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PART II

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THE MAJLIS ISLAM SARAWAK ORDINANCE, 2001

THE MAJLIS ISLAM SARAWAK (ADMINISTRATION OF *WAKAF*) RULES, 2008

(Made under section 82)

In exercise of the powers conferred by section 82 of the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*], the Yang di-Pertua Negeri has, on the advice of the Majlis Islam Sarawak, made the following Rules:

PART I

PRELIMINARY

Citation and commencement

1. These Rules may be cited as the **Majlis Islam Sarawak (Administration of *Wakaf*) Rules, 2008**, and shall be deemed to have come into force on the 1st day of January, 2008.

Interpretation

2. In these Rules—

“Baitulmal” means the fund established under section 45 of the Ordinance;

“Certificate of *Mawquf*” means the Certificate of *Mawquf* issued under rule 8;

“Islamic Law” shall have the meaning assigned to that expression in the Ordinance;

“*istibdal*” means to substitute a *mawquf* with another property or money, or in kind, which is of the same value as or higher value than that *mawquf*, either by substituting, purchasing, selling or any other means in accordance with Islamic Law;

“Lembaga Fatwa” means the Lembaga Fatwa established under section 36 of the Ordinance;

“Majlis” means the Majlis Islam Sarawak established under section 3 of the Ordinance;

“*mawquf*” means a property dedicated as *wakaf*;

“*mawquf-alaih*” means a person or an association or institution entitled to receive any benefit, interest or profit from a *mawquf*;

“Ordinance” means the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*];

“person” includes a body of persons, corporate or unincorporated;

“property” shall have the meaning assigned to that expression in the Ordinance;

“*rasyid*” means a person who is not stupid or insane or has not been declared a bankrupt under any written law;

“Registrar” means the Registrar of *Wakaf* appointed by the Majlis under rule 17, and includes a Deputy Registrar of *Wakaf*;

“Syariah Court” means the Syariah High Court constituted under section 3(2) of the Syariah Courts Ordinance, 2001 [*Cap. 42*];

“*wakaf*” means the dedication of any property for religious or charitable purposes whether as *wakaf am* or *wakaf khas*, in accordance with Islamic Law;

“*wakaf am*” shall have the meaning assigned to that expression in the Ordinance;

“*wakaf khas*” shall have the meaning assigned to that expression in the Ordinance;

“*waqif*” means a person who creates a *wakaf*.

PART II

CREATION AND REGISTRATION OF *WAKAF*

Creation of *wakaf*

3.—(1) Except as provided hereinafter, any person who has attained the age of eighteen years and of sound mind and *rasyid* may dedicate his property for any *wakaf* purposes in accordance with Islamic Law.

(2) Any such *wakaf* may either be *wakaf am* or *wakaf khas*.

(3) A *wakaf* shall be created by executing an instrument in such form as may be determined by the Majlis in the presence of two witnesses in accordance with Islamic Law.

Effectiveness of *wakaf*

4.—(1) A *wakaf* shall become effective upon fulfillment of all requirements and conditions of a valid *wakaf* unless expressly provided otherwise that it shall become effective on or after the death of the *waqif*.

(2) A *wakaf* which has become effective shall not be sold or disposed of by the *waqif* or be subject to inheritance by any person.

Determination of conditions of *wakaf*

5. Where a *wakaf* prescribes the conditions to be fulfilled before a *mawquf-alaih* is entitled to the benefits of a *mawquf*, the determination of such conditions shall be made by the *waqif* or, where it is not so made, by the Majlis with the consent of the *waqif*.

Absence of *mawquf-alaih*

6.—(1) Where, in any *wakaf*—

(a) the *mawquf-alaih* has not been named by the *waqif*,

(b) the *mawquf-alaih* has ceased to exist; or

(c) the *mawquf-alaih* could not be traced within a period of four years after the *wakaf* has become effective,

such *wakaf* shall become a *wakaf am*, and in respect of subrule (1)(c) by notification in the *Gazette* by the Majlis.

(2) Subject to subrule (3), any *mawquf-alaih* whose *wakaf* has been gazetted by the Majlis as *wakaf am* under subrule (1) may apply to the Syariah Court for an order that such *wakaf* be registered with the Majlis as a *wakaf khas*.

(3) The *mawquf-alaih* shall not be entitled to the benefits of the *mawquf* until the order made under subrule (2) has been registered with the Majlis.

Registration of *wakaf*

7. Any person who desires to dedicate his property as a *wakaf* shall register such property with the Majlis in such form as may be determined by the Majlis.

Certificate of *Mawquf*

8.—(1) The Majlis shall issue a Certificate of *Mawquf* for any *mawquf* registered under rule 7.

(2) A Certificate of *Mawquf* shall be in such form as may be determined by the Majlis, and upon issuance shall be *prima facie* evidence in any Syariah Court or Civil Court on the validity of the *wakaf* without further proof.

Certification of *Wakaf*

9.—(1) Where an instrument by which a *wakaf* has been created is lost or destroyed, the Majlis may issue to the *waqif* a certificate in such form as may be determined by the Majlis.

(2) A certificate issued under subrule (1) shall be *prima facie* evidence in any Syariah Court or Civil Court on the validity of the *wakaf* without further proof.

PART III

THE RESPONSIBILITIES OF MAJLIS

Wakaf khas of Majlis

10.—(1) Where, by virtue of section 58(1)(a)(i) of the Ordinance, the Majlis is the sole trustee of all mosques, Islamic religious institutions and schools and Muslim burial grounds in the State, the Majlis shall register such properties as *wakaf khas*.

(2) Notwithstanding subrule(1), the Majlis may register any *mawquf*, other than for the purposes of a mosque, Islamic religious institution and school or Muslim burial ground, as *wakaf khas*.

(3) Any *mawquf* which has been registered under subrule (1) or (2) shall not be transferred, charged, subleased, mortgaged or assigned by the Majlis.

Wakaf scheme

11.—(1) The Majlis may establish any *wakaf* scheme—

(a) through cash contribution or any other form of financial contribution from any person, association or institution dedicated as *wakaf* to the Majlis;

(b) by offering for sale *wakaf* shares or by issuing *wakaf* bonds or any other instruments for valuable securities as *wakaf* to any person, association or institution; or

(c) for purposes of investment,

for or in any property acquired by it or to be acquired by it, to be dedicated as *wakaf*, or for development of the *mawquf*.

(2) In subrule (1), “*wakaf* shares”, “*wakaf* bonds” and “other instruments for valuable securities” mean the creation of a *wakaf* through the offering of shares, issuance of bonds or other instruments for valuable securities which is subsequently dedicated as a *wakaf* to the Majlis by the purchasers of the shares, bonds or other instruments for valuable securities.

(3) Any property acquired or to be acquired or developed from the contribution, proceeds or investment under subrule (1) may be dedicated as *wakaf am* or *wakaf khas*.

Power of Majlis to *istibdal*

12.—(1) The Majlis may *istibdal* any *mawquf*, except a mosque or mosque site, in the following circumstances:

(a) where any condition of the *wakaf* is inconsistent with any written law;

(b) where the *mawquf* has been acquired by any authority in accordance with any written law;

(c) where the use of the *mawquf* does not yield any benefit, interest or profit as intended by the *waqif*;

(d) where the use of the *mawquf* does not conform with the purpose of the *wakaf*; or

(e) where due to lapse of time or change of circumstances, it is not possible to carry out any of the conditions specified by the *waqif*.

(2) The Majlis shall seek the opinion of the Mufti where the Majlis intends to *istibdal*—

- (a) a mosque or mosque site; or
- (b) in circumstances other than those specified in subrule (1).

(3) Notwithstanding any of the conditions as may be specified by a *waqif*—

- (a) its execution shall be subject to any written law; and
- (b) where the Majlis is unable to execute any of the specified conditions, the Majlis shall determine any other manner for the execution of the *wakaf* in order that it may be utilized in a manner as closely as may be analogous to the condition specified by the *waqif*.

(4) The value of the *mawquf* obtained through *istibdal* shall be not less than the current market value of the original *mawquf*.

Benefits to mawquf-alaih

13.—(1) The Majlis shall ensure that a *mawquf-alaih* enjoys the benefit, interest or profit from a *mawquf* of which the *mawquf-alaih* is entitled.

(2) Where a *mawquf-alaih* has ceased to exist in respect of any *mawquf*, the Majlis shall manage such *mawquf* in accordance with the conditions as may be specified by the *waqif* or in the absence of such conditions, as the Majlis may deem fit.

Rights of Majlis as mawquf-alaih

14.—(1) The Majlis shall be entitled to any benefit, interest or profit from any *mawquf* of which the Majlis is its *mawquf-alaih*.

(2) The Majlis shall take all necessary steps as soon as may be practicable to claim its rights over any benefit, interest or profit of the *mawquf* under subrule (1), including a *mawquf* situated outside the State.

Redevelopment of mawquf

15. The Majlis may at its sole discretion redevelop any *mawquf* which has been destroyed whether wholly or partly, by utilizing the income or proceeds of the *mawquf* or other financial resources.

Rights of Majlis to defray administration cost of *mawquf*

16. The Majlis is entitled to utilize any amount of benefit, interest or profit from any *mawquf* to defray all costs necessary and incidental to it for the administration of the *mawquf*.

PART IV

REGISTRAR OF *WAKAF*

Appointment of Registrar and Deputy Registrar of *Wakaf*

17. The Majlis shall appoint a Registrar of *Wakaf* and such number of Deputy Registrar of *Wakaf* from among the officers of the Majlis as may be necessary to carry out the provisions of these Rules.

Responsibility of Registrar

18. The Registrar shall be responsible for—

- (a) the keeping and maintenance of a register of all *mawquf* in a form or manner as may be determined by the Majlis;
- (b) the vesting of a *mawquf* in the Majlis;
- (c) the keeping and holding of all instruments, documents of title or other securities relating to all *mawquf* registered with the Majlis; and
- (d) the carrying out of any duty as may be directed from time to time by the Majlis or the Lembaga Baitulmal dan *Wakaf*.

PART V

OFFENCES AND PENALTIES

Giving false information

19. Any person who makes any statement which he knows to be or has reason to believe is not true, not accurate or false, or conceals any material fact or furnishes any misleading information, or falsifies any document for the purposes of these Rules, commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months, or to both.

Preventing *mawquf-alaih* from enjoying benefit of *mawquf*

20. Any person who—

(a) prevents any *mawquf-alaih* from enjoying the benefit, interest or profit from a *mawquf* of which the *mawquf-alaih* is entitled; or

(b) causes the failure of any *mawquf-alaih* to enjoy the benefit, interest or profit from a *mawquf* of which the *mawquf-alaih* is entitled,

commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months, or to both.

Alteration, etc., of *mawquf*

21. Any person who uses any *mawquf* without the authority of the Majlis or causes any alteration, destruction, damage or defect to any *mawquf* commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months, or to both.

Unlawful occupation, etc., of *wakaf* land or building

22.—(1) Any person who, without the authority of the Majlis—

(a) occupies any *wakaf* land or building;

(b) erects any construction or structure on any *wakaf* land or building;

(c) clears, ploughs, digs, encloses, cultivates or otherwise works on any *wakaf* land; or

(d) cuts, takes, removes or disposes any produce on or from any *wakaf* land,

commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months, or to both.

(2) The court may order any person who commits an offence under subrule (1) to demolish, destroy and clear all constructions, structures, obstructions or crops on the *wakaf* land or building, as the case may be, at his own expense, or the Majlis may do so and recover the expenses incurred from such person by civil action as a debt due to the Majlis.

Order as to damages

23.—(1) Nothing in rules 21 and 22 shall affect the power of the Syariah Court to order any person to pay to the Majlis damages for any act committed under these Rules.

(2) If the damages referred to in subrule (1) are not paid, they may be recovered by civil action as debts due to the Majlis.

PART VI

GENERAL

Wakaf dedicated before commencement of these Rules

24.—(1) Notwithstanding the date of the coming into force of these Rules, any person who has dedicated his property as *wakaf*, or any person authorized by him, or if the person who has endowed his property as *wakaf* is deceased, his beneficiary or the trustee of such *mawquf*, shall, within six months from the date of service of the notice on him by the Majlis, register such *mawquf* in accordance with rule 7.

(2) Where any person referred to in subrule (1) fails to register the *mawquf*, the Majlis shall register itself as the *mawquf-alaih* of such *mawquf* and upon such registration the *mawquf* shall be deemed to be *wakaf khas* and rule 10 shall apply to such *mawquf*.

Made by the Yang di-Pertua Negeri Sarawak this 3rd day of January, 2008.

By Command,

PEHIN SRI HAJI ABDUL TAIB MAHMUD
*Chief Minister,
Sarawak*

JKM.P/SUL/MMKN/219

Sarawak LawNet



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