



# **LAWS OF SARAWAK**

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ONLINE VERSION OF  
UPDATED TEXT OF REPRINT

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## **Chapter 24**

### **SARAWAK BIODIVERSITY CENTRE ORDINANCE, 1997**

*Incorporating all amendments up to 30th September, 2015*

PREPARED AND PUBLISHED BY  
THE COMMISSIONER OF LAW REVISION, SARAWAK  
UNDER THE AUTHORITY OF THE REVISION OF LAWS ORDINANCE, 1992  
**2007**

**SARAWAK BIODIVERSITY CENTRE  
ORDINANCE, 1997**

Date Passed by Dewan Undangan Negeri ... ..	17th November, 1997
Date of Assent ... ..	27th November, 1997
Date of Publication in <i>Gazette</i>	4th December, 1997

Sarawak LawNet

**LAWS OF SARAWAK**  
**Chapter 24**  
**SARAWAK BIODIVERSITY CENTRE**  
**ORDINANCE, 1997**

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# LAWS OF SARAWAK

## Chapter 24

### SARAWAK BIODIVERSITY CENTRE ORDINANCE, 1997

*An Ordinance to establish the Sarawak Biodiversity Centre and the Sarawak Biodiversity Council and for purposes incidental thereto.*

*[1st January, 1998]*

Enacted by the Legislature of Sarawak—

#### PART I PRELIMINARY

##### **Short title and commencement**

1. This Ordinance may be cited as the Sarawak Biodiversity Centre Ordinance, 1997, and shall come into force on the 1st day of January, 1998.

##### **Interpretation**

2. In this Ordinance—

“biodiversity” means biological diversity, being the variability among living organisms from all sources, including plant materials, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, and the diversity within species, between species and ecosystem, and includes biological resources;

“Biodiversity Centre” means the Sarawak Biodiversity Centre established under section 5;

“biological resources” includes genetic resources, organisms or microorganisms or parts thereof, population and any other biotic components of an ecosystem with actual or potential use or value for humanity and derivatives therefrom, and information in relation thereto;

*[Sub. Cap A163/2014.]*

“Chairman” means the Chairman of the Council appointed under section 4, and includes any temporary Chairman so appointed;

“Chief Executive Officer” means the Chief Executive Officer of the Council appointed under section 7(1), and includes his Deputy or any person temporarily discharging the duties of his office;

*[Sub. Cap A163/2014.]*

“Council” means the Sarawak Biodiversity Council established under section 3;

“Deputy Chairman” means the Deputy Chairman of the Council appointed under section 4, and includes any temporary Deputy Chairman so appointed;

“derivatives” includes a naturally occurring chemical compound derived, developed or synthesized, 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 the chemical compound;

*[Ins. Cap A163/2014.]*

“financial year” means a period of twelve months beginning on 1st January in any year;

“genetic resources” means any material of plant, animal, microbial or other origin that contains functional units of heredity and that has actual or potential use or value for humanity;

*[Ins. Cap A163/2014.]*

“Government” means the Government of the State of Sarawak;

“Minister” means the Minister in the Government having responsibility for natural resources;

“premises” includes any building, store, shed, vehicle, vessel or structure, whether enclosed or otherwise.

*[Am. Cap A106.]*

“research and development” includes any form of study, analysis, evaluation, isolation, testing, experiment, examination

or screening of biological resources to determine their medicinal, pharmaceutical, therapeutic, nutritional, industrial, agricultural properties or qualities, or their functional ingredient for any purpose including potential commercial development.

*[Ins. Cap A163/2014.]*

## PART II

### THE SARAWAK BIODIVERSITY COUNCIL AND BIODIVERSITY CENTRE

#### **Establishment of Sarawak Biodiversity Council**

**3.—**(1) There is established in accordance with the provisions of this Ordinance a body corporate to be called the Sarawak Biodiversity Council.

(2) The Council—

- (a) shall have perpetual succession;
- (b) shall have a common seal; and
- (c) may, subject to the provisions of this Ordinance—
  - (i) acquire, hold and dispose of property, both movable and immovable;
  - (ii) enter into contracts;
  - (iii) sue and be sued in its corporate name; and
  - (iv) perform such other acts as bodies corporate may by law perform.

#### **Constitution of the Council**

**4.—**(1) The Council shall consist of—

- (a) a Chairman;
- (b) a Deputy Chairman;
- (c) a Secretary; and
- (d) not less than six but not more than ten other members,

all of whom shall be appointed by the Majlis Mesyuarat Kerajaan Negeri.

(2) Subject to the provision of this Ordinance, the members of the Council shall hold office for such term and subject to such conditions as the Majlis Mesyuarat Kerajaan Negeri may determine.

(3) The Majlis Mesyuarat Kerajaan Negeri may appoint any person to be temporary member of the Council during the temporary incapacity from illness or otherwise, or during the temporary absence from Malaysia, of any member of the Council.

(4) The Majlis Mesyuarat Kerajaan Negeri may appoint any member of the Council to be a temporary Chairman or temporary Deputy Chairman during the temporary incapacity from illness or otherwise, or during the temporary absence from Malaysia, of the Chairman or the Deputy Chairman, as the case may be.

(5) The Majlis Mesyuarat Kerajaan Negeri may, at any time, accept the resignation of any member of the Council.

(6) The Majlis Mesyuarat Kerajaan Negeri may, at any time, revoke the appointment of the Chairman, the Deputy Chairman, the Secretary and any other member of the Council.

(7) The Council may act notwithstanding any vacancy in its membership.

### **Sarawak Biodiversity Centre**

5. The Council shall establish, manage and maintain a biodiversity centre to be named the Sarawak Biodiversity Centre 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) the management and sustainable utilization of the biodiversity of the State, including determining policies and guidelines for scientific research or experiment related to the use of



biological resources of Sarawak for pharmaceutical, medicinal, therapeutic, and other specific purposes;

(c) maintaining a library of extracts of biological resources collected by the Sarawak Biodiversity Centre available for research and development and for maintaining records of and databases for biological resources found in the State;

*[Am. Cap A163/2014.]*

(d) ensuring that all collections of biodiversity and related data are maintained for the purposes of inventory and study of the biodiversity of Sarawak;

(e) formulating programmes for systematic surveys of biodiversity and the collection and analysis of data relating thereto;

(f) undertaking research and development and documentation of the traditional uses of biological resources by the native communities in the State, including ethnobotany or ethnobiology;

*[Am. Cap A163/2014.]*

(g) identifying new natural and biotechnological products derived from the biodiversity of the State;

(h) providing facilities for research and development including the characterization of chemical compounds, of genes and of proteins;

*[Am. Cap A163/2014.]*

(i) establishing linkages and partnership with other institutions or bodies, within or outside Malaysia to undertake research and development from the biological resources of the State; and

*[Am. Cap A163/2014.]*

(j) generally to promote education and knowledge of the biodiversity of the State.

[Am. Cap. A106.]

### **Powers of the Council**

6. The Council shall have the following powers for the discharge of its functions and duties under this Ordinance:

(a) to carry out all activities, the carrying on of which appears to the Council to be necessary, advantageous or convenient for or in connection with the discharge of its duties;

(b) to undertake the collection of biological resources for research and development, and for the establishment of a library of extracts of biological resources for the purposes referred to in section 5(c);

(bb) to ensure that prior informed consent is obtained from the natives where traditional knowledge associated with a biological resource is accessed and an agreement that includes benefit sharing based upon mutually agreed terms is entered into;

[Sub. Cap. A106, Am. Cap. A163/2014.]

(c) to promote the carrying on of any such activities by other bodies or persons or jointly with such other bodies or persons;

(d) to carry on such activities in association or collaboration or in joint venture with other bodies or persons including the departments or agencies of the Government or of the Government of Malaysia;

(e) with the approval of the Minister, to acquire, purchase, lease, take, hold and enjoy movable and immovable property of every description and sell, convey, assign, surrender and yield up, mortgage, demise, reassign, transfer or otherwise dispose of any movable or immovable property vested in the Council upon such terms as the Council thinks fit;

(f) to erect and maintain all necessary buildings for the purposes of the Biodiversity Centre;

(g) to manage the Biodiversity Centre or to appoint any person or body to manage the same on its behalf;

(h) to acquire, install and maintain exhibits for the Biodiversity Centre;

(i) to establish systems for maintaining and updating of databases of biodiversity in the Biodiversity Centre;

(j) to receive donations, grants, gifts of movable or immovable property from any source or to raise funds by any lawful means;

(k) to regulate and control public access to the Biodiversity Centre or the exhibits or resources maintained therein, and to charge fees for such access;

(l) to make provision for the specialized training of officers or employees of the Council and in that connection may offer scholarships to intending trainees or otherwise pay for the course of such training and all expenditure incidental thereto;

(m) to enter into contracts, establish trusts and generally to regulate transaction of all business connected with the Council; and

(n) to discharge such other functions as may be assigned to the Council by the Majlis Mesyuarat Kerajaan Negeri.

### **Appointment of officers and employees**

7.—(1) The Council may from time to time appoint and employ a Chief Executive Officer and such other officers and employees as may be necessary to assist the Council in carrying out its functions and duties and may, subject to terms and conditions determined by the Council under subsection (3), dismiss them:

Provided that the approval of the Minister shall be obtained in respect of the appointment of the Chief Executive Officer of the Council.

(2) All officers and employees of the Council shall be under the administrative control of the Chief Executive Officer.

(3) The Council may, with the approval of the Minister, make standing orders to provide for the terms and conditions of service,

including loans and allowances and the conduct and discipline of officers and employees of the Council.

### **Members and officers of the Council deemed to be public servants**

8. All members, officers and employees of the Council shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

### **Directions of the Minister**

9.—(1) The Minister may give to the Council such directions, not inconsistent with the provisions of this Ordinance, as he thinks fit, as to the exercise and performance by the Council of its powers, duties and functions under this Ordinance, and the Council shall give effect to all such directions.

(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 committees and advisers**

10.—(1) The Council may, in 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 purposes 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 or genetic resources, 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 powers, functions and duties**

**11.**—(1) The Council may, subject to such conditions or restrictions as it thinks fit, delegate to any committee referred to in section 10(1) or the chairman thereof or any officer of the Council all or any of the powers, functions and duties vested in the Council by this Ordinance, (other than the power to delegate conferred by this section) and any power, function or duty so delegated may be exercised or performed by that committee or the chairman thereof or the officer in the name and on behalf of the Council.

[Am. Cap. A106.]

(2) The Council may continue to exercise any power conferred upon it, or perform any function or duty under this Ordinance, notwithstanding the delegation of that power, function or duty under this section.

### **Protection from personal liability**

**12.**—(1) No action, suit, prosecution or proceedings 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 Ordinance.

(2) Where any member of the Council is exempt from liability by reason only of this section, the Council itself is liable only to the extent that it would be if that member of the Council were an employee or agent of the Council.

### **Execution of documents**

**13.** All deeds, documents or other instruments requiring the seal of the Council shall be sealed with the common seal of the Council in the presence of the Chairman or the Deputy Chairman and the Chief Executive Officer, who shall sign every such deed, document or other instrument to which the common seal is affixed and their signing shall be sufficient evidence that the seal was duly and properly affixed and that it is the lawful seal of the Council.

PART III  
FINANCE AND ACCOUNTING PROCEDURE

**Grants to the Council**

14. For the purpose of enabling the Council to carry out its functions under this Ordinance, the Government may, from time to time, make grants to the Council of such sums of money as it may determine.

**Biodiversity Centre Fund**

15. All moneys received or raised by the Council shall forthwith be paid into such banks or other financial institutions as may from time to time be decided by the Council to the credit of a fund to be called the Biodiversity Centre Fund (referred to in this Ordinance as “the Fund”) which shall be controlled and administered by the Council, subject to the directions of the Minister.

**Investment of moneys**

15A. All moneys not immediately required to be expended in the meeting of any obligations or the discharge of any functions of the Council may be invested in any bank or financial institution licensed under the Financial Services Act 2013 [*Act758*] or Islamic Financial Services Act 2013 [*Act 759*], or in such other investments or securities as may from time to time be approved by the Council.

*[Ins. Cap. A163/2014.]*

**Application of the Fund**

16. The moneys standing to the credit of the Fund may be applied for the following purposes:

(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;

(c) the salaries, fees, provident fund contributions, superannuation allowances and gratuities of the officers and employees of the Council.

- (d) the granting of loans to the officers and employees of the Council;
- (e) the repayment of loans made to the Council; and
- (f) the payment of all expenses necessary for carrying out the provisions of this Ordinance.

[Sub. Cap. A163/2014.]

### **Vesting of property**

17. The Majlis Mesyuarat Kerajaan Negeri may, by notification in the *Gazette*, vest in the Council any property as may be considered necessary to enable the Council to carry out its functions and duties under this Ordinance.

### **Annual report**

18. The Council shall, as soon as possible after the close of each financial year, submit to the Majlis Mesyuarat Kerajaan Negeri an annual report on the activities of the Council during that financial year, and the Minister shall present a copy of the report to the Dewan Undangan Negeri.

### **Accounts of the Council**

19.—(1) The Council shall keep proper accounts and other records of its own and shall prepare in respect of each financial year a statement of its accounts in a form approved by the Majlis Mesyuarat Kerajaan Negeri.

(2) The accounts of the Council shall be audited by a qualified auditor appointed annually by the Council with the approval of the State Financial Authority and the auditor shall make a report on the accounts examined by him.

(3) As soon as the accounts of the Council have been audited in accordance with subsection (2), a copy of the statement of accounts together with a copy of any report made by the auditor shall be submitted to the Majlis Mesyuarat Kerajaan Negeri, for its examination and approval, and thereafter the Minister shall present to the Dewan Undangan Negeri a copy of every such statement and report.

(4) The Statutory Bodies (Financial and Accounting Procedure) Ordinance, 1995 [*Cap. 15*], shall apply to the Council.

#### **Annual estimates**

**20.** The Council shall obtain in advance the approval of the Minister for its annual estimates of expenditure and for any supplementary estimates of its expenditure.

### PART IV

#### LEGAL PROCEEDINGS, OFFENCES AND PENALTIES, *ETC.*

#### **Protection of biological resources**

**21.—(1)** The Council may, with the approval of the Minister, by notification in the *Gazette*, declare any biological resources as protected resources (“protected resources”) by reason that such biological resources—

(a) upon research and development conducted by the Sarawak Biodiversity Centre or parties collaborating with the Sarawak Biodiversity Centre, have properties of medicinal, pharmaceutical, therapeutic, industrial or agricultural or their functional ingredients or nutritional values; or

(b) are required for the purpose of research and development undertaken by the Sarawak Biodiversity Centre for the purposes of this Ordinance; or

(c) have to be protected for the conservation or preservation thereof.

(2) No person shall, without a permit issued by the Council and subject to such terms and conditions as may be stipulated in such permit—

(a) collect or take away any protected resources from their natural habitat or place where they are found or grown; or

(b) take any protected resources out of the State,

for the purpose of any research and development.

[*Sub. Cap. A106, Am. Cap A163/2014.*]



**Penalty for collection of protected resources**

**22.** Any person who, without a permit from the Council, collects or takes away any protected resources from their habitat or place where they are found or grown for the purpose of research and development or take such resources out of the State, shall be guilty of an offence: Penalty, (a) where such person is an individual, to a fine of not less than fifty thousand ringgit and not more than two hundred thousand ringgit, or to imprisonment for a term of not exceeding five years or to both; (b) where such person is a body corporate, to a fine of not less than one hundred thousand ringgit and not more than five hundred thousand ringgit.

*[Sub. Cap. A106, Sub. Cap A163/2014.]*

**Compliance with other laws**

**22A.** Nothing in this Ordinance shall be deemed to have relieved a person from compliance with other relevant written laws pertaining to the collection, removal, taking away of or removal of biological resources from any State land forest, protected forest, forest reserve, national park, nature reserve or wild life sanctuary.

*[Ins. Cap. A106.]*

**Delivery of report of research and development on biological resources in Sarawak**

**22B.** Any person who conducts or carries out any research and development on biological resources found in Sarawak shall, subject to and in accordance with regulations made under section 35(1), deliver, at his own expense, a copy of the final report of such research and development to the Sarawak Biodiversity Centre.

*[Ins. Cap. A106, Am. Cap A163/2014.]*

**Conditions for permit**

**23.** No permit shall be issued by the Council except in accordance with rules made under section 35, and subject to the condition that the applicant enters into an agreement stipulating—

(a) the terms and conditions for research into and the use of the protected resources; and

*[Am. Cap. A106.]*

(b) the manner and mode of protection of any patent or intellectual property rights related to any invention or discovery made consequent upon such study or research,

and that the applicant deposits such sum or provides such bond as may be determined by the Council, to secure the due observance or compliance by the applicant of the terms and conditions of the permit, the agreement aforesaid and the provisions of this Ordinance.

#### **Duration of permit**

24. No permit issued under section 23 shall be for a period of exceeding three years and shall stipulate the locality or area wherein collection, under the permit may be made, or from which protected resources may be removed, or for the taking away of such resources from Sarawak.

*[Am. Cap. A106.]*

#### **Unauthorized taking of exhibits, data or resources from the Biodiversity Centre**

25. Any person who without the written authority from the Chief Executive Officer or a person duly authorized by him, takes away, removes from or makes use of any biological resource, exhibit, data, material or information kept, stored or maintained in the Biodiversity Centre shall be guilty of an offence: Penalty a fine of twenty thousand ringgit or imprisonment for three years or both such fine and imprisonment.

#### **Powers of entry and investigation**

26. The Chief Executive Officer, any police officer or customs officer or any other officer authorized in writing in that behalf by the Chief Executive Officer may without warrant enter any land or premises upon which any collection, study, research or experiment is being carried out on biological resources of the State with a view to ascertaining whether the provisions of this Ordinance or the conditions of any permit granted under this Ordinance are being

complied with, and may make such investigation and inspection of the land or premises or the activities described above, and call any person to produce such materials, books, records, reports or other documents or things and to furnish any information as the Chief Executive Officer or such officer authorized 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 such land or premises demanding the same.

*[Am. Cap A163/2014.]*

#### **Powers of search**

**27.** The Chief Executive Officer, any police officer or customs officer or any other officer authorized to exercise the powers of entry or investigation under section 26 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 Ordinance 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:

Provided that no woman shall be searched under this section except by a woman.

#### **Powers of seizure**

**28.—(1)** The Chief Executive Officer, any police officer or customs officer or any other officer authorized to exercise the powers of entry or investigation under section 26 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 of 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 Ordinance.

(2) No claim or action shall lie against the Chief Executive Officer, police officer, customs officer or any other officer authorized in writing by the Chief Executive Officer in that behalf in respect of the 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 Chief Executive Officer by public auction or otherwise disposed of as the court may order, and the proceeds 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**

**29.**—(1) The Chief Executive Officer or any other officer authorized to exercise the powers of entry or investigation under section 26 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 Ordinance and—

(a) who refuses to furnish his name and address; or

(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 possible be delivered into the custody of a police officer to be dealt with according to law.

### **Obstruction**

**30.** Any person who obstructs the Chief Executive Officer, any police officer or customs officer or any other authorized officer lawfully exercising any powers conferred on him by or under this Ordinance shall be guilty of an offence: Penalty, a fine of five thousand ringgit or imprisonment for two years, or both such fine and imprisonment.

**Liability of director, etc.**

31. Where an offence under this Ordinance 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 that offence unless he proves that the offence was committed without his consent or connivance, and that he exercised such diligence to prevent the 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 and shall, on conviction, be liable to the penalty applicable to an individual.

*[Ins. Cap. A163/2014.]*

**Conduct of prosecution**

32. Prosecution of any offence under this Ordinance or its regulations may be conducted by the Public Prosecutor or any person duly authorized in writing by him under section 377 of the Criminal Procedure Code *[Act 593]*.

*[Sub. Cap. A106.]*

**Legal representation**

33. In regard to any suit, action or proceedings of a civil nature by or against the Council or any member thereof or any officer of the Council in his official capacity, the State Attorney-General, or a State Legal Officer duly authorized by him, or an Advocate appointed by the Council, may represent, appear and plead on behalf of the Council or its member or officer in any court having jurisdiction over such suit, action or proceedings.

**Compounding of offences**

34. The Chief Executive Officer or any other officer of the Council authorized in writing in that behalf by him may compound any offence under this Ordinance by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding one half of the fine stipulated for the offence.

PART V  
REGULATIONS

**Regulations**

**35.**—(1) The Majlis Mesyuarat Kerajaan Negeri may make regulations for or in respect of—

(a) the convening of meetings of the Council and the procedure to be followed;

(b) the payment of fees, honorarium, allowances and benefits to members of the Council, or advisers or consultants appointed under section 10(2);

(c) the management and control of the Biodiversity Centre;

(d) the terms and conditions for access to and use of biological resources (including protected resources) of the State or such resources, data, exhibit, information or materials kept, stored or maintained in the Biodiversity Centre;

*[Sub. Cap. A163/2014.]*

(e) permits to be issued under this Ordinance;

(f) the exercise of the Council's powers and functions under the provisions of this Ordinance; and

(g) such other purposes which may be considered to be necessary for carrying out the provisions of this Ordinance.

*[Am. Cap. A106.]*

(2) All regulations made under this Ordinance—

(a) may prescribe that any act or omission in contravention thereof is an offence; and

(b) may provide for the imposition of a penalty, (i) where such person is an individual, to a fine of not less than fifty thousand ringgit and not more than two hundred thousand ringgit, or to imprisonment for a term of not exceeding five years or to both; (ii) where such person is a body corporate, to a fine of not less than one hundred thousand ringgit and not more than five hundred thousand ringgit.

*[Am. Cap. A106, Sub. Cap. A163/2014.]*

**LAWS OF SARAWAK**  
**Chapter 24**  
**SARAWAK BIODIVERSITY CENTRE**  
**ORDINANCE, 1997**

LIST OF AMENDMENTS

Amending Law	Short Title	In force from
Cap. A106	Sarawak Biodiversity Centre (Amendment) Ordinance, 2003	
	(a) The whole of Cap. A106 except section 11	1st April, 2004 (Swk. L.N. 9/2004)
	(b) Section 11 of Cap. A106	1st January, 1999
Cap. A163	Sarawak Biodiversity Centre (Amendment) Ordinance, 2014	1st June, 2015 (Swk. L.N. 295/2015)