respect of each financial

year.

(2) The accounts of the Board shall be audited by the Auditor-General.

(3) The Board shall not later than the 31st day of July of each year submit the accounts of the Board for the preceding financial year to the Auditor-General for the purpose of audit.

(4) The Board shall, when required by the Auditor-General, produce and lay before him all books and accounts of the Fund concerned, together with all vouchers in support thereof, and relating thereto, and the Auditor-General shall be entitled to require from the Board, or any member, officer, servant or agent of the Board such information and explanation as he may deem necessary for the performance of his duties as an auditor.

(5) At the end of each financial year, as soon as the accounts of the Board have been audited, the Board shall cause a copy of the statement of account, together with a copy of any report of the Auditor-General, to be transmitted to the Chief Minister who shall cause the same to be laid before the Legislative Assembly and cause a copy thereof to be published in the *Gazette*.

The Board and corporations set up under the Foundation deemed to be a Malay or a Native.

16. For the purposes of any written law relating to the land reserved for alienation to Malays or to Natives of the State of Sabah in which it lies, the Board and every corporation set up under the Foundation shall be deemed to be a Malay or a Native as the case may be.

Safeguards for forests owned by or reserved for the Foundation.

17. Notwithstanding any law relating to the preservation of forests or any other law for the time being in force, no land or forest which has been approved, licensed or otherwise reserved for the use and purposes of the Foundation shall be exchanged with any other land or forest nor shall it be excised therefrom or otherwise revoked from being the land or forest approved or licensed to or otherwise reserved for the Foundation:

Provided that it shall be lawful for the State Government to approve any right of way

through such land or forest or for the Director of Forestry* to exercise other powers vested in him under the law relating to the preservation of forest in such land or forest:

Provided further that it shall be lawful for the Board at the request of the State Government to surrender to the State Government any such land or forest or any part thereof-

- (a) for the purpose of constituting it as a Park under the Parks Enactment 1984 [En. 6/1984.];
- (b) for the purpose of constituting or classifying it as a Class I, Class VI or Class VII Forest Reserve under the Forest Enactment 1968 [En. 2/1968.] or any other written law;
- (c) from which timber has been extracted, for the purpose of agriculture, reforestation, commerce or industry; or
- (d) in exchange for any land or forest required by the Foundation for the purpose of consolidating its licensed areas into one contiguous area.

Undue influence.

18. Whoever –

- (a) uses his position; or
- (b) brings or attempts to bring any form of influence or pressure to support or advance his case or matter which is being considered or to be considered by the Board or the Director; or
- (c) holds out any threat of injury to any member of the Board or the Director or to any person in whom he believes that the member of the Board or the Director to be interested,

for the purposes of inducing a member of the Board or the Director to do any act, or to

* "Director of Forestry" substituted for "Conservator of Forest" by virtue of Enactment No.13 of 1988.

forbear or delay to do any act, connected with the exercise of the functions of such member of the Board or Director, shall be liable to imprisonment for two years, and to a fine of five thousand ringgit.

Power of Cabinet in relation to the Board.

19. The Cabinet may give the Board such directions of a general nature as are not inconsistent with the provisions of this Enactment as relate to the exercise of its powers and performance of its functions and the Board shall give effect to such directions.

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