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MAJLIS ISLAM SARAWAK ORDINANCE, 2001

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LAWS OF SARAWAK
Chapter 41
MAJLIS ISLAM SARAWAK ORDINANCE, 2001

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Sarawak LawNet

LAWS OF SARAWAK**Chapter 41****MAJLIS ISLAM SARAWAK ORDINANCE, 2001**

An Ordinance to make better provisions in the law with respect to the incorporation, administration and management of the Majlis Islam Sarawak and to provide for matters connected therewith and incidental thereto.

[1.8.2002]

*(Swk. L.N. 104/2002)

Enacted by the Legislature of Sarawak—

PART I**PRELIMINARY****Short title and commencement**

1.—(1) This Ordinance may be cited as the Majlis Islam Sarawak Ordinance, 2001.

(2) This Ordinance shall come into force on such date as the Yang di-Pertua Negeri may, by notification in the **Gazette*, appoint.

(3) The Yang di-Pertua Negeri may appoint different dates for the coming into force of different provisions of this Ordinance.

Interpretation

2.—(1) In this Ordinance, unless the context otherwise requires—

“*anak kariah*” means a person who is permanently or habitually resident in the *kariah masjid*;

“appointed date” means the date or dates appointed by the Yang di-Pertua Negeri under section 1;

“Baitulmal” means the fund established under section 45;

“court” means any court in the Federation established under any written law;

“emoluments” means salary or wages and all remunerations in money due to an employee, and includes basic pay, fixed rewards, incentive payments and other monthly allowances;

“employer” means the person with whom an employee has entered into a contract of service or apprenticeship, and includes—

(a) a manager, agent or person responsible for the payment of salary or wages to an employee;

(b) any body of persons whether or not statutory or incorporated;

(c) any Government, any department of Government (including the Government of Malaysia and of any State in Malaysia), any local authority and any Federal or State statutory body; and

(d) such other bodies as the Majlis Mesyuarat Kerajaan Negeri may from time to time, by notification in the *Gazette*, specify;

“*fatwa*” means an edict issued under section 37 by the Majlis;

“*fitrah*” means the amount of rice or its equivalent value in money payable under the law of the religion of Islam or Islamic Law annually by a Muslim in the month of *Ramadan* to be used for religious or charitable purposes recognized by Islamic Law;

“former Majlis” means the Majlis Islam established under the repealed Ordinance;

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

“Islamic Law” means Islamic Law according to *Mazhab Shafie* or any one of *Mazhab Maliki*, *Hanbali* or *Hanafi* as may be determined by the Majlis;

“*kariah masjid*”, in relation to a mosque, means the area, the boundaries of which are determined under section 60, in which the mosque is situated;

“Lembaga” means the Lembaga Baitulmal dan Wakaf, the Lembaga Fatwa, the Lembaga Hal-Ehwal Islam dan Adat Melayu and the Lembaga Masjid-Masjid established under this Ordinance respectively, and when reference is made to such Lembaga singly it refers to, and means, that particular Lembaga referred to only;

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

“Majlis Mesyuarat Kerajaan Negeri” means the body constituted under Article 6(1) of the Constitution of the State of Sarawak [*G.N.S. 163/63*] to advise the Yang di-Pertua Negeri in the exercise of his functions;

“Minister” means the Minister for the time being charged with the responsibility for the Majlis;

“mosque” means a building—

(a) erected or used for the purpose of holding Friday prayers and other prayers and activities which are enjoined, required, recommended or approved by the religion of Islam; and

(b) the use of which as such is permitted by the Majlis under section 60,

and includes any *surau* or other building declared by the Majlis as a mosque under that section;

“Mufti” means the Mufti appointed under section 35;

“Muslim” means—

- (a) a person who professes the religion of Islam;
- (b) a person either or both of whose parents were, at the time of the person’s birth, Muslims;
- (c) a person whose upbringing was conducted on the basis that he was a Muslim;
- (d) a person who has converted to the religion of Islam in accordance with Part VIII;
- (e) a person who is commonly reputed to be a Muslim; or
- (f) a person who is shown to have stated, in circumstances in which he was bound by law to state the truth, that he was a Muslim, whether the statement be verbal or written;

“Muslim convert” means a person who is newly converted to the religion of Islam under section 68;

“National Fatwa Committee” means the committee established by the Rulers’ Conference under regulation 11 of the regulations of the National Council for Religious Affairs, Malaysia;

“*nazr*” means a vow expressed in writing and properly executed in accordance with Islamic Law to do any act or to dedicate property for any purpose permitted by Islamic Law;

“*nazr am*” means a vow intended wholly or in part for the benefit of the Muslim community generally or any section of the Muslim community, as opposed to an individual person or persons;

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

“*pegawai masjid*” means the *Imam, Khatib, Bilal* or *Marbot*, as the case may be, of a mosque for the time being;

“President” means the President of the Majlis appointed under section 11;

“property” means all property, movable or immovable, and includes all lands, estates, interests, easements and rights, whether equitable or legal, in, to or out of property, and things in action;

“repealed Ordinance” means the Majlis Islam (Incorporation) Ordinance [*Cap. 105 (1958 Ed.)*];

“Secretary” means the Secretary of the Majlis mentioned in section 23 who shall also be the Secretary of all the Lembaga;

“State” means the State of Sarawak;

“*wakaf am*” means a dedication in perpetuity of the capital and income of property for religious or charitable purposes recognized by Islamic Law and the property so dedicated;

“*wakaf khas*” means a dedication in perpetuity, or for a limited period, of the capital of property for religious or charitable purposes recognized by Islamic Law and the property so dedicated, the benefit and income of the property being given to specified persons or for purposes prescribed in the *wakaf*;

“written law” means any written law which is applicable to persons professing the religion of Islam in the State;

“*zakat*” means a tax imposed on the property and income of a Muslim payable in accordance with Islamic Law.

(2) In this Ordinance, a reference to the Yang di-Pertua Negeri shall be construed as a reference to the Yang di-Pertua Negeri acting on the advice of the Majlis Mesyuarat Kerajaan Negeri or of a member thereof acting under the general authority of the Majlis Mesyuarat Kerajaan Negeri.

(3) All words and expressions used in this Ordinance and not defined in this Ordinance but defined in the Interpretation Ordinance, 2005 [*Cap. 61*] or in any written law for the time being in force shall have the meanings assigned to them respectively in that Ordinance or written law to the extent that such meanings do not conflict with Islamic Law.

PART II

MAJLIS ISLAM SARAWAK

Establishment, Powers, *etc.*, of the Majlis

Establishment of the Majlis

3.—(1) There shall be a body to be known as the “Majlis Islam Sarawak” to aid and advise the Yang di-Pertuan Agong in matters relating to the religion of Islam in the State, except matters on Islamic Law and laws relating to the administration of justice, and to exercise such powers and duties as are conferred by this Ordinance.

(2) Upon the commencement of this section, the “Majlis Islam”, existing by virtue of section 3 of the repealed Ordinance, shall be deemed to be the Majlis referred to in subsection (1).

Legal entity and powers of the Majlis

4.—(1) The Majlis shall be a body corporate having perpetual succession with a corporate seal, and such corporate seal may from time to time be broken, changed, altered and made anew as the Majlis deems fit, and, until a seal is provided under this section, the seal of the former Majlis may be used as the common seal of the Majlis.

(2) The Majlis may sue and be sued in its corporate name.

(3) The Majlis may enter into contracts and may acquire, purchase, take, hold and enjoy property movable or immovable of every description and, subject to any or other written law affecting the property, may convey, assign, surrender and yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any property vested in the Majlis upon such terms and conditions as the Majlis deems fit and in accordance with Islamic Law.

(4) The Majlis shall have power to act as an executor of a will or as an administrator of the estate of a deceased person or as a trustee of any trust.

(5) The Majlis shall have power to register Islamic religious institutions and schools in the State.

(6) The Majlis shall, for the purposes of the Land Code [*Cap. 81 (1958 Ed.)*], be deemed to be a Native of Sarawak.

The duty of the Majlis for the economic and social development of Muslims

5.—(1) It shall be the duty of the Majlis to promote, stimulate, facilitate and undertake the economic and social development and the well-being of the Muslim community in the State consistent with Islamic Law.

(2) The Majlis shall have power, for the purpose of the discharge of its duty under subsection (1),—

(a) to carry on all activities, particularly the development of commercial and industrial enterprises, the carrying on of which appears to the Majlis to be requisite, advantageous, beneficial or convenient for or in connection with the discharge of such duty;

(b) to promote the carrying on of any such activities by other 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 Majlis or independently, and to give assistance to such bodies or to other bodies or persons appearing to the Majlis to have the facilities for the carrying on of any such activities, including the giving of financial assistance by way of loan or otherwise;

(c) to carry on any such activities in association with other bodies or persons, including the departments or authorities of the Federal Government or State Government, or as managing agent or otherwise on behalf of the Federal Government or State Government;

(d) to invest in any authorized investment as defined by the Trustee Act 1949 [Act 208], and to dispose of the investment on such terms and conditions as the Majlis may determine;

(e) to establish, construct, maintain and regulate Islamic religious institutions or schools, and Islamic training and research institutions;

(f) to establish any scheme for the granting of loans or otherwise from the Baitulmal to Muslim individuals for higher learning; and

(g) to do all other acts which the Majlis considers desirable or expedient.

Power to establish companies

6. The Majlis may, with the approval of the Minister,—

(a) establish or incorporate a company or companies under the Companies Act 1965 [Act 125]; or

(b) acquire or hold interests, shares and securities in any company or companies,

in order to undertake or carry out any activity or business which the Minister deems fit and proper to undertake or to carry out for the purpose of this Ordinance or for the investment of any money or property vested in or administered by the Majlis under Part V.

Power to borrow

7.—(1) The Majlis may, with the approval of the Minister and upon such terms and conditions as may be determined by him, borrow such sums as it may require for the purposes of meeting any of its obligations or discharging any of its functions under this Ordinance.

(2) Sums borrowed by virtue of this section shall be paid into a separate account of the Baitulmal.

The Majlis assisted by Lembaga

8. The Majlis shall be assisted by the Lembaga in carrying out such duties as are assigned to the respective Lembaga by this Ordinance either under the direction of the Majlis or independently.

Laws to be observed

9. The Majlis shall take notice of and act upon all written laws in force in the State, the provisions of the Islamic Law and the Malay customary law of the State.

Further powers and duties

10. In addition to the powers provided under this Ordinance, the Majlis shall have such further powers and shall carry out such further duties as may, by this Ordinance or by any written law, be assigned to it or as may, by Order published in the *Gazette*, be imposed upon the Majlis by the Yang di-Pertua Negeri.

Membership of the Majlis and Appointments

Membership of the Majlis

11.—(1) The Majlis shall consist of the following members who shall be appointed by the Yang di-Pertuan Agong, on the recommendation of the Yang di-Pertua Negeri:

- (a) a President;
- (b) a Deputy President; and
- (c) not more than ten other members.

(2) Save as otherwise expressly provided in this Ordinance and unless the contrary appears in the instrument of appointment, the appointment of members of the Majlis shall, unless they sooner resign or their appointments are sooner revoked, be deemed to have been made for a period of three years from the date thereof.

(3) The members of the Majlis shall, on the expiration of their term, be eligible for re-appointment.

(4) No person of or under the age of twenty-one years and not professing the religion of Islam shall be appointed a member of the Majlis.

Termination of appointments

12. The appointment of any member of the Majlis shall terminate—

(a) upon his death;

(b) if there has been proved against him, or he has been convicted of—

(i) an offence involving fraud, dishonesty or moral turpitude;

(ii) an offence under section 33 or under any law relating to corruption; or

(iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;

(c) if he is adjudged a bankrupt;

(d) if he is of unsound mind or is otherwise incapable of discharging his duties;

(e) if, by letter addressed to the Yang di-Pertua Negeri through the President, he resigns his appointment; or

(f) if he shall be absent from the State, without the written permission of the President, for a period exceeding three months.

Revocation of appointments

13. The Yang di-Pertuan Agong may at any time, on the recommendation of the Yang di-Pertua Negeri, revoke the appointment of any member of the Majlis—

(a) if his conduct, whether in connection with his duties as a member or otherwise, has been or is in the opinion of the Yang

di-Pertuan Agong, acting on the recommendation of the Yang di-Pertua Negeri, such as to bring discredit upon the Majlis; or

(b) if he shall, without any excuse which in the opinion of the President is sufficient, absent himself from three consecutive meetings of the Majlis.

Temporary appointments

14. In the event of the temporary absence or incapacity or termination under section 12 of any member of the Majlis, the Yang di-Pertua Negeri may appoint any person to act on behalf of such member during such temporary absence or incapacity or termination.

Powers of the Majlis, etc., not affected by vacancy, etc.

15. The powers of the Majlis, any Lembaga or any committee established by or under this Ordinance shall not, unless the contrary intention appears, be affected by—

(a) any vacancy in the membership thereof;

(b) the fact that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member thereof; or

(c) the fact that there was any minor irregularity in the convening of any meeting thereof.

Allowances

16. The members of the Majlis and the Lembaga, and members of the committees established under this Ordinance by the Majlis and the Lembaga respectively may be paid such allowances as the Majlis may, after consultation with the Minister, determine.

PART III
PRESIDENT, SECRETARY AND PROCEEDINGS
OF THE MAJLIS

*Powers and Functions of President
on Proceedings of the Majlis, etc.*

Control by President

17.—(1) The President shall exercise control over all deliberations and proceedings of the Majlis and shall be responsible for the proper and orderly conduct thereof and be answerable to the Yang di-Pertua Negeri.

(2) The President, or any person appointed by the Yang di-Pertua Negeri under section 14, on the recommendation of the Majlis, may exercise the powers and functions of the Mufti during the period in which no Mufti has been appointed under section 35 or during the period in which the Mufti is for any reason unable to exercise his powers or functions.

(3) The President or the person so appointed shall, during the period in which he is exercising the powers and functions of the Mufti under subsection (2), be deemed to be the Mufti.

Attendance of non-members at meetings of the Majlis

18.—(1) The President may invite any person who is not a member of the Majlis to any meeting of the Majlis if the business before the meeting makes the presence of such a person desirable for the purpose of assisting or advising it on any matter under deliberation.

(2) A person attending a meeting under subsection (1) is entitled to participate in the deliberation of the Majlis but is not entitled to vote.

(3) Any person invited under subsection (1) to attend any meeting of the Majlis may be paid such allowance as the Majlis may determine.

Presiding over meetings

19.—(1) The President or, in his absence, the Deputy President, shall preside as Chairman at all meetings of the Majlis.

(2) If the President and the Deputy President are absent from a meeting, the members present shall elect from among their number a person to preside as Chairman for that meeting.

Order of business and voting

20.—(1) The President shall determine the order of business at any meeting.

(2) If on any resolution to be determined by the Majlis there is an equality of votes, the Chairman of the meeting shall have a casting vote in addition to his deliberative vote.

Application for leave by the President

21.—(1) The President shall, if he expects to be absent on leave or for other reasons for more than fourteen days, apply for leave from the Yang di-Pertua Negeri who may give such directions as he deems fit.

(2) Any other member of the Majlis or the Secretary shall apply to the President who may either grant the leave or submit the matter to the Yang di-Pertua Negeri for his directions.

Action in case of emergency

22.—(1) In any case of emergency, the President may, with the approval of the Minister, do or direct to be done on behalf of the Majlis any act or thing that may lawfully be done by resolution of the Majlis.

(2) If any act or thing is done pursuant to subsection (1), a meeting of the Majlis shall be held within one week thereafter for the purpose of ratifying and confirming the act or thing done, and if the Majlis shall decline to ratify and confirm the act or thing done, the Yang di-Pertua Negeri may give such directions with respect thereto as he deems fit.

Powers, Duties and Responsibilities of Secretary

Secretary

23.—(1) The Director of the Islamic Religious Department of the State shall be the Secretary of the Majlis, who shall be assisted by such officers as the Director may, with the approval of the President, appoint.

(2) The Secretary shall, in addition to the duties and powers under sections 24, 25, 26 and 62,—

(a) be responsible for implementing the decisions and for carrying out the policies and resolutions of the Majlis and for the general administration of its affairs;

(b) exercise supervision and control over all officers and servants of the Majlis; and

(c) perform and discharge such other functions and duties as the Majlis may from time to time determine.

(3) The Secretary shall attend all meetings of the Majlis and may participate in its deliberations, but shall not be entitled to vote.

Duties and powers of Secretary

24. Subject to such directions as may be given to him by the President, the Secretary shall—

(a) have charge of all correspondence and documents of the Majlis, including all books of account of the Majlis, and all title deeds and securities;

(b) be generally responsible for the proper collection of, accounting for, and disposal of, all funds of the Majlis; and

(c) in all other respects, carry out such duties as may be imposed upon him by this Ordinance or assigned to him by direction of the President.

Summoning of meetings

25.—(1) All meetings of the Majlis shall be summoned by the Secretary on the direction at any time of the President.

(2) Any four members of the Majlis may at any time in writing require the Secretary to summon a meeting of the Majlis on condition that they inform the Secretary the purpose for which they desire the meeting to be summoned.

(3) The Secretary shall summon a meeting within fourteen days from the date of receipt of the direction under subsection (1) or the requirement under subsection (2).

(4) At least seven days' notice in writing shall be given of any meeting, but the President may, if he considers that there is urgent need to summon a meeting at shorter notice, direct that the requirement of seven days' notice be dispensed with.

(5) Notice of a meeting may be sent by post, facsimile or E-mail.

(6) A notice sent to a member by post shall be addressed to his last known place of residence and shall be deemed to have been served in the due course of post.

(7) A notice sent to a member by facsimile shall be sent to the facsimile number given by the member in writing to the Secretary and shall be deemed to have been received by the member when the call back code is received by the Secretary.

(8) A notice sent to a member by E-mail shall be sent to the E-mail address given by the member in writing to the Secretary and shall be deemed to have been received by the member if the relevant mail administrator informs that the mail has been successfully delivered or if there is no information from the mail administrator that the mail has not been successfully delivered.

(9) No notice of meeting shall be necessary in the case of a member who is for the time being outside the State.

Minutes

26.—(1) The Secretary shall keep the minutes of all meetings of the Majlis.

(2) At every meeting the minutes of the previous meeting shall be read and confirmed, subject to any amendment which may be required.

(3) The minutes shall be entered in the minute book of the Majlis and shall contain a full verbatim record of every resolution of the Majlis.

(4) As soon as possible after every meeting of the Majlis, a copy of the confirmed minutes shall be sent to the Yang di-Pertua Negeri, and if on confirmation of the draft minutes the minutes are amended, the Yang di-Pertua Negeri shall forthwith be informed of the amendments made.

Certified copies of resolutions

27. The Secretary may certify a copy of any resolution of the Majlis to be a true copy of such a resolution and such resolution shall, until the contrary is proved, be sufficient evidence thereof, and all courts shall take judicial notice of the resolution without proof of the signature of the Secretary.

*Proceedings of the Majlis***Conduct of proceedings**

28.—(1) Except as otherwise expressly provided by this Ordinance, all proceedings of the Majlis shall be conducted in a meeting of the Majlis regularly convened and shall be disposed of by the resolution of the majority of the members present and entitled to vote.

(2) A resolution in writing signed by all members of the Majlis shall, unless in any special case or class of cases the Yang di-Pertua Negeri shall otherwise direct, have the same effect as a resolution duly passed under subsection (1).

Quorum

29. No business, save that of adjournment, shall be transacted at a meeting and no resolution or action of the Majlis made or performed at a meeting shall be valid, unless one-third of the members, including the President or person presiding over the meeting, are present at the meeting.

Use of seal

30.—(1) The corporate seal of the Majlis as provided under section 4 (1) shall not be used except in pursuance of a resolution of the Majlis.

(2) Any document or instrument to be executed under the seal of the Majlis shall be sealed in the presence of the Secretary and two other members of the Majlis who shall all sign as witnesses. Such signing shall be sufficient evidence that such seal was duly and properly affixed and is the lawful seal of the Majlis.

(3) The following documents or instruments shall be executed under the corporate seal of the Majlis:

- (a) documents requiring registration in any Land Office;
- (b) documents authorizing any person to act for any particular purpose or purposes on behalf of the Majlis; and
- (c) such other documents or instruments or classes of documents or instruments as the Yang di-Pertua Negeri may from time to time direct.

(4) The corporate seal of the Majlis shall be officially and judicially noticed.

Appearances by the Majlis

31. The Majlis may appear in any court (including courts other than Syariah Courts) or office of Government by its President, Deputy President or Secretary, or by any person appointed for the purpose, whether generally or in any particular case, under the corporate seal of the Majlis.

Delegation of Powers and Duties of the Majlis

Delegation of powers and duties of the Majlis

32.—(1) The Majlis may, by resolution approved by the Yang di-Pertua Negeri, delegate to the President, the Deputy President or the Secretary or to any Lembaga established under this Ordinance or to any committee of such Lembaga or of the Majlis the exercise of any of its powers, not being judicial or quasi-judicial powers, or the discharge of any of its duties as it may deem fit.

(2) The exercise of powers and the discharge of duties in pursuance of a delegation under subsection (1) shall be subject to the control and direction of the Majlis.

(3) The President, Deputy President, the Secretary, the Lembaga or committee to whom or to which a delegation has been made under subsection (1) shall inform the Majlis of all acts and things done by him or it in pursuance of such delegation.

(4) For the purpose of this section, the powers conferred on the Majlis by sections 37 and 39 shall be deemed to be quasi-judicial powers.

Secrecy

33.—(1) The proceedings of the Majlis shall be kept secret and no member, officer or servant thereof shall disclose or divulge to any person, other than the Yang di-Pertua Negeri or the Minister or any member of the Majlis, any matter that has arisen at any meeting unless he is expressly authorized to do so by the Majlis:

Provided that this section shall not apply to proceedings and matters which have been submitted to, and have received the approval of, the Yang di-Pertua Negeri.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment not exceeding one year or to both.

The Majlis may determine its own procedure and practice

34. The Majlis may, subject to the other provisions of this Ordinance, determine all questions relating to its own procedure and practice.

PART IV

APPOINTMENT OF MUFTI AND
THE ESTABLISHMENT OF LEMBAGA FATWA*Mufti***Appointment of Mufti**

35.—(1) The Yang di-Pertuan Agong may, on the recommendation of the Yang di-Pertua Negeri, appoint a fit and proper person to be the Mufti.

(2) The Mufti shall be *ex officio* a member of the Majlis and shall not be subject to section 11.

*Lembaga Fatwa***Establishment of Lembaga Fatwa**

36.—(1) There shall be established, for the purpose of this Ordinance, a Lembaga Fatwa which shall consist of the Mufti and not less than four members but not more than eight other members who shall assist and advise the Majlis in respect of all matters relating to Islamic Law.

(2) The members of the Lembaga Fatwa, other than the Mufti, shall be appointed by the Yang di-Pertua Negeri, on the recommendation of the Majlis, for such period as may be prescribed.

(3) The Mufti shall be the Chairman of the Lembaga Fatwa and, in his absence from any meeting, the members present may elect from among their number, a person to act as Chairman for that meeting.

(4) The Chairman and three other members of the Lembaga Fatwa shall be a quorum.

(5) Subject to any other written law, the Lembaga Fatwa shall have power to regulate its own procedure.

(6) For the purpose of subsection (4), “Chairman” shall include a person elected to act as Chairman in accordance with subsection (3).

Power of the Majlis to issue *fatwa*

37.—(1) The Majlis may issue a *fatwa* on any point or tenet of Islamic Law or any matter pertaining to the practice of the religion of Islam:

(a) on its own initiative; or

(b) where a request for the issuance of a *fatwa* is made by a person belonging to the Islamic faith and who represents a section of the Muslim community in the State.

(2)(a) Upon receipt of a request under subsection (1)(b), the Secretary shall submit such request to the Mufti who, if satisfied that the *fatwa* sought relates to a matter concerning Islamic Law or the practice of the religion of Islam which is of interest or concern to the Muslim community in the State or any part thereof, will cause a study or research on the issue raised and the proposed *fatwa* sought, to enable the Lembaga Fatwa to deliberate thereon.

(b) If the Lembaga Fatwa shall determine that the proposed *fatwa* ought to be submitted to the Majlis for its consideration, the Lembaga Fatwa shall forward to the Majlis its written opinion thereon.

(3)(a) Where the Majlis determines whether on its own initiative or pursuant to a request made by a person in accordance with subsection (1)(b), that a *fatwa* ought to be issued, the Majlis shall, through the State Secretary, transmit its decision to the Yang di-Pertua Negeri for his concurrence.

(b) A decision under paragraph (a) may be made by a majority of the members of the Majlis.

(4) Upon the concurrence of the Yang di-Pertua Negeri being obtained for the issue of the *fatwa*, the State Secretary shall cause the *fatwa* to be published in the *Gazette*, whereupon the *fatwa*, shall, as from the date specified in the *Gazette* notification, be binding on all Muslims in the State.

(5)(a) A *fatwa* shall from the date referred to in subsection (4) be recognized by all courts in the State as conclusive of the matters laid down therein.

(b) In proceedings before any court, the production of the *Gazette* notification published pursuant to subsection (4) shall be conclusive evidence of the *fatwa* contained therein.

Request for opinion of Lembaga Fatwa

38. If in any court, including a Syariah Court, any question on Islamic Law calls for a decision or clarification, the court may request for the opinion of the Lembaga Fatwa thereon, and the Lembaga Fatwa may, with the concurrence of the Majlis, submit its opinion to the court requesting the same provided that such opinion issued by the Lembaga shall not be regarded as a *fatwa*.

***Qaul muktamad* to be followed**

39.—(1) In issuing any *fatwa* under section 37, or certifying an opinion under section 38, the Majlis shall ordinarily follow the accepted views (*qaul muktamad*) of the *Mazhab Syafie*.

(2) If the Majlis considers that following the *qaul muktamad* of the *Mazhab Syafie* will lead to a situation which is repugnant to public interest, the Majlis may, with the special sanction of the Yang di-Pertua Negeri, follow the *qaul muktamad* of the *Mazhab Hanafi*, *Maliki* or *Hanbali*.

(3) If the Majlis considers that none of the *qaul muktamad* of the four *Mazhabs* may be followed without leading to a situation which is repugnant to public interest, the Majlis may, with the special sanction of the Yang di-Pertua Negeri, make the *fatwa* according to its own judgment without being bound by the *qaul muktamad* of any of the four *Mazhabs*.

(4) In making any *fatwa* under subsection (2) or (3), the Majlis may set out in full detail and with any necessary explanation the provisions and principles which it followed.

Amendment, modification or revocation of *fatwa*

40.—(1) The Majlis may amend, modify or revoke any *fatwa* that has been issued in the *Gazette* under this Ordinance or under the repealed Ordinance.

(2) An amendment, a modification or a revocation of a *fatwa* shall be deemed to be a *fatwa* and section 37 shall apply thereto.

***Fatwa* which relates to matters of national interest**

41.—(1) Notwithstanding the powers of the Lembaga Fatwa under section 37, whenever it appears to the Lembaga Fatwa that a *fatwa* proposed to be made is related to matters affecting national interest, the Lembaga Fatwa shall adjourn its discussions on the proposed *fatwa* and submit the matter to the Majlis accordingly.

(2) After deliberating upon the matter, the Majlis may make a recommendation to the Yang di-Pertua Negeri for his consent to refer the proposed *fatwa* to the Conference of Rulers through the National Fatwa Committee.

(3) Without prejudice to the generality of subsection (1), a *fatwa* shall be deemed to be related to matters affecting national interest if the question is related to any matter, policy, programme or activity which directly affects the interest of the Federal Government, a State Government or any of its ministries, departments or agencies.

(4) If the Yang di-Pertua Negeri gives his consent under subsection (2), the Majlis shall, before the *fatwa* is referred to the National Fatwa Committee, inform the State Government of the reference.

(5) When a proposed *fatwa* has been referred to the National Fatwa Committee, the National Fatwa Committee shall present its advice and recommendations on the matter to the Conference of Rulers in accordance with subsection (2).

(6) If the National Fatwa Committee advises and recommends that the proposed *fatwa* be made, with or without any modification, or that another *fatwa* on the same matter be made, and the Conference of Rulers have agreed—

(a) that the proposed *fatwa* affects a religious act or observance which extends to the Federation as a whole pursuant to Article 38(2)(b) of the Federal Constitution; and

(b) with the advice and recommendation of the National *Fatwa* Committee,

the Majlis shall notify the Yang di-Pertua Negeri of the *fatwa* according to such advice and recommendation, and section 37 shall apply thereto.

(7) A *fatwa* published in the *Gazette* shall be accompanied by a statement that the *fatwa* is made under this section.

Adoption of advice and recommendation of National Fatwa Committee

42.—(1) The Majlis may adopt any advice and recommendation of the National Fatwa Committee which affects any religious act or observance which has been agreed upon by the Conference of Rulers as a religious act or observance which extends to the Federation as a whole pursuant to Article 38(2)(b) of the Federal Constitution.

(2) The advice and recommendation adopted by virtue of subsection (1) shall be deemed to be a *fatwa* and section 37 shall apply thereto.

(3) A *fatwa* published in the *Gazette* shall be accompanied by a statement that the *fatwa* is made under this section.

PART V

ESTABLISHMENT OF LEMBAGA BAITULMAL DAN
WAKAF, BAITULMAL, WAKAF AND NAZR*Lembaga Baitulmal dan Wakaf***Establishment of Lembaga Baitulmal dan Wakaf**

43.—(1) There shall be established, for the purpose of this Ordinance, a Lembaga Baitulmal dan Wakaf which shall consist of not less than four members, including the Chairman, but not more than eight other members who shall be appointed by the Yang di-Pertua Negeri, on the recommendation of the Majlis, for such period as may be prescribed.

(2) It shall be the responsibility of the Lembaga Baitulmal dan Wakaf, for and on behalf of the Majlis—

(a) to collect and manage the collection of contributions to the Baitulmal in accordance with this Part; and

(b) to apply or distribute the income of a *wakaf khas* to persons or for purposes prescribed in the *wakaf*.

Investment in immovable property

44. The Lembaga Baitulmal dan Wakaf shall, for and on behalf of the Majlis, have power—

(a) to invest from time to time the money or assets of the Baitulmal for the benefit of the Majlis in any of the following investments:

(i) to purchase, exchange, sub-lease and hold land, buildings and other immovable property;

(ii) to build houses, flats, tenements, shops, shophouses or any other building;

(iii) to sell land, houses, flats, tenements, shops, shophouses or any other building;

(iv) to invest in any investments or securities for the time being authorized by any written law for the investment of trust funds and by Islamic Law; and

(v) to invest in such other investments or securities as may be authorized by the Majlis; and

(b) to vary, transpose or realize investments from time to time and employ the bankers of the Baitulmal or any other agency as may be approved by the Majlis to invest the money of the Baitulmal.

Establishment, etc., of the Baitulmal and Contributions thereto

Establishment of the Baitulmal

45.—(1) There shall be established, for the purposes of this Ordinance, a fund to be known as the Baitulmal.

(2) The Baitulmal shall consist of—

(a) all estate or property of a deceased Muslim which, by Islamic Law or under this Ordinance or rules made thereunder, accrues to the Baitulmal;

(b) all fees, moneys, *zakat* and *fitrah* collected from time to time by the respective Lembaga in accordance with this Part and Part VII;

(c) all contributions made or payable by any person to the Baitulmal;

(d) any such grant, gift, donation, contribution or any other sums as may be received from any source;

(e) such sums borrowed by the Majlis under section 7;

(f) all moneys and property of the Baitulmal;

(g) all property and assets of *wakaf khas* and *nazr am*;

(h) any property, investments, mortgages, charges or debentures acquired by or vested in the Majlis;

(i) all moneys earned or arising from any property, investments, charges or debentures acquired by or vested in the Majlis;

(j) all moneys earned by the operation of any project, scheme or enterprise financed from the Baitulmal; and

(k) all such other sums or property which may in any manner become payable to or vested in the Majlis in respect of any matter incidental to its functions, powers and duties.

(3) All moneys and property in the Baitulmal shall be vested in the Majlis which shall administer all such moneys and property in accordance with this Ordinance or the rules made under this Ordinance.

(4) Notwithstanding subsection (3), any investments of assets and funds vested in the Majlis may be sold, realized and disposed of, and the proceeds thereof may be invested in accordance with section 44.

Application of the Baitulmal

46. The Baitulmal shall be expended for—

(a) the advancement, support and promotion of the religion of Islam;

(b) the benefit of Muslims in accordance with Islamic Law;

(c) the social and economic development and well-being of the Muslim community;

(d) the relief of poverty among Muslims;

(e) the granting of loans or otherwise to Muslim individuals for higher learning under the scheme established under section 5(2)(f);

- (f) the provision and maintenance of places of worship and burial grounds for Muslims;
- (g) the provision of religious and educational facilities for Muslims;
- (h) the payment of any costs, charges and expenses of maintaining and administering property and assets of the Baitulmal vested in the Majlis;
- (i) the salaries and allowances of all agents, officers and servants of the Majlis engaged to administer the Baitulmal;
- (j) fees and allowances payable to members of the Majlis and the Lembaga and members of the committees established by the Majlis and the Lembaga respectively under this Ordinance and to any person invited to attend any meeting under section 18;
- (k) the payment of any costs, charges and expenses for carrying into effect this Ordinance and in connection with the administration of the Baitulmal; and
- (l) such other charitable purposes as the Majlis may, with the approval of the Minister, deem fit.

Application of the Baitulmal to estate and immovable property of deceased

47.—(1) The Baitulmal shall apply to—

- (a) the estate of a deceased Muslim who died domiciled in the State before or after the appointed date;
- (b) all immovable property in the State which becomes the estate of a deceased Muslim who died in the State or outside the State whether or not domiciled in the State before or after the appointed date; and
- (c) the property of a deceased Muslim who dies after the appointed date in such circumstances that, under the Islamic Law, his property would vest in, or become payable to, the Baitulmal.

(2) The estate or property of a deceased Muslim under subsection (1) shall vest in, and become payable to, the Majlis and form part of the Baitulmal.

(3) For the purpose of the Baitulmal under subsection (2), all property, other than immovable property, situated in the State shall, without any conveyance, assignment or transfer whatsoever, and in the case of immovable property upon registration under the Land Code [*Cap. 81 (1958 Ed.)*], vest in the Majlis.

Contributions to the Baitulmal by employers in respect of Muslim employees

48.—(1) Subject to this Ordinance and any rules made under section 82, every employer of a Muslim employee shall be liable to pay to the Baitulmal monthly contributions in respect of each Muslim employee of the amount of emoluments for the month at the rate as set out in the Schedule.

(2) Notwithstanding any written law or any contract to the contrary, an employer shall be entitled to recover from the emoluments of a Muslim employee the amount of any contribution payable to the Baitulmal on behalf of his employee.

(3) An employer who fails to pay, within such time as may be prescribed, to the Baitulmal the contributions referred to in subsection (1) in respect of any month shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred ringgit.

(4) An employer who has recovered any amount of contribution from the emoluments of a Muslim employee in accordance with subsection (2) and fails to pay such recovered contribution to the Baitulmal within such time as may be prescribed shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit.

(5) Notwithstanding subsection (6), the Yang di-Pertua Negeri may, from time to time, by notification in the *Gazette*, vary the amount of contributions specified in the Schedule and may prescribe different amounts of contributions payable by the employer in respect of different classes of Muslim employees.

(6) Without prejudice to subsections (1) and (2),—

(a) an employee may at any time contribute voluntarily to the Baitulmal a sum in addition to that referred to in subsection (1) as payable by the employer; or

(b) an employee may elect to have contributions in excess of the amount deducted from his emoluments every month by giving his employer a written notice to that effect,

and the employer shall make such monthly deduction as if the rate of contribution which such employee has elected to pay were the rate set out in the Schedule and the employer shall remit the amount of such excess deductions to the Baitulmal, in addition to the appropriate monthly contributions in respect of such employee:

Provided that an employee may at any time cease making such excess monthly deductions or revoke the election made under paragraphs (a) and (b) respectively by giving further written notice, not being less than six months from the date of giving such notice, to his employer of his desire to do so.

(7) Any contribution recoverable from the emoluments of an employee in accordance with subsection (2) shall be recovered by the employer from the emoluments in respect of which such contribution is payable at the time of payment of those emoluments or within such time as may be prescribed and not otherwise.

Contributions from other persons to the Baitulmal

49.—(1) Notwithstanding section 48, the Majlis may—

(a) receive voluntary contributions to the Baitulmal from any Muslim person; and

(b) with the approval of the Yang di-Pertua Negeri, by order published in the *Gazette*, require any Muslim person or

class of Muslim persons to pay monthly contributions to the Baitulmal of such amount as may be prescribed.

(2) Nothing in this Part shall be construed as precluding the Majlis from receiving contributions to the Baitulmal from any person, including person not professing the religion of Islam.

Contributions by Muslim employers

50. Every employer who is a Muslim shall be required to pay monthly contributions to the Baitulmal at such rate as set out in the Schedule and the provisions of this Part shall *mutatis mutandis* apply accordingly.

Wakaf and nazr

Restrictions on creation of *wakaf* or *nazr*

51.—(1) Whether or not made by way of will or death-bed gift, no *wakaf* or *nazr* involving more than one-third of the property of the person making the *wakaf* or *nazr* shall be valid in respect of the excess beyond such one-third.

(2) This section shall not operate to render valid any *wakaf* or *nazr* which is invalid under the provisions of Islamic Law.

(3) Any *wakaf* or *nazr* which is valid in accordance with the repealed Ordinance shall remain valid for the purposes of this Ordinance.

Income of *wakaf khas* and *nazr am*

52.—(1) The income received by the Majlis from a *wakaf khas* shall be applied by the Majlis in accordance with the lawful provisions of such *wakaf khas*.

(2) The income of every *wakaf*, other than *wakaf khas* and of every *nazr am*, shall be paid into and form part of the Baitulmal.

Capital of *wakaf* and *nazr am*

53.—(1) Subject to subsections (2) and (3), the capital property and assets affected by any lawful *wakaf* or *nazr am* shall not form part of the Baitulmal, but shall be applied in pursuance of such *wakaf* or *nazr am* and held as segregated accounts.

(2) If due to lapse of time or change of circumstances, it is no longer possible beneficially to carry out the exact provisions of any *wakaf* or *nazr am*, the Majlis shall prepare or cause to be prepared a scheme for the application of the property and assets affected thereby in a manner as closely as may be analogous to that required by the terms of such *wakaf* or *nazr am*, and shall apply such property and assets accordingly.

(3) Notwithstanding subsection (1), the Majlis may, with the approval in writing of the Yang di-Pertua Negeri, direct that the property and assets referred to in subsection (2) shall be added to and form part of the Baitulmal.

(4) If the terms of any *wakaf* or *nazr am* are such that no method of application of the capital property and assets affected thereby is specified, or it is uncertain in what manner such capital property and assets should be applied, the Majlis may, with the approval in writing of the Yang di-Pertua Negeri, direct that such capital property and assets shall be added to and form part of the Baitulmal.

(5) All instruments creating, evidencing or affecting any *wakaf* or *nazr am*, together with any documents of title or other securities relating thereto, shall be held and retained by the Majlis.

Construction of instruments on *wakaf* or *nazr*

54. If, in the opinion of the Majlis, the meaning or effect of any instrument or declaration creating or affecting any *wakaf* or *nazr am* is obscure or uncertain, the Majlis may refer such instrument or declaration to the Lembaga Fatwa for its opinion as to the meaning or effect thereof, and it shall act on any opinion so given by the Lembaga Fatwa.

Publication of list of property, etc., and keeping of

separate accounts in the Baitulmal

Publication of list of property, etc. and keeping of separate accounts in the Baitulmal

55.—(1) As soon as possible after the 31st day of December in every year the Majlis shall prepare and submit to the Minister a list of all properties, investments and assets vested in the Majlis, subject to any trust, *wakaf* or *nazr* and not forming part of the Baitulmal.

(2) There shall be paid into the Baitulmal—

(a) all moneys in respect of contributions to the Baitulmal collected by the Lembaga Baitulmal dan Wakaf;

(b) the capital property and assets from *wakaf khas* and *nazr am*; and

(c) the income of capital property and assets from *wakaf khas* and *nazr am*,

but such moneys, or the capital property and assets or the income thereof, shall be accounted in a separate account respectively of the Baitulmal.

PART VI

ESTABLISHMENT OF LEMBAGA HAL-EHWAL ISLAM
DAN ADAT MELAYU, LEMBAGA MASJID-MASJID, ETC.

Lembaga Hal-Ehwal Islam dan Adat Melayu

Establishment of Lembaga Hal-Ehwal Islam dan Adat Melayu

56.—(1) There shall be established, for the purpose of this Ordinance, a Lembaga Hal-Ehwal Islam dan Adat Melayu which shall consist of not less than four members, including the Chairman, but not more than eight other members who shall be appointed by the Yang di-Pertua Negeri, on the recommendation of the Majlis, for such period as may be prescribed.

(2) It shall be the responsibility of the Lembaga Hal-Ehwal Islam dan Adat Melayu to aid and assist the Majlis in respect of all matters relating to the Malay customary law of the State, the affairs

and activities of all Islamic religious societies, bodies and charitable organizations and the religion of Islam in the State, except on the question of or relating to Islamic Law and those relating to the administration of justice.

(3) If in any court, other than a Syariah Court, any question relating to any matter under subsection (2) calls for a decision, such court may request for the opinion of the Majlis on such question.

(4) Upon receipt of the request under subsection (3), the Majlis shall refer such question to the Lembaga Hal-Ehwal Islam dan Adat Melayu which shall, on behalf and in the name of the Majlis, give its opinion thereon in accordance with the opinion of the majority of its members to the requesting court.

(5) In making and issuing any such decision in accordance with this section, the Lembaga Hal-Ehwal Islam dan Adat Melayu shall have due regard to the Malay customary law applicable in the State.

Lembaga Masjid-Masjid

Establishment of Lembaga Masjid-Masjid

57.—(1) There shall be established, for the purpose of this Ordinance, a Lembaga Masjid-Masjid which shall consist of not less than six members, including the Chairman, but not more than twelve members who shall be appointed by the Yang di-Pertua Negeri, on the recommendation of the Majlis, for such period as may be prescribed.

(2) It shall be the responsibility of the Lembaga Masjid-Masjid, for and on behalf of the Majlis—

(a) to exercise control and supervision over all mosques established within the State;

(b) to ensure that the moneys and properties of the mosques are properly managed;

(c) to carry on any such activities either under the direction of the Majlis or independently;

(d) to give financial assistance to any mosque by way of loan or otherwise; or

(e) to do all other acts which it considers desirable or expedient.

(3) The Lembaga Masjid-Masjid shall, at all times, keep the Majlis informed of the state of affairs of all the mosques within the State, and shall make and transmit or cause to be made and transmitted to the Majlis annual reports dealing with the activities of all mosques and the money received or expended or property disposed of during the year.

General

Trusteeship of mosques, land, etc.

58.—(1) Without prejudice to any written law for the time being in force in the State relating to companies, co-operative societies or societies—

(a) the Majlis shall—

(i) be the sole trustee of all mosques, Islamic religious institutions and schools and Muslim burial grounds in the State, and every mosque, Islamic religious institution and school and Muslim burial ground, together with any property belonging or appertaining thereto, other than land reserved for a public purpose or acquired in the name of the Board of Trustees constituted under the Charitable Trusts Ordinance, 1994 [*Cap. 7*], shall, without any conveyance, assignment or transfer whatsoever, vest in the Majlis for the purpose of this Ordinance, and where it affects alienated land, subject to subsection (6), the Register kept under the Land Code [*Cap. 81 (1958 Ed.)*] in which the title to such land is registered, shall be rectified accordingly;

(ii) be responsible for the proper control and supervision of the affairs and activities of all Islamic religious societies, bodies and charitable organizations in the State;

(iii) be responsible for issuing directions to all Islamic religious teachers and bodies in matters relating to the authorities to be followed in teaching or propagating the religion of Islam; and

(iv) be responsible for all the arrangements which are required to be made in the State regarding the pilgrimage to Mecca of Muslims in the State;

(b) the Majlis may direct any Islamic religious societies, bodies or charitable organizations to produce full accounts of all sums collected and of the disposal thereof with all receipts and other documents for inspection and audit by the Majlis;

(c) no person shall collect money or other contributions for any charitable purpose, or for the support and promotion of the religion of Islam, or for the benefit of Muslims or any mosques and Islamic religious institutions or schools, or for the maintenance of Muslim burial grounds, without the approval in writing of the Majlis;

(d) no person shall teach or propagate or publicly expound any doctrine of the religion of Islam in the State without the approval in writing of the Majlis; and

(e) no person shall use any building or place as or for the purpose of an Islamic religious institution or school to teach or propagate Islam or in which Arabic is the main medium of instruction, without the approval in writing of the Majlis.

(2) Where the Majlis is satisfied, after such enquiry as it may deem necessary, that any such Islamic religious society, body, charitable organization, institution or school or any person has failed to comply with any direction issued under subsection (1), the Majlis may, by Order published in the *Gazette*, declare that the activities of such Islamic religious society, body, charitable organization, institution or school or person are prejudicial and opposed to the interest of the Muslim community.

(3) Upon such declaration,—

(a) no person shall undertake, organize or be involved in any manner, in the activities or the collection of money or contributions for or in support of the aforementioned Islamic

religious society, body, charitable organization, institution or school or person; and

(b) the funds of such Islamic religious society, body, charitable organization, institution or school or person shall be deemed to be vested in, and be delivered to, the Majlis within fourteen days from the date of the Order, to be dealt with in such manner as the Majlis deems fit.

(4) Any Islamic religious society, body, charitable organization, institution or school or person aggrieved with the Order made by the Majlis may, within fourteen days of the receipt of the Order, appeal to the Yang di-Pertua Negeri. Upon considering such appeal, the Yang di-Pertua Negeri may either affirm, annul, vary or amend the Order.

(5) Until and unless annulled, varied or amended by the Yang di-Pertua Negeri, the Order shall remain in full force and effect and shall be obeyed failing which such Islamic religious society, body, charitable organization, institution or school or person affected thereby shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit and imprisonment not exceeding two years.

(6) (a) Notwithstanding any written law or the terms of any lease, in any case where any alienated land has been vested in the Majlis for the purpose of this Ordinance pursuant to subsection (1)(a) (i), the Majlis shall, with the approval of the Yang di-Pertua Negeri, acquire such land by compulsory acquisition in accordance with Part IV of the Land Code [*Cap. 81 (1958)*].

(b) The purpose for which any land is acquired pursuant to this subsection shall be deemed to be a public purpose under the Land Code and any expenses incurred and compensation paid in respect of such acquisition shall be paid by the Majlis.

(7) The Majlis may exempt any Islamic religious institution or school from the provisions of this section.

(8) For the purpose of this section, subject to any exemption granted under subsection (7), "Islamic religious institution or school" means any educational institution or school or establishment or place

in the State where persons are enlisted to learn or to be taught any subject relating to the religion of Islam.

Maintenance of mosques and compounds

59.—(1) The Majlis shall ensure that all mosques in the State are kept in a proper state of repair and that the compounds thereof are maintained in a proper state of cleanliness.

(2) The Majlis may raise and apply, or authorize the raising and application of, special funds for the purpose of such repairs and maintenance, or may defray the cost of such repairs and maintenance from the Baitulmal.

Establishment of mosques

60.—(1) The Majlis may at any time—

- (a) permit a building to be erected for use as a mosque;
- (b) permit the use of any building as a mosque; or
- (c) prescribe any *surau* or other building to be a mosque.

(2) The Majlis shall not give its permission or make a prescription under subsection (1) unless the site of the building to be used as a mosque has been made a *wakaf* in perpetuity.

(3) The Majlis may at any time by notification in the *Gazette* or otherwise determine, amend or alter the boundaries of any *kariah masjid*.

(4) The Majlis may appoint a committee consisting of such persons as it deems fit to manage or look after any mosque and such committee shall discharge its functions under the direction of the Majlis.

Appointment of *pegawai masjid*

61.—(1) The Majlis may appoint a fit and proper person to be a *pegawai masjid* in respect of any mosque.

(2) Every person appointed by the Majlis to be a *pegawai masjid*, including every person deemed to have been so appointed under section 84, shall be given a *tauliah* by the Majlis and shall have such powers and duties as may be set out in their respective *tauliah* or in the rules made under this Ordinance.

Tenure of office of *pegawai masjid*

62.—(1) The appointment of a *pegawai masjid* may be terminated with a notice from the Majlis.

(2) It shall be the duty of the Secretary to bring to the notice of the Majlis any disgraceful conduct on the part of any *pegawai masjid* whether in relation to his duties as such or otherwise and to make any reasonable recommendations.

Control and direction over *pegawai masjid*

63. In the discharge of their duties, a *pegawai masjid* shall be subject to the control and direction from time to time of the Majlis or any person authorized by the Majlis.

Exemption of mosque

64. The Majlis may, with the approval of the Yang di-Pertua Negeri, by notification in the *Gazette* or otherwise, exempt any mosque from any of the provisions of this Part.

PART VII

ZAKAT AND FITRAH

Power of Majlis to collect and dispose of *zakat* and *fitrah*

65.—(1) Subject to this Ordinance, the Majlis shall have the power, and shall be under the duty, to collect and dispose of as the Majlis may, with the approval of the Yang di-Pertua Negeri, direct all *zakat* and *fitrah* payable in the State in accordance with Islamic Law.

(2) All *zakat* and *fitrah* collected in accordance with this Part shall be paid into the Baitulmal but shall be accounted in a separate account of the Baitulmal.

Power of Majlis to make rules on *zakat* and *fitrah*

66.—(1) The Yang di-Pertua Negeri, on the advice of the Majlis, may by notification in the *Gazette* make rules for and regulate all matters in connection with the collection, administration and distribution of *zakat* and *fitrah*.

(2) In particular, but without prejudice to the generality of the foregoing, such rules may provide for—

(a) the amount of *zakat* and *fitrah* to be paid from time to time by all Muslims in the State;

(b) the method by which *zakat* and *fitrah* shall be collected;

(c) the appointment of agents and *amil*s for the collection of *zakat* and *fitrah* respectively; and

(d) the penalties for the collection or giving of *zakat* and *fitrah* by or to unauthorized persons.

(3) The Undang-Undang Zakat dan Fitrah 1966 [*Swk. L.N. 94/66*] made under Undang-Undang Mahkamah Syariah [*Vol. VIII, pg. 673*] shall be deemed to have been made under this section and shall continue to remain in force, in so far as they are not inconsistent with this Ordinance, until it is revoked or replaced by rules made under this Ordinance.

Objection

67.—(1) Any person may make objection to the Majlis against any demand for payment by him of *zakat* and *fitrah*.

(2) The Majlis shall consider such objection and may order that—

(a) such person shall have to pay the amount of *zakat* and *fitrah* as demanded from him; or

(b) such person shall pay such lesser amount of *zakat* and *fitrah* as the Majlis shall deem proper; or

(c) such person shall not be liable in any one or more years to pay *zakat* or *fitrah* or both.

(3) The decision of the Majlis on such objection shall be final and shall not be called in question or reviewed in any court.

PART VIII

CONVERSION TO THE RELIGION OF ISLAM

Requirements for, and effect of, conversion

68.—(1) A person who is not a Muslim and wishes to convert to the religion of Islam shall comply with all the necessary requirements according to Islamic Law for a valid conversion.

(2) A person is converted to the religion of Islam and becomes a Muslim as soon as he fulfills the requirements under subsection (1).

Capacity to convert to the religion of Islam

69. For the purpose of this Part, a person who is not a Muslim may convert to the religion of Islam if he is of sound mind and—

- (a) has attained the age of eighteen years; or
- (b) if he has not attained the age of eighteen years, his parent or guardian consents to his conversion.

Appointment of Registrar of Muslim Converts

70.—(1) The Director of the Islamic Religious Department of the State shall be the Registrar of Muslim Converts who shall maintain a Register in the prescribed form for the registration of those persons who convert to Islam.

(2) The Registrar of Muslim Converts shall furnish every person whose conversion to the religion of Islam has been registered a Certification Card in such form as may be prescribed in the rules made under this Ordinance and such Certification Card shall be conclusive proof of the facts stated therein.

PART IX**FINANCIAL PROVISIONS****Estimates of income and expenditure**

71.—(1) The Majlis shall prepare and submit to the Minister not later than the 31st day of October in each year estimates of all income and expenditure of the Baitulmal, including therein estimates of all property receivable and disposable in kind, in respect of the ensuing year.

(2) The Minister may approve such estimates or may direct that the estimates be amended.

(3) The Majlis may at any time submit to the Minister supplementary estimates of expenditure of the Baitulmal in respect of the current year, or, at any time prior to the 31st day of March in any year, in respect of the preceding year, and such supplementary estimates of expenditure may be approved or amended in accordance with subsection (2).

(4) No money of the Baitulmal shall be expended, or property disposed of in kind, save in accordance with such estimates as are provided for in this section and upon a voucher signed by such person as may be authorized by the Majlis in that behalf.

Audit

72. The annual balance sheet, income and expenditure account and list of investments shall, prior to the issue thereof, be audited annually and duly certified by the Auditor-General or an officer authorized by the Auditor-General. A copy of the auditor's certificate shall be annexed to all copies of the report and accounts as issued.

Annual report

73. The Majlis shall cause full and true accounts of the Baitulmal to be kept and shall as soon as possible after the 31st day of December of every year submit to the Minister a report on the activities of the Majlis during the preceding year, together with a balance sheet of the Baitulmal, as at the 31st day of December, an income and expenditure account for the year and list of the properties and investments of the Baitulmal showing their costs, if bought, and estimated values as at the 31st day of December.

Bank accounts

74.—(1) The Majlis may manage and operate such account or accounts in respect of the Baitulmal as it may deem proper with any bank which is suitable.

(2) All moneys received by or for the Majlis in respect of the Baitulmal shall be paid into a bank account of the Majlis either upon fixed deposit or upon current account.

(3) All cheques drawn on any such account of the Majlis shall be signed by such person as may be authorized by the Majlis in that behalf.

PART X
MISCELLANEOUS PROVISIONS

Appointment of agents, *amilis* and officers in respect of collection of contributions to the Baitulmal

75. For the purposes of this Ordinance, the Majlis may appoint such agents, *amilis* and officers as may be necessary for the collection of contributions, of income from *wakaf khas* and *nazr am* and *zakat* and *fitrah* to be credited into the Baitulmal or credited into a separate account.

Appointment of committees

76. The Majlis and the Lembaga established under this Ordinance may appoint committees to assist them in the discharge of their duties or the exercise of their powers.

Publication of appointments, *etc.*, in the *Gazette*

77. All appointments and revocation of appointments of members of the Majlis and the Lembaga established or made under this Ordinance shall be published in the *Gazette*.

Public Authorities Protection Act 1948

78. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Majlis, the Secretary, the Lembaga or committee or any member thereof or the officers and servants of the Majlis or any other persons authorized in writing by the Majlis in respect of any act, neglect or default done or committed by any of them in such capacity.

Public servants

79. The members, officers and servants and the Secretary of the Majlis and members of the Lembaga and committees established by the Majlis and the Lembaga respectively under this Ordinance shall, while discharging their duties as such members, officers, servants or Secretary, be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

Offence by company, Islamic religious society, etc.

80. Where an offence under this Ordinance has been committed by any company, Islamic religious society, body, charitable organization, institution or school, a person who at the time of the commission of the offence is a director or secretary or other similar officer thereof or a person who is purporting to act in such capacity shall, as well as such company, body, religious institution or school, be deemed to be guilty of the offence unless he proves that the offence has been committed without his knowledge or that he took reasonable precautions to prevent its commission, or in the case of a continuing offence, the continuation thereof.

Who may prosecute

81. Prosecution in respect of offences committed under this Ordinance or any rules made hereunder may be conducted or instituted by officers or servants of the Majlis or any other persons duly authorized in writing in that behalf by the Majlis.

Power of Yang di-Pertua Negeri to make rules

82.—(1) The Yang di-Pertua Negeri, on the advice of the Majlis, may by notification in the *Gazette* make rules for the carrying into effect the provisions of this Ordinance.

(2) In particular, but without prejudice to the generality of the foregoing, such rules may provide for—

(a) the fees to be paid in respect of any act or thing done under or in pursuance of this Ordinance, and the method of collecting and disposing of such fees;

(b) the appointment of committees of the Majlis or the Lembaga and their powers, duties and proceedings;

(c) the forms, registers, books of account, reports, accounts, estimates, and other documents to be used by the Majlis in respect of any act or thing done under or in pursuance of this Ordinance;

- (d) the conduct of any charitable collection and the disposal of the proceeds thereof;
- (e) in respect of the Lembaga Masjid-Masjid—
 - (i) the administration and registration of mosques and the method relating thereto;
 - (ii) the establishment of mosque, the appointment, powers and duties of any *pegawai masjid* and any matters relating thereto;
 - (iii) the establishment of burial grounds and any matters relating thereto;
 - (iv) the determination and publication of *kariah masjid* boundaries;
 - (v) the proper conduct and good order of the mosque, and the good conduct and discipline of the *anak kariah* in matters relating to the religion of Islam;
 - (vi) the control and restriction relating to the establishment of mosques; and
 - (vii) any other matters as to which it is necessary or expedient to make rules relating to mosques;
- (f) the administration and supervision of Islamic religious institutions and schools and activities relating to the teaching of the religion of Islam;
- (g) the punishment (a fine of one thousand ringgit and imprisonment not exceeding six months) for any breach of or for failure to comply with any of the rules made under this section;
- (h) the collection, administration and distribution of all property and investments of the Baitulmal;
 - (i) the winding-up of the Baitulmal;
 - (j) the manner of payment and collection of contributions to the Baitulmal and any matters incidental thereto;

(k) the exemption of employers from paying contributions to the Baitulmal in respect of such categories of Muslim employees as the Yang di-Pertua Negeri may determine;

(l) the return of contributions under Part V or of any part of such contributions paid in error;

(m) the payment of contributions under Part V or of any part of such contributions omitted to be paid in error;

(n) the keeping of books, accounts or records by employers;

(o) prescribing the evidence to be produced and the person, officer or authority to whom such evidence is to be produced for the purposes of Part V;

(p) prescribing the procedure to be followed when contributions are paid into the Baitulmal;

(q) the extent of the obligation of such employers as to payment of contributions to the Baitulmal in cases where an employee is employed concurrently by two or more employers;

(r) the procedure to be followed when voluntary contributions are paid to the Baitulmal;

(s) the powers, duties and proceedings of the Lembaga established under this Ordinance;

(t) the returns to be made and the forms and registers to be used in the carrying out of Part V;

(u) the care and instruction of Muslim converts, and the method of registering them or otherwise;

(v) anything that may be prescribed under this Ordinance;
and

(w) all other matters which may be provided for by rules under this Ordinance.

PART XI

REPEAL, SAVING AND TRANSITIONAL PROVISIONS

Repeal, saving and transitional provisions

83.—(1) The Majlis Islam (Incorporation) Ordinance [*Cap. 105 (1958 Ed.)*] is repealed.

(2) All rules, proclamations, orders, notifications, notices, forms, authorization letters and appointments, if any, issued or made under the repealed Ordinance shall, in so far as they are not inconsistent with this Ordinance, be deemed to have been made under this Ordinance and shall continue in force until other provisions relating thereto shall be issued or made under this Ordinance or until it is revoked by rules, proclamations, orders, notifications, notices, forms, authorization letters and appointments, issued or made under this Ordinance.

Continuance of officers, servants, etc., of Majlis

84. Every person who, immediately before the appointed date—

(a) was the President, Deputy President, Mufti or a member of the former Majlis, Lembaga or committee, if applicable, established under the repealed Ordinance or a *pegawai masjid* shall be deemed to have been appointed under this Ordinance and shall continue to serve as the President, Deputy President, Mufti or a member of such Majlis, Lembaga or committee or a *pegawai masjid*, until other provisions relating thereto shall be made under this Ordinance or until the date of expiry of his appointment as such President, Deputy President, Mufti, or member of such Majlis, Lembaga or committee or a *pegawai masjid*; and

(b) was employed as an officer or servant of the former Majlis shall on that date be deemed to be employed as an officer or servant, as the case may be, of the Majlis established under this Ordinance upon the same terms and conditions of service as those obtaining immediately before the appointed date.

Transfer of powers, rights, liabilities and duties

85. Subject to this Ordinance, every power, right, authority, privilege, duty, liability or obligations which immediately before the appointed date were vested in or charged on the former Majlis shall, as from that date, vest in and be charged on the Majlis established under this Ordinance, in so far as they are not inconsistent with the provisions of this Ordinance.

Transfer of property

86.—(1) Subject to this Ordinance, all lands immediately before the appointed date vested in or reserved under any written law relating to land for the purpose of the former Majlis shall, on that date, as the case may be, vest in, or be deemed to be reserved for the purpose of, the Majlis established under this Ordinance.

(2) Subject to this Ordinance and to any direction of the Minister, all property and assets other than land which immediately before the appointed date were vested in the former Majlis or in any person on behalf of the former Majlis shall on that date vest in the Majlis established under this Ordinance without any conveyance, assignment or transfer.

(3) It is hereby declared that any property which immediately before 17 December 1954 was used for the purposes which after that date became the purposes of the former Majlis shall on the appointed date be vested in the Majlis established under this Ordinance without any conveyance, assignment or transfer.

Existing contract

87. Subject to this Ordinance, all deeds, bonds, agreements, instruments and working arrangements subsisting immediately before the appointed date and affecting any of the property transferred under section 86 shall be of full force and effect against or in favour of the Majlis and enforceable as fully and effectually as if, instead of the former Majlis, or any person acting on behalf of the former Majlis, the Majlis established under this Ordinance had been named therein or had been a party thereto.

Transfer of Baitulmal

88. Subject to this Ordinance, all moneys standing in, and due to be paid to, the Baitulmal of the former Majlis shall, on the appointed date, be transferred to the Baitulmal established under section 45.

Prevention of anomalies

89. If any difficulty arises with respect to the foregoing transitional provisions of this Ordinance, the Minister may, by Order, make such modifications to those provisions as may appear to him necessary for preventing anomalies:

Provided that the Minister shall not exercise the powers conferred by this section after the expiration of two years from the appointed date.

SCHEDULE

(Sections 48(1) and 50)

**RATES OF CONTRIBUTION TO THE BAITULMAL
FOR THE MONTH**(1) *Employees*

<i>Amount of Emoluments for the Month</i>	<i>Rate of Contribution Per Month</i>
Exceeding RM300 but not exceeding RM1,000	RM1.00
Exceeding RM1,000 but not exceeding RM2,000	RM2.00
Exceeding RM2,000	RM4.00

(2) *Employers*

For an employer who is a Muslim	RM5.00
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[List of Amendments]

MAJLIS ISLAM SARAWAK

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LAWS OF SARAWAK

Chapter 41

MAJLIS ISLAM SARAWAK ORDINANCE, 2001

LIST OF AMENDMENTS

Amending Law	Short Title	In force from
Swk. L.N. 104/2002	... Date of Commencement of the Ordinance	1.8.2002
Cap. 61	... Interpretation Ordinance, 2005	1.7.2005

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