

STATE OF SABAH

TRUSTEES (INCORPORATION) ORDINANCE (Sabah Cap. 148)

ARRANGEMENT OF SECTIONS

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LIST OF AMENDMENTS

<i>Ordinance/ Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
8/1955	3, 4, 5, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, Sch.	13-05-1955

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To facilitate the incorporation of trustees for religious, educational, literary, scientific, social and charitable purposes.

[12th April 1951]

Short title.

1. This Ordinance may be cited as the Trustees (Incorporation) Ordinance.

Upon application of trustees Yang di-Pertua Negeri may grant certificate of registration as a corporate body.

2. Trustees or a trustee may be appointed by any body or association of persons established for any religious, educational, literary, scientific, social or charitable purpose, and such trustees or trustee may apply, in manner hereinafter mentioned, to the Yang di-Pertua Negeri* for a certificate of registration of the trustees or trustee of such body or association of persons as a corporate body; and if the Yang di-Pertua Negeri, having regard to the extent, nature, and objects and other circumstances of such body or association of persons, shall consider such incorporation expedient, he may grant such certificate accordingly, subject to such conditions or directions generally as he shall think fit to insert in such certificate, and particularly relating to the qualifications and number of the trustees, their tenure and avoidance of office, the mode of appointing new trustees, the custody and use of the common seal, the amount of the land which such trustees may hold, and the purposes for which such land may be applied; and the trustees or trustee shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in such corporate name, and subject to the conditions and directions contained in the said certificate to hold and acquire, and by instruments under such common seal to convey, assign and demise, any land or any interest therein now or hereafter belonging to, or held for the benefit of, such body or association of persons, in such and the like manner, and subject to such restrictions and provisions, as such trustees or trustee might, without such incorporation, hold or acquire, convey or assign, or demise the same for the purposes of such body or association of persons.

* Throughout the Ordinance "Yang di-Pertua Negeri" substituted for "Governor" by virtue of G.N.S. 87 of 1965 and Enactment No. 17 of 1976.

Estate to vest in body corporate.

3. The certificate of incorporation shall, subject to compliance with any written law relating to the registration of title to land, vest in such body corporate all land or any interest therein, of what nature and tenure soever, belonging to or held by any person or persons in trust for such body or association of persons.

Particulars respecting application.

4. Every application to the Yang di-Pertua Negeri for a certificate under this Ordinance shall be in writing, signed by the person or persons making the same, and shall contain the several particulars specified in the Schedule or as may be prescribed, or such of them as shall be applicable to the case. The Yang di-Pertua Negeri may require such declaration or other evidence in verification of the statements and particulars in the application and such other particulars, information, and evidence (if any) as he may think necessary or proper.

Nomination of trustees, and filling up vacancies.

5. Before a certificate of incorporation shall be granted, the said trustees or trustee shall have been effectually appointed to the satisfaction of the Yang di-Pertua Negeri, and where a certificate of incorporation shall have been granted vacancies in the number of the said trustees shall be filled up so far as shall be required by the constitution or settlement or rules of the said body or association of persons, or by any such conditions or directions as aforesaid, by such legal means as would have been available for the appointment of new trustees of the said body or association if no certificate of incorporation had been granted, or otherwise as shall be required by such conditions or directions as aforesaid, and the appointment of every new trustee shall be certified by, or by the direction of, the trustees to the Yang di-Pertua Negeri upon the completion of such appointment; and within one month after the expiration of each period of five years after the grant of a certificate of incorporation, or whenever required by the Yang di-Pertua Negeri, a return shall be made to the Yang di-Pertua Negeri by the then trustees or trustee of the names of the trustees at the expiration of each such period with their residences and additions.

Certificate to be evidence of compliance with requisitions.

6. A certificate of incorporation so granted shall be conclusive evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which incorporation has taken place.

Record of applications and documents to be kept and may be inspected.

7. The Yang di-Pertua Negeri shall, in such manner as he shall think fit, direct a record to be kept of all such applications for and certificates of incorporation, and shall in like manner direct all documents sent to him under the provisions of this Ordinance to be preserved, and any person may require a copy or extract of any such document to be certified under the hand of such person as shall be appointed for that purpose by the Yang di-Pertua Negeri, and there shall be paid for such certified copy or extract such fee as may be prescribed by the Yang di-Pertua Negeri.

Enforcement of conditions of certificate.

8. All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the trustees or trustee as trusts of the said body or association of persons.

Applications and certificates; fees.

9. Every application for a certificate of incorporation under this Ordinance and every such certificate shall be charged with the prescribed fee.

Gifts to vest in corporate body.

10. After the incorporation of the trustees or trustee of any association or body of persons pursuant to this Ordinance, every donation, gift, and disposition of land, or any interest therein, theretofore lawfully made (but not having actually taken effect), or hereafter lawfully made, by deed, will, or otherwise to or in favour of such body or association of persons, or the trustees thereof, or otherwise for the purposes thereof, shall take effect as if the same had been made to, or in favour of, the corporate body or otherwise for the like purposes.

Common seal.

11. The common seal of the corporate body shall have such device as may be approved by the Yang di-Pertua Negeri, and until such common seal is provided, a rubber stamp or the seal of some person may be authorised by the Yang di-Pertua Negeri for use as the common seal of the corporate body. Any instrument to which the common seal of the corporate body has been affixed, in apparent compliance with the conditions or directions for the use of such common seal referred to in section 2, shall be binding on such corporate body, notwithstanding any defect or circumstance affecting the execution of such instrument.

Petition to decide question whether person is a member of a corporate body.

12. When any question arises as to whether any person is a member of any such corporate body as aforesaid, any person interested in such question may apply by petition to the High Court for its opinion on such question. Notice of the hearing shall be given to such persons and in such manner as the Court shall think fit, and any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.

Powers of High Court and Yang di-Pertua Negeri.

13. (1) In addition to any jurisdiction relating to trusts in general the High Court shall have power, upon the application of any interested party made subject to any rules of court, to make such orders regarding the constitution of any body incorporated under this Ordinance or in regard to the trustees thereof as may seem to it proper and any orders of the High Court, whether under this Ordinance or not, relating to the trust shall, subject to appeal, be conclusive and binding for all purposes and shall be registered by the trustee or trustees with the person appointed under the provisions of section 7. In particular and without prejudice to the generality of the foregoing, the High Court may authorise –

- (a) any variation in the composition or constitution of such corporate body or in the rules or other instrument regulating the same without prejudice to its due incorporation and perpetual succession for the objects which were applicable at the time of incorporation;

- (b) the amalgamation of two or more bodies incorporated under this Ordinance having the same or similar objects and the vesting of the property of those bodies in a new corporate body having such constitution as the Court may approve;
- (c) a change of name of any corporate body created under this Ordinance.

(2) Any power conferred upon the High Court by subsection (1) may be exercised in conjunction with and as part of any application to it in any matter relating to the trust in respect of which incorporation has been granted.

(3) Upon the registration of any order of the High Court relating to the trust the Yang di-Pertua Negeri shall have power to order the termination of incorporation of any corporate body under this Ordinance and to give such directions as to the disposal of its assets as he sees fit to order.

Liability of trustees and others, notwithstanding incorporation.

14. After a certificate of incorporation has been granted under the provisions of this Ordinance all trustees of the body or association of persons, notwithstanding their incorporation, shall be chargeable for such property as shall come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects and defaults, and for the due administration of the body or association of person and its property, in the same manner and to the same extent as if no such incorporation has been effected.

Contracts not under seal to be binding in certain cases.

15. Every contract made or entered into by the trustees of a body or association of persons which would be valid and binding according to the constitution, settlement or rules of the said body or association of persons if no such incorporation had taken place as aforesaid, shall be valid and binding although the same shall not have been made or entered into under the common seal of the trustees.

Payments on transfers in reliance on corporate seal protected.

16. Any person who shall make or permit to be made any transfer or payment *bona fide*, in

reliance on any instruments to which the common seal of any body corporate created under this Ordinance is affixed, shall be indemnified and protected by the person or persons executing such instrument in respect of such transfer or payment, notwithstanding any defect or circumstance affecting the execution of the instrument.

Appeals.

17. For the avoidance of doubt it is declared that an appeal shall lie to the Court of Appeal from any order of the High Court in respect of any jurisdiction conferred by this Ordinance.

Rules.

18. The Yang di-Pertua Negeri may make rules generally for the purposes of this Ordinance including the fixing of fees, the prescribing of forms and the regulating of applications for certificates of registration.

SCHEDULE

(Section 4)

1. The objects of the body or association of persons, and the rules and regulations of the same, together with the date of, and parties to, every deed, will, or other instrument (if any) creating, constituting, or regulating the same.
2. A statement and short description of the land, or interest in land, which at the date of application is possessed by, or belonging to, or held on behalf of such body or association of persons.
3. The names, residences, and additions of the said trustees of such body or association of persons, the manner and date of their appointment, their number, qualifications, tenure and avoidance of office, and the mode of appointing new trustees.
4. The proposed title of the corporate body, of which title the words "trustees" and "registered" shall form part.

5. The proposed device of the common seal.
6. The regulations for the custody and use of the common seal.

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